

AN ORDINANCE 2008-03-13-0192

SELECTING 118 DESIGN CONSULTANTS LISTED IN ATTACHMENT A FOR NEGOTIATION AND EXECUTION OF PROFESSIONAL ARCHITECTURAL AND/OR ENGINEERING DESIGN SERVICES CONTRACTS, IN AN AGGREGATE AMOUNT NOT TO EXCEED \$54,481,186.00, AND AUTHORIZING REIMBURSEMENT BY SAWS AND CPS ENERGY FOR DESIGN SERVICES COST, IN CONNECTION WITH THE 2007 GENERAL OBLIGATION BOND PROGRAM AND CERTAIN FIRE STATION AND PARKS CAPITAL PROJECTS INCLUDED IN THE 2008-2013 CAPITAL BUDGET, LOCATED CITY-WIDE.

* * * * *

WHEREAS, the 2007-2012 Bond Implementation Plan provided for a new city organizational structure for delivery of the bond program which included an Executive Committee and the creation of the new Capital Improvements Management Services Department to oversee the bond program implementation; and

WHEREAS, Requests for Qualifications were issued to seek consultant services for program management, engineering design and architecture/landscape architecture design services; and

WHEREAS, this Ordinance will select the proposals submitted by 118 design consultants for negotiation and execution of professional architectural and/or engineering design services contracts in an aggregate amount not to exceed \$54,481,186.00; and

WHEREAS, San Antonio Water System and CPS Energy have agreed to a joint design and joint bid process where the City contracts with the Design Consultants and Construction Contractors and receives reimbursement from SAWS and CPS Energy for their respective portions of the project; and

WHEREAS, approval of this Ordinance for the negotiation and execution of all design consultant contracts in one action reduces the total number of council actions significantly and allows staff to move forward with the bond program more quickly; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The firms listed in on **Attachment A** are hereby selected to provide professional services in connections with the 2007 General Obligation Bond Program and certain fire station and parks capital projects included in the 2008-2013 Capital Budget, located city-wide.

SECTION 2. The City Manager or her designee, in order to accomplish the aims of this Ordinance, is hereby authorized to negotiate and execute professional services contracts for Architectural and/or Engineering Design Services with the firms listed on Attachment A.

SECTION 3. If contracts for Architectural and/or Engineering Design Services can be negotiated in accordance with the terms of the standard professional services contracts used by

the City of San Antonio for such services and for a fair and reasonable amounts, then the contracts may be executed without further City Council Action.

SECTION 4. The City Manager or her designee, in order to accomplish the aims of this Ordinance, is hereby authorized to negotiate professional services contracts for Program Management Services with firms listed in Exhibit A, and after such negotiations are completed, the Program Management contracts shall be presented to City Council for final approval.

SECTION 5. The total aggregate amount of the professional services contract executed shall not exceed \$54,481,186.00.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

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SECTION ~~3~~⁷. This ordinance shall take effect on the tenth day after passage.

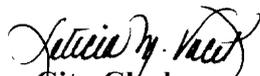
PASSED AND APPROVED this 13th day of March, 2008.



M A Y O R

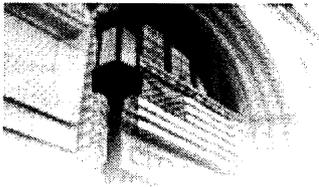
PHIL HARDBERGER

ATTEST:

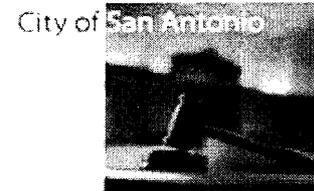

City Clerk

APPROVED AS TO FORM:


City Attorney



Request for
COUNCIL
 ACTION



Agenda Voting Results - 8A

Name:	8A, 8B, 8C						
Date:	03/13/2008						
Time:	02:33:13 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance selecting 118 design consultants listed in Attachment A for negotiation and execution of professional architectural and/or engineering design services contracts, in an aggregate amount not to exceed \$54,481,186.00, and authorizing reimbursement by SAWS and CPS Energy for design services cost, in connection with the 2007 General Obligation Bond Program and certain fire station and parks capital projects included in the 2008-2013 capital budget, located City-Wide.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4	x					
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				x
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

■ 2007-2012 Bond Program

Agenda Item #8
March 13, 2008



1

■ Challenges – Opportunities

- Design 121 Projects
- Stay on Schedule & on Budget
- Take Advantage of Market

2



Solutions

- Fully Engage Consultants
- Spread Work Around
- One Large Selection Process

3



Process

November Requests for Qualifications (RFQ)

- Program Management
- Engineering Design
- Architectural & Landscape Architecture
Design

4

Selection Process

- Thorough & Well-Documented
- Submittal Review Teams:
 - CIMS
 - EDD (SBEDA)
 - Public Works, Parks, Fire & Library
 - SAWS & CPS

5

Design Results

Type	Submittals	# of Projects	Firms Selected
Streets/ Drainage	63	52	50
Buildings	40	24	22
Parks	9	43	9

6



Program Management Results

- 12 Submittals
- 8 Interviews
- 3 Selected

7



Program Management Results

- PBS&J: Executive Program Manager
- Freese & Nichols: Project Delivery
- Parsons: "Vertical" Projects & Bridge Program

8



Overall Results

- 81 Different Prime Consultants
 - 88% Local
 - 60% SA Headquarters
 - 53% Small Business Enterprises
 - 32% Minority-Owned Business Enterprises
 - 14% Women-Owned Business Enterprises

9



Overall Results (cont.)

- 198 Prime & Subconsultants Selected
 - 126 are SBEDA Firms (64%)
- 32 Firms Not Selected as Prime
 - 10 Firms Selected as Subconsultants on Other Jobs

10



Summary

- Strong Consultant Community
- Consultant Input
- Thorough Process
- Widespread Selections

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Recommended Council Action

Authorize Staff to:

- a. Negotiate & Execute Design Contracts
- b. Appropriate & Receive SAWS & CPS Funds
- c. Negotiate Program Management Contracts

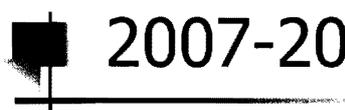
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Reasons For Council Action

- Expedite Project Delivery
- Consultant Availability
- Cost-Effective
- Design Process Is Well-Defined
- Council & Staff Time

13



2007-2012 Bond Program

Agenda Item #8
March 13, 2008



14



CMS or Ordinance Number: CN4600008161

TSLGRS File Code:1075-16

Document Title:

CONT - Project No. 20-00115 New Fire Station #19

Contract in the amt. of \$335,407.00

Commencement Date:

12/22/2008

Expiration Date:

12/31/2015

**PROFESSIONAL SERVICES AGREEMENT
ARCHITECTURAL/ENGINEERING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

AGREEMENT FOR ARCHITECTURAL/ENGINEERING SERVICES

CITY OF SAN ANTONIO NEW FIRE STATION #19 – PROJECT NUMBER 20-00115

This Agreement is made and entered into in San Antonio, Bexar County, Texas; between the City of San Antonio, a Municipal Corporation in the State of Texas, hereinafter termed "CITY" and

DEBRA J. DOCKERY, ARCHITECT, P.C.

118 Broadway, Suite 516, San Antonio, Texas, 78209

Architect(s)/Engineer(s), duly licensed, and practicing under the laws of the State of Texas, hereinafter termed "DESIGN CONSULTANT", said Agreement being executed by the CITY pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by the DESIGN CONSULTANT for architectural and/or engineering services hereinafter set forth in connection with the above designated Project for the City of San Antonio.

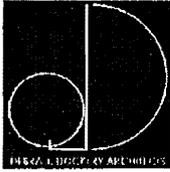
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ARTICLE I. DEFINITIONS

As used in this AGREEMENT, the following terms shall have meanings as set out below:

- 1.1 "Application for Compensation" means written form for a request from DESIGN CONSULTANT or Construction Contractor to be paid for completed work.
- 1.2 "Application for Payment" means form CONSTRUCTION CONTRACTOR uses to make a request to be paid for completed work.
- 1.3 "Certificate for Payment" means a form DESIGN CONSULTANT uses to make recommendations on Construction Contractor's Application for Payment.
- 1.4 "CITY" and "Owner" means the City of San Antonio, Texas.
- 1.5 "Claim" is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and DESIGN CONSULTANT arising out of or relating to the Agreement.
- 1.6 "Compensation" means amounts paid by City to DESIGN CONSULTANT for completed services under this Agreement.
- 1.7 "CONSTRUCTION CONTRACTOR" means the firm hired by the CITY to construct the Project.
- 1.8 "Construction Contract Documents" means the contract between the CITY and the firm contracted by CITY to construct the project and all documents therein.
- 1.9 "Contract Drawings and Specifications" means the construction documents.
- 1.10 "DESIGN CONSULTANT" means **DEBRA J. DOCKERY, ARCHITECT, P.C.** and its officers, partners, employees, agents and representatives, and all sub-consultants, if any, and all other persons or entities for which the DESIGN CONSULTANT is legally responsible.
- 1.11 "Director" means the Director of CITY's Capital Improvements Management Services Department, Public Works Department or the designated project manager identified by the Notice to Proceed.
- 1.12 "Final Compensation" means the final amounts paid by CITY to DESIGN CONSULTANT for completed services under this Agreement.
- 1.13 "Final Payment" means the final amounts paid by CITY to CONSTRUCTION CONTRACTOR for completed work under the construction contract.
- 1.14 "Owner Designated Representative (ODR)" means person designated by Owner to act for Owner.



DEBRA J. DOCKERY, ARCHITECT, P.C.

November 26, 2008

Gerlach Laven, Architect
City Architect's Office, CIMS Department
City of San Antonio
PO Box 839966
San Antonio, TX 78283-3966

By email to: gerlach.laven@sanantonio.gov

Re: City of San Antonio New Fire Station #19
Architectural and Engineering Fee Proposal - Second Revision

Dear Mr. Laven:

This architectural and engineering services fee proposal is based upon the scope of services and contract conditions prepared by the City for the replacement of Fire Station #19 and transmitted to me on June 17, 2008 and revised per our meeting on October 15, 2008 to omit LEED certification and add geotechnical services relative to testing for ground contamination from abandoned fuel storage tanks on adjacent properties. I have listed the services and expenses in a detailed format as some services may ultimately not be required. All scope items and fees are negotiable.

BASIC / TRADITIONAL A/E SERVICE

ARCHITECTURAL	\$156,000
STRUCTURAL	\$22,000
MECHANICAL ELECTRICAL	\$38,000
LANDSCAPE ARCHITECT	\$7,500
CIVIL - BASIC	\$37,000
ON-SITE MEASUREMENTS AND INVESTIGATIONS	
ARCHITECTURAL	\$2,200
STRUCTURAL	\$960
MEP	\$1,600
TAS APPLICATION, REVIEW, VARIANCE REQUEST, INSPECTION FEES	\$1,500
<u>DOCUMENT PRINTING</u>	<u>\$2,500</u>
TOTAL BASIC SERVICES	\$269,260

- 1.15 "Project" means the capital improvement/construction development undertaking of CITY for which DESIGN CONSULTANT's services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.
- 1.16 "Payment" means amounts paid by City to Construction Contractor for work performed under construction contract documents.
- 1.17 "Proposal" means Design Consultant's Proposal to provide services for this Project.
- 1.18 "Request for Payment" means a form the Construction Contractor uses to be paid for completed work.
- 1.19 "Schedule of Values" means the values allocated to materials and various portions of the work, prepared in such form, and supported by such data to substantiate its accuracy as Owner may require.
- 1.20 "Scope of Services" mean the services described in Article IV Scope of Services.
- 1.21 "Services" means design services performed by the DESIGN CONSULTANT.
- 1.22 "Statement of Probable Construction Cost" means DESIGN CONSULTANT's estimate of probable Construction costs based on current, area, volume or other unit costs.
- 1.23 "Substantial Completion" is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.
- 1.24 "Total Compensation" means the lump sum amount of this Agreement.
- 1.25 "Work" means the construction performed by the Construction Contractor and design services performed by the DESIGN CONSULTANT.

ARTICLE II. COMPENSATION

- 2.1 The Total Compensation for basic services defined by this Agreement is the lump sum of **TWO HUNDRED SIXTY-NINE THOUSAND TWO HUNDRED SIXTY AND NO/100 DOLLARS (\$269,260.00)**. An additional amount of **SIXTY-SIX THOUSAND ONE HUNDRED FORTY-SEVEN AND NO/100 DOLLARS (\$66,147.00)** is allowed for additional services and design contingency as detailed in Exhibit 1, "Scope of Services" and Exhibit 2, "Additional Services." It is agreed and understood that compensation to the DESIGN CONSULTANT shall not exceed these amounts. Such amounts have been approved and appropriated by the San Antonio City Council for expenditure under this Agreement. Unless and until the CITY makes further appropriations for any services not included in the Scope of Services in combination with additional services provided for in Exhibit 2 of this Agreement, the obligation of the CITY to the DESIGN CONSULTANT for Total Compensation in connection with this Agreement cannot and will not exceed the sum of **\$335,407.00** without further amendment to this Agreement.
- 2.1.1 The amount to be paid to the DESIGN CONSULTANT is stated in this Agreement and, including authorized adjustments, is the total amount payable by the Owner to the DESIGN CONSULTANT for performance of the Work under the Agreement Documents.

2.2 A Schedule of Values shall be used as the basis for reviewing the DESIGN CONSULTANT's Applications for Payment. The Schedule of Values shall include a schedule for both the design phase and construction phase of the project.

2.2.1 Before the first Application for Payment, the Owner shall receive from the DESIGN CONSULTANT a Schedule of Values allocated to the Phases in Paragraph 2.2.3 prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This Schedule of Values shall be used as the basis for reviewing the DESIGN CONSULTANT's Applications for Payment during each phase of the Work.

2.2.2 Before the first Application for Payment during the construction phase, the DESIGN CONSULTANT shall receive from the Construction Contractor a draw schedule allocated to various portions of the Work prepared in such form and supported by such data to substantiate accuracy as the DESIGN CONSULTANT may require. This schedule shall be used as the basis for reviewing the DESIGN CONSULTANT'S Applications for Payment during the construction phase.

2.2.3 DESIGN CONSULTANT shall complete the PROJECT in accordance with the following Project Design Phases:

<u>PHASE</u>	<u>PERCENT OF TOTAL FEE FOR BASIC SERVICES</u>
Schematic Design Phase	15%
Design Development Phase	20%
Construction Documents (Including Bid Documents)	45%
Construction Administration Phase	20%

2.3 The DESIGN CONSULTANT shall submit an Itemized Application for Compensation for work completed in accordance with the Schedule of Values. Such Application for Payment shall be notarized, if required, and supported by such data substantiating the DESIGN CONSULTANT's right to Compensation as the Owner may require. Such Application for Payment shall be used to substantiate the DESIGN CONSULTANT's right to compensation from the Owner.

2.3.1 Such applications may include Applications for Compensation on account of changes in the Work which have been properly authorized by the Director, or by interim determination approved by the Director, but not yet included in Amendments to this Agreement.

2.3.2 The DESIGN CONSULTANT and the CITY acknowledge the fact that the Total Fee amount contained in paragraph 2.1 above has been established predicated upon the total estimated costs of services to be rendered under this Agreement. For additional services or if the scope of services is changed materially, compensation shall be in accordance with EXHIBIT 2 "Compensation for Additional Professional Services."

2.3.3 The DESIGN CONSULTANT shall, within ten (10) days following receipt of Compensation from the Owner, pay all bills for services performed and furnished by others in connection with the Project and the performance of the work, and shall, if requested, provide the Owner with evidence of such payment. DESIGN CONSULTANT's failure to make payments within such time shall constitute a material breach of this Agreement, unless the DESIGN CONSULTANT is able to demonstrate to Owner bona fide disputes associated with the unpaid subconsultant and its work. DESIGN CONSULTANT shall include a provision in each of its subagreements imposing the same payment obligations on the subconsultant's as are applicable to the DESIGN CONSULTANT hereunder, and if the Owner so requests, shall provide copies of such payments by the DESIGN CONSULTANT to the Owner. If the DESIGN CONSULTANT has failed to make payment promptly to the subconsultant for the Work for which the Owner has made payment to the DESIGN

CONSULTANT, the Owner shall be entitled to withhold payment to the DESIGN CONSULTANT to the extent necessary to protect the Owner.

- 2.3.4 The DESIGN CONSULTANT warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The DESIGN CONSULTANT further warrants that upon submittal of an Application for Compensation, all Work for which Applications for Application have been previously issued and payments received from the Owner shall, to the best of the DESIGN CONSULTANT's knowledge, information and belief be free and clear of liens, claims, security interests or encumbrance in favor of the DESIGN CONSULTANT, or other persons or entities making a claim by reason of having provided labor or services relating to the Work. **DESIGN CONSULTANT SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO DESIGN CONSULTANT.**

ARTICLE III. METHOD OF PAYMENT

- 3.1 DESIGN CONSULTANT may submit a request for Partial Compensation prior to submittal of a Request for Compensation in this Article. A request for Partial Compensation must be accompanied by a progress report detailing the Work performed. Any partial payment made shall be in proportion to the Work performed as reflected in the progress report and approved by the Director. Partial Compensation shall not exceed seventy percent (70%) of the compensation allowed for the Phase in which the Partial Compensation is requested. The balance due for the Phase in which Partial Compensation is approved will be paid to DESIGN CONSULTANT upon approval and acceptance of the Phase.
- 3.2 Compensation may be made to the DESIGN CONSULTANT based upon the several phases as described in Article II and in accordance with and subject to the following:
- 3.2.1 Preliminary/Schematic Design Phase – 15% of the total amount due the DESIGN CONSULTANT for basic services under the Preliminary/Schematic Design Phase shall be payable after approval and acceptance of this Phase by the CITY.
- 3.2.2 Design Development Phase – 20% the total amount due the DESIGN CONSULTANT for basic services under the Design Development Phase shall be payable after approval and acceptance of this Phase by the CITY.
- 3.2.3 Construction and Bid Documents Phase – 45% of the total amount due the DESIGN CONSULTANT for basic services under the Construction and Bid Documents Phase shall be payable after the bid opening provided the low qualified bid is in conformance with Section II of the Agreement.
- 3.2.4 Construction Phase - 20% of the total fee due DESIGN CONSULTANT for basic services during the Construction Phase will be made in monthly installments for this Phase in proportion to the percentage of construction completed by the CONSTRUCTION CONTRACTOR as determined by the Director in his sole discretion.
- 3.2.5 All basic services and any additional services to be performed in connection with this AGREEMENT shall be performed under Task Orders. CONSULTANT shall complete a Task Order for each Work Task that the City requests to be performed under this AGREEMENT. Task Orders shall be numbered sequentially starting with number one and must reference this contract. The CITY will either approve or disapprove each Task Order. Once a Task Order is approved, it will become a part of this AGREEMENT. A Sample Task Order Form is included as part of this Exhibit 2.
- 3.2.6 A negotiated fixed price, hourly, or lump-sum amount for each Work Task may be derived

based on the scope of services, and will be based substantially on contractual pre-described and not to exceed pre-priced tasks and/or hourly rates included in this Agreement and in Exhibits "1," and "2".

3.2.7 Payment may also be made based solely on the tasks completed and approved by the Director, and the associated unit price for each Work Task as may be described in fee schedule and/or hourly rates included in Exhibits "1," and "2".

3.2.8 **CONSULTANT** must obtain the prior written approval of the **CITY** for any additional line items not described in the Contract Documents. Additional services which are not included in the Documents (not described in Exhibit 1 hereto), must be approved by the Director as being appropriately within the SCOPE OF SERVICES of this **AGREEMENT**.

3.2.9 All Task Orders and Applications for Compensation shall be submitted using the CITY's Program Management Portal.

3.2.10 Project Close Out and Final Payment:

a. The DESIGN CONSULTANT shall not be entitled to final payment unless and until it submits to the Owner its affidavit that the invoices for services, and other liabilities connected with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied or will be paid from final payment; releases and waivers of liens from all the DESIGN CONSULTANT's subconsultants and of any and all other parties required by the Owner that are either unconditional or conditional on receipt of final payment, Certificates of insurance showing continuation of required insurance coverages; such other documents as Owner may request; and consent of Surety to final payment.

b. Final Payment - The final payment to be made by the CITY to the DESIGN CONSULTANT will be payable upon submission of the "Record Drawings". DESIGN CONSULTANT agrees to submit "Record Drawings" in print media, electronic format (PDF format) and final billing within 45 days of final acceptance of construction. Additionally, DESIGN CONSULTANT agrees to submit a statement of release with the final billing notifying the CITY that there are no further payments owed to the DESIGN CONSULTANT by the CITY beyond the final bill, Final billing shall indicate "Final Bill - no additional payments are due to DESIGN CONSULTANT".

3.2.11 When all of the Work is finally completed and ready for final inspection, the DESIGN CONSULTANT shall notify the Owner thereof in writing. Thereupon, the DESIGN CONSULTANT and Owner will make final inspection of the Work and, if the Work is complete in full accordance with this Agreement and this Agreement has been fully performed, the DESIGN CONSULTANT will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and that the DESIGN CONSULTANT is entitled to the remainder of the unpaid Agreement Sum, less any amount withheld pursuant to this Agreement. If the DESIGN CONSULTANT is unable to issue its final Certificate of Payment for reasons for which the DESIGN CONSULTANT is responsible and is required to repeat its final inspection of the Work, the DESIGN CONSULTANT shall bear the cost of such repeat final inspection(s).

3.2.12 The Owner may withhold payment to such extent as may be necessary, in the Owner's opinion, to protect the Owner from damage or loss for which the DESIGN CONSULTANT is responsible, because of:

3.2.12.1 delays in the performance of the DESIGN CONSULTANT's work;

3.2.12.2 third party claims filed or reasonable evidence indicating probable filing

of such claims unless security acceptable to the Owner is provided by the DESIGN CONSULTANT;

- 3.2.12.3 failure of the DESIGN CONSULTANT to make payments properly to sub-consultants or vendors for labor, materials or equipment;
 - 3.2.12.4 reasonable evidence that the DESIGN CONSULTANT's work cannot be completed for the amount unpaid under this Agreement;
 - 3.2.12.5 damage to the Owner or the CONSTRUCTION CONTRACTOR; or
 - 3.2.12.6 persistent failure by the DESIGN CONSULTANT to carry out the performance of its services in accordance with this Agreement.
- 3.2.13 When the above reasons for withholding are removed or remedied by the DESIGN CONSULTANT, payment of the amount withheld will be made within a reasonable time. The Owner shall not be deemed in default by reason of withholding payment as provided for in this Article.
- 3.2.14 In the event of any dispute(s) between the parties regarding the amount properly payable for any Phase or as final payment, or regarding any amount that may be withheld by the Owner, the DESIGN CONSULTANT shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the event DESIGN CONSULTANT does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.
- 3.2.15 The Owner shall make final payment or all sums due the DESIGN CONSULTANT not more than thirty (30) days after the DESIGN CONSULTANT has submitted the final Basic Services Pay Estimate, all Additional Service Pay Estimates and has coordinated with the Texas Department of Licensing & Regulation Review on the project, the consultant has made a post-substantial completion review of the contractor's work, and that PDF as-builts, and CADD site plan (unsealed) are submitted and accepted by the CITY.
- 3.2.16 Acceptance of final payment by the DESIGN CONSULTANT shall constitute a waiver of claims except those previously made in writing and identified by DESIGN CONSULTANT as unsettled at the time of final Application for Payment.
- 3.2.17 DESIGN CONSULTANT agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. DESIGN CONSULTANT agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of DESIGN CONSULTANT and the Construction Contractor and all such books, payrolls and records, and shall have the right to audit same.
- 3.3 Internet-based Project Management Systems. Owner will administer its design and construction management through an Internet-Based Management System. In such case, the DESIGN CONSULTANT shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, amendment, change orders and other administrative activities. The Owner shall administer the software, shall provide training to Project Team Members, and shall make the software accessible via the Internet to all Project Team Members.

- 3.4 All draws shall be submitted through the CITY's Program Management Portal. Prior to submittal of the first draw, DESIGN CONSULTANT will submit a schedule of values for payment to be approved by the CITY, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.

ARTICLE IV. SCOPE OF SERVICES

- 4.1 The DESIGN CONSULTANT shall not commence work on this proposed Project until being thoroughly briefed on the scope of the project and being notified in writing to proceed. The scope of the project and the DESIGN CONSULTANT's services required shall be reduced by the DESIGN CONSULTANT to a written Summary of the Scope meeting and included as a part of this Agreement. Should the scope subsequently change, either the DESIGN CONSULTANT or the CITY may request a review of the anticipated services, with an appropriate adjustment in compensation.
- 4.2 The DESIGN CONSULTANT, in consideration for the compensation herein provided, shall render the professional services described in this Section that are necessary for the development of the Project to substantial completion, including plans and specifications, construction services, any special and general conditions, and instructions to bidders as acceptable to the Director, or his duly authorized representative, hereinafter termed "Director", subject to other provisions of this Agreement.
- 4.3 The DESIGN CONSULTANT shall perform its obligations under this Agreement in accordance with Phases outlined in 2.2.3 DESIGN CONSULTANT's Scope of Services attached and incorporated herein as Exhibit "1". The Scope of Services shall be the DESIGN CONSULTANT's Proposal, as revised in accordance with negotiations with the CITY and approval of the Director, and as provided in this Agreement.
- 4.4 The DESIGN CONSULTANT will advise and consult with the CITY. The CITY's instruction to the CONSTRUCTION CONTRACTOR may be issued through the DESIGN CONSULTANT but the CITY reserves the right to issue instructions directly to the CONSTRUCTION CONTRACTOR through inspectors or others designated CITY representatives. CONSTRUCTION CONTRACTOR understands that CITY may modify the authority of the DESIGN CONSULTANT as provided in the terms of its contract relationship with the DESIGN CONSULTANT, and the Director shall, in such event, be vested with powers formerly exercised by such DESIGN CONSULTANT, provided written notice of such modification has been promptly served on the CONSTRUCTION CONTRACTOR in writing. Nothing herein shall authorize independent agreements between CONSTRUCTION CONTRACTOR and such DESIGN CONSULTANT, nor shall the DESIGN CONSULTANT be deemed to have a legal relationship with the CONSTRUCTION CONTRACTOR.
- 4.5 Upon acceptance and approval of the plans, reports or other deliverables required for a phase of work, as set forth in the Scope of Services, Director shall authorize DESIGN CONSULTANT, in writing, to proceed with the next phase of work.
- 4.6 The DESIGN CONSULTANT will make visits to the Site at intervals appropriate to the phases (1) to become generally familiar with and to keep the CITY informed about the progress and quality of the portion of the Work completed, and (2) to endeavor to guard the CITY against defects and the Work. However, the DESIGN CONSULTANT will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.
- 4.7 The DESIGN CONSULTANT will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since- these are solely the Contractor's rights and responsibilities under the Contract Documents. The DESIGN CONSULTANT'S efforts will be directed toward providing for CITY a greater

degree of confidence that the completed Work will generally conform to the Contract Documents.

- 4.8 The DESIGN CONSULTANT will not be responsible for the CONSTRUCTION CONTRACTOR'S failure to perform the Work in accordance with the requirements of the Contract Documents. The DESIGN CONSULTANT will not have control over or charge of and will not be responsible for acts or omissions of the CONSTRUCTION CONTRACTOR, Subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work
- 4.9 Communications by and with the DESIGN CONSULTANT's consultants shall be through the DESIGN CONSULTANT. Communications by and with Subcontractors and material suppliers shall be through the CONSTRUCTION CONTRACTOR.
- 4.10 Based on the DESIGN CONSULTANT's review of the CONSTRUCTION CONTRACTOR's Application for Payment, the DESIGN CONSULTANT will approve the amounts due the CONSTRUCTION CONTRACTOR and will issue a recommendation for approval for payment in such amounts.
- 4.11 Except as otherwise provided in the Supplementary or Special Conditions, the DESIGN CONSULTANT and the CITY will have authority to reject Work that does not conform to the Contract Documents. Whenever the DESIGN CONSULTANT or CITY considers it necessary or advisable, the DESIGN CONSULTANT will have authority to require inspection or testing of the Work whether or not such Work is fabricated, installed or completed. However, neither this authority of the DESIGN CONSULTANT or CITY nor a decision made by either, in good faith, to exercise or not to exercise such authority shall give rise to a duty or responsibility of the DESIGN CONSULTANT or the CITY to the CONSTRUCTION CONTRACTOR, subcontractors, material and equipment suppliers, agents or employees, or other persons or entities performing portions of the Work.
- 4.12 The DESIGN CONSULTANT will review and approve or take other appropriate action upon the CONSTRUCTION CONTRACTOR's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The DESIGN CONSULTANT will respond to submittals such as Shop Drawings, Product Data, and Samples pursuant to the procedures set forth in the Project specifications. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of the CONSTRUCTION CONTRACTOR as required by the Contract Documents. The DESIGN CONSULTANT's review of the CONSTRUCTION CONTRACTOR's submittals shall not relieve the CONSTRUCTION CONTRACTOR of its obligations. The DESIGN CONSULTANT's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the DESIGN CONSULTANT, or any construction means, methods, techniques, sequences or procedures. The DESIGN CONSULTANT's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 4.13 The DESIGN CONSULTANT will, within three (3) days after receipt of the CONSTRUCTION CONTRACTOR's Application for Payment, either issue to the Owner an approval for Payment for such amount as the DESIGN CONSULTANT determines is properly due, or notify the Owner in writing of the DESIGN CONSULTANT's reasons for withholding approval in whole or in part.
- 4.14 The issuance of an approval for Payment will constitute a representation by the DESIGN CONSULTANT to the Owner, based on the DESIGN CONSULTANT's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the DESIGN CONSULTANT's knowledge, information and belief, the quality of the work is in accordance with the Design Contract Documents or Construction Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Agreement Documents

upon Substantial completion, to results of subsequent tests and inspections, to correction of minor deviations from the Agreement Documents prior to completion, and to any specific qualifications expressed by the DESIGN CONSULTANT. The issuance of an approval for Payment will further constitute a representation that the DESIGN CONSULTANT and/or CONSTRUCTION CONTRACTOR is entitled to payment in accordance not with the Schedule of Values. The issuance of an approval for Payment will not be a representation that the DESIGN CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the CONSTRUCTION CONTRACTOR's right to payment, or (4) made any examination to ascertain how or for what purpose the CONSTRUCTION CONTRACTOR has used money previously paid on account of the Agreement Sum.

4.15 The DESIGN CONSULTANT may withhold an approval for Payment in whole or in part, to the extent reasonably necessary to protect the Owner if, in the DESIGN CONSULTANT's opinion, the representations to the Owner required by Section 4.14 cannot be made. If the DESIGN CONSULTANT is unable to approve payment in the amount of the Application, the DESIGN CONSULTANT will notify the Owner as provided in Section 4.13. If the Owner and the DESIGN CONSULTANT cannot agree on a revised amount, the DESIGN CONSULTANT will promptly issue an approval for Payment for the amount for which the DESIGN CONSULTANT is able to make such representations to the Owner. The DESIGN CONSULTANT may also withhold an Approval for Payment, because of subsequently discovered evidence, may modify the whole or a part of an approval for Payment to such extent as may be necessary, in the DESIGN CONSULTANT's opinion, to protect the Owner from loss for which the CONSTRUCTION CONTRACTOR is responsible, including loss resulting from acts and omissions described below:

4.15.1 defective Work not remedied;

4.15.2 third party claims filed or reasonable evidence indicating probable filing of such claims for which CONSTRUCTION CONTRACTOR is responsible hereunder unless security acceptable to the Owner is provided by the CONSTRUCTION CONTRACTOR;

4.15.3 failure of the CONSTRUCTION CONTRACTOR to make payments properly to the subcontractors and/or material providers; or

4.15.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Agreement Sum and CONSTRUCTION CONTRACTOR has failed to provide Owner adequate assurance of its continued performance within a reasonable time after demand;

4.15.5 damage to the Owner or another Contractor;

4.15.6 reasonable evidence that the Work will not be completed within the Agreement Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

4.15.7 persistent failure by the CONSTRUCTION CONTRACTOR to carry out the Work in accordance with the Agreement Documents.

The Owner will pay the undisputed portions of such Application for Payment within the time frames established in the Schedule of Values.

4.16 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided.

4.17 The DESIGN CONSULTANT will prepare Change Orders and Field Work Directives, and with concurrence of the ODR, will have authority to order minor changes in the Work not

involving an adjustment in the Total Compensation or an extension of the time for construction. Such changes shall be effected by written order, which the Contractor shall carry out promptly and record on the as-built record documents.

- 4.18 The DESIGN CONSULTANT and the CITY will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The DESIGN CONSULTANT will receive and forward to the CITY, for the CITY's review and records, written warranties and related documents required by the Contract and assembled by the CONSTRUCTION CONTRACTOR, and will issue a final Approval for Payment upon compliance with the requirements of the Contract Documents.
- 4.19 Upon written request of the CITY or CONSTRUCTION CONTRACTOR the DESIGN CONSULTANT will issue its interpretation of the requirements of the plans and specifications. The DESIGN CONSULTANT's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required for the DESIGN CONSULTANT shall be furnished in compliance with Article IV, then delay shall not be recognized on account of failure by the DESIGN CONSULTANT to furnish such interpretations until 15 days after written request is made for them.
- 4.20 Interpretations and decisions of the DESIGN CONSULTANT will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings:
- 4.21 The DESIGN CONSULTANT's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the CITY.
- 4.22 The approved Scope of Services dated October 6, 2008 is incorporated by reference herein and attached as Exhibit 1.

**ARTICLE V.
DESIGN PHASES REQUIREMENTS**

- 5.1 The DESIGN CONSULTANT shall:
 - 5.1.1 Follow and comply with the Requirements listed in the City of San Antonio Unified Development Code, as amended, if applicable, which is incorporated by reference herein.
 - 5.1.2 Follow and comply with the Requirements for the DESIGN PHASES listed in the CPS and SAWS Design Guidance Manuals, as amended, if applicable, both of which are incorporated by reference herein.
 - 5.1.3 Schematic Design Phase The DESIGN CONSULTANT shall:
 - 5.1.3.1 Review the scope of work furnished by the CITY to ascertain the requirements of the Project and shall review the understanding of such requirements with the CITY.
 - 5.1.3.2 Provide a preliminary evaluation of the program and the Project budget requirements, each in terms of the other, subject to the limitations such as inflation, competitive market prices, negotiations, etc.
 - 5.1.3.3 Review with the CITY alternative approaches to design and construction of the Project.
 - 5.1.3.4 Coordinate the proposed Project with all utility companies that may affect this Project and request the most current available records showing the location of utilities. DESIGN CONSULTANT shall identify particular problems and conflicts arising from

advances, provided that such data shall not extend beyond that actually developed in the performance of other provisions of this Agreement.

5.1.5.2 Attend not more than three (3) citizens meetings and, as deemed necessary, meet with CITY officials.

5.1.5.3 Prepare detailed contract drawings and specifications, after authorization has been received from the CITY to proceed with the Construction Documents Phase. These designs shall combine in all respects the applications of sound architectural principles with a high degree of economy.

5.1.5.3.1 Detailed specifications shall be developed as applicable, to the particular project.

5.1.5.3.2 A specimen copy of standard general provisions, instructions to bidders, and applicable prevailing wage rates will be furnished to the DESIGN CONSULTANT by the CITY for incorporation in the specifications of the proposed Project.

5.1.5.4 Prior to the actual printing of the final Construction Documents (plans, specifications and proposals) one (1) advance copy shall be submitted to the CITY. Upon review and approval of said documents, the DESIGN CONSULTANT shall provide and submit same to the CITY as follows:

5.1.5.4.1 DESIGN CONSULTANT shall submit one (1) set of Plans and Specifications for review of State Handicapped Requirements to the:

Texas Department of Licensing & Regulation
Architectural Barriers, Program Manager
E.O. Thompson State Office Building,
P. O. Box 12157
Austin, Texas 78711

5.1.5.4.2 DESIGN CONSULTANT shall submit six (6) sets of Plans and Specifications to the City Architect's Office for the City Architect, the Project Manager, the City Inspector, the City Inspections Manager, Building Maintenance and the Department Director.

5.1.5.4.3 DESIGN CONSULTANT shall deliver one (1) set of Plans and Specifications in electronic format (PDF format) to the City's Plans and Records Office, CIMS, Contract Services.

5.1.5.6 DESIGN CONSULTANT shall advise the CITY of any adjustments to previous Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.

5.1.5.7 Upon the direction of the CITY, issue Plans and Specifications for bidding purposes, to include providing copies to the Plans Rooms utilized by the City, receive and record plan deposits; prepare, issue and deliver all addenda required to perfect the bid documents; maintain a record of issuance and receipt of same; furnish to the CITY a statement that the DESIGN CONSULTANT has provided and all bidders have received the Plans and Specifications and any necessary addenda thereto prior to opening of the bids. Attend the Pre-Bid Conference as scheduled by the CITY to provide clarification and interpretation to bidders.

5.1.5.8 In consultation with the City set a charge for plans and specifications (bid documents) based on the cost of printing and handling, said charge to be assessed all bidders and vendors. Return of bid documents and any refund to be made will be in accordance with normal city policy.

5.1.5.9 Once the Construction Contract is signed, the successful bidder's document

deposit along with all available sets of documents will be turned over to the CONSTRUCTION CONTRACTOR. DESIGN CONSULTANT shall provide to the City additional sets of contract documents as required for the successful bidder and subcontractors to use during the construction phase. The DESIGN CONSULTANT will then be reimbursed by the City for the cost of all document sets furnished to bidders for bid purposes and to the Contractor for construction purposes in accordance with Exhibit "1".

5.1.5.10 Attend the formal opening of bids and shall tabulate and furnish to the CITY a bid tabulation together with DESIGN CONSULTANT's recommendation regarding the award of the contract within 5 working days from the date of bid opening.

5.1.5.11 DESIGN CONSULTANT shall provide all documents to the City in the form as specified by the City which may include hard copies as well as electronic versions.

5.1.6 Construction Phase The DESIGN CONSULTANT shall:

5.1.6.1 Attend a Pre-Construction Conference with the Representatives of the interested Departments.

5.1.6.2 Visit the site in intervals appropriate to the stage of construction or as otherwise agreed by the DESIGN CONSULTANT in writing to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Contract Documents. However, the DESIGN CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. On the basis of such on site observations as a professional consultant, the DESIGN CONSULTANT should keep the City informed of the progress and quality of each major division of the work and shall endeavor to guard the City against defects and deficiencies in the work of the Contractor. The DESIGN CONSULTANT shall provide the CITY with a Memorandum Record of each jobsite visit and shall submit a Monthly Report to the CITY plus two additional copies as determined by the City. The Monthly Report shall include the status of the project, and information to indicate the progress and performance of the Contractor in accordance with the Contract Documents.

5.1.6.3 Review Contractor's building construction layout, specifically foundation elevations.

5.1.6.4 DESIGN CONSULTANT shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor or the safety precautions and programs incident to the work of the Contractor.

5.1.6.5 The DESIGN CONSULTANT's efforts will be directed towards providing assurance for the CITY that the completed project will conform to the Plans and Specifications. The DESIGN CONSULTANT shall not be responsible for the failure of the Contractor to perform the construction work in accordance with the Plans and Specifications and the Contractor's contract. However, the DESIGN CONSULTANT shall report to the City any deficiencies in the work actually detected by the DESIGN CONSULTANT.

5.1.6.6 Submittals: DESIGN CONSULTANT shall review and take other appropriate action (approve with modifications, reject, etc.) upon the Contractor's submittals such as shop drawings, product data and samples, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. Such reviews and approvals, or other actions, shall not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions and program incident thereto. The approval of a specific item shall not indicate approval of an assembly of which the item is a component.

5.1.6.7 Receive and review certificates of inspections, testing (to include field, laboratory, shop and mill testing of materials) and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents to determine generally that the results certified substantially comply with the Contract Documents which are submitted to him. The Consultant shall also recommend to the City special inspection or testing when

deemed necessary to assure that materials, products, assemblages and equipment conform to the design concept and the Contract Documents.

5.1.6.8 Review and approve in concert with the CITY all colors, materials, fabrics, etc., relating to finishes required.

5.1.6.9 Review and approve in concert with the CITY equipment required to be submitted and tested by the Plans and Specifications for compliance with Project design and performance specifications.

5.1.6.10 Determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor's Monthly Estimates (and Final Estimate) and issue recommendations to the CITY for payment of such amounts as provided in the Contract Documents.

The issuance of a Recommendation For Payment shall constitute a representation by the DESIGN CONSULTANT to the CITY based on the DESIGN CONSULTANT's observations at the site as provided herein and in the data comprising the Contractor's Monthly Estimate (and Final Estimate), that the work has progressed to the point indicated; that to the best of the DESIGN CONSULTANT's knowledge, information and belief, the quality of work is in accordance with the Contract Documents (subject to an evaluation of the work for conformance with the Contract Document upon substantial completion, to the results of any subsequent test required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Recommendation For Payment); and that the Contractor is entitled to payment in the amount recommended. However, the issuance of a Recommendation For Payment shall not be representation that the DESIGN CONSULTANT has made an examination to ascertain how, and for what purpose the Contractor has used the monies paid on account of the contract sum.

5.1.6.11 Observe the initial start-up of the Project and the necessary performance tests required by the Specifications of any machinery or equipment installed in and made a part of the Project. The Consultant shall advise the City representatives if, in his opinion, the machinery or equipment is not operating properly.

5.1.6.12 Perform in company with the CITY representative(s) a "conditional approval" and a "final" inspection of the Project to observe any apparent defects in the completed construction, assist the CITY in consultation and discussions with the Contractor(s) concerning such deficiencies, and make recommendations as to replacements or corrections of the defective work.

5.1.6.13 After completion of the work, and before final payment to the Contractor, it shall be the CONSULTANT's responsibility to recommend to the CITY that the CONSTRUCTION CONTRACTOR receive final payment from the CITY based on the completion of all close-out activities including the delivery of "Record Drawings" by the CONSTRUCTION CONTRACTOR, who has control of the work and who is in a position to know how the Project was constructed. The DESIGN CONSULTANT, after receiving this information shall provide "Record Drawings" in electronic format to the CITY. Additionally, the CITY may require DESIGN CONSULTANT to transfer the information to a set of "Mylar" tracings as "Record Drawings" or documents for the City's permanent file. "Record Drawings" shall be provided by Consultant at no additional cost to the City. The Consultant shall not be held liable for the information supplied him by the CONSTRUCTION CONTRACTOR and/or City representative.

5.1.6.14 The City will require the CONSTRUCTION CONTRACTOR to submit to the DESIGN CONSULTANT who shall review and deliver to the CITY all manufacturer's warranties or bonds, equipment maintenance and operating manuals, and similar data on materials and equipment incorporated in the Project as required by the Contract Document and shall attend and monitor the CONSTRUCTION CONTRACTOR's commissioning and training of systems and equipment as applicable.

5.1.6.15 Develop, at the request of the CITY, any changes, alterations or modifications to the Project, which appear to be advisable and feasible, and in the best interest of the CITY. Such alterations shall appear on or be attached to the CITY's form "Change Order Request". The DESIGN CONSULTANT shall obtain the Contractor's acceptance of the proposed alteration prior to submitting it to the CITY for its approval. No work shall be authorized to be done by the Contractor prior to receipt of the CITY's approval of the "Change Order Request".

ARTICLE VI. TIME AND PERIOD OF SERVICE

- 6.1 Prior to commencement of any work, Design Consultant shall provide CITY with a schedule of PROJECT DESIGN PHASES, Exhibit 1.
- 6.2 Time is of the essence of this Agreement. The DESIGN CONSULTANT shall perform and complete its obligations for the various Phases of work under Section IV "Scope of Service" of this Agreement in a prompt and continuous manner so as to not delay the development of the design work and so as to not delay the construction of the work for the Project in accordance with the schedules approved by the CITY with the CONSTRUCTION CONTRACTOR. If, upon review of phase work, corrections, modifications, alterations, or additions are required of the DESIGN CONSULTANT, these items shall be completed by the DESIGN CONSULTANT before that Phase is approved.
- 6.3 The DESIGN CONSULTANT shall not proceed with the next appropriate Phase of work without written authorization from the Director. The CITY may elect to discontinue the DESIGN CONSULTANT's services at the end of any Phase for any reason. However, if circumstance dictates, the Director may make adjustments to the scope of the DESIGN CONSULTANT's obligations at any time to achieve the required design.
- 6.4 The DESIGN CONSULTANT shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations, or any other causes beyond DESIGN CONSULTANT's reasonable control. Within twenty one (21) days from the occurrence of any event for which time for performance by DESIGN CONSULTANT shall be significantly extended under this provision, DESIGN CONSULTANT shall give written notice thereof to the CITY stating the reason for such extension and the actual or estimated time thereof. If the CITY determines that the DESIGN CONSULTANT is responsible for the need for extended time, the CITY shall have the right to make a Claim as provided in this Agreement.
- 6.5 This Agreement shall remain in force for a period which may reasonably be required for the design, award of the contract, and construction of the Project including any extra work and any required extensions thereto unless discontinued as provided for elsewhere in this Agreement.

ARTICLE VII. COORDINATION WITH THE CITY

- 7.1 The DESIGN CONSULTANT shall hold periodic conferences with the Director or his representatives to the end that the Project as developed shall have the full benefit of the CITY's experience and knowledge of existing needs and facilities, and be consistent with its current policies and standards. To assist the DESIGN CONSULTANT in this coordination, the CITY shall make available for the DESIGN CONSULTANT's use in planning and designing the Project all existing plans, maps, statistics, computations and

other data in its possession relative to existing facilities and to this particular Project, at no cost to the DESIGN CONSULTANT. However, any and all such information shall remain the property of the CITY and shall be returned by the DESIGN CONSULTANT upon termination or completion of the Project or if instructed to do so by the Director.

- 7.2 The Director will act on behalf of, the CITY with respect to the work to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information, interpret and define the CITY'S policies and decisions with respect to materials, equipment, elements and systems pertinent to the DESIGN CONSULTANT'S services.
- 7.3 The CITY will give prompt written notice to the DESIGN CONSULTANT whenever the CITY observes or otherwise becomes aware of any defect in the DESIGN CONSULTANT'S services, in the work of the CONSTRUCTION CONTRACTOR, or any development that affects the scope or timing of the DESIGN CONSULTANT'S services.
- 7.4 Unless otherwise required by the CITY, the CITY shall furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for the completion of the Project. The DESIGN CONSULTANT will provide the CITY reasonable assistance in connection with such approvals and permits such as the furnishing of data compiled by the DESIGN CONSULTANT pursuant to other provisions of the Agreement, but the DESIGN CONSULTANT shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefore under other provisions of this Agreement.

ARTICLE VIII. REVISIONS TO DRAWINGS AND SPECIFICATIONS

- 8.1 The DESIGN CONSULTANT shall make without expense to the CITY such revisions to the drawings, reports or other documents as may be required to meet the needs of the CITY which are within the Scope of the Project, but after the approval of drawings, reports or other documents and specifications by the CITY, any revisions, additions, or other modifications made at the CITY'S request which involves extra services and expenses to the DESIGN CONSULTANT shall be at additional compensation to the DESIGN CONSULTANT for such extra services and expenses, subject to Exhibit 2.
- 8.2. The Director may require the DESIGN CONSULTANT to revise the Construction Document Phase drawings, reports or other documents and specifications, at no cost to the CITY, if the lowest bona fide bid is in excess of fifteen percent (15%) of the amount of the fixed limit or the Design Development Phase cost estimate as submitted by the DESIGN CONSULTANT, and accepted by the CITY.

ARTICLE IX. OWNERSHIP OF DOCUMENTS

- 9.1 All previously owned documents, including the original drawings, estimates, specifications, and all other documents and data by DESIGN CONSULTANT, will remain the property of the DESIGN CONSULTANT as instruments of service. However, the DESIGN CONSULTANT understands and agrees that the CITY shall have free access to all such information with the right to make and retain copies of previously owned drawings, estimates, specifications and all other documents and data. Any reuse without specific written verification or adaptation by DESIGN CONSULTANT will be at CITY'S sole risk and without liability or legal exposure to DESIGN CONSULTANT.
- 9.2 All completed documents submitted by DESIGN CONSULTANT for final approval or issuance of a permit shall bear the seal with signature and date adjacent thereto of a Texas registered Architect/Landscape Architect licensed to practice in Texas.

- 9.3 The DESIGN CONSULTANT acknowledges and agrees that upon payment, the CITY shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this Agreement and shall be used as the CITY desire and documents, including the original drawings, estimates, specifications and all other documents and data shall be delivered to the CITY at no additional cost to the CITY upon request or termination or completion of this AGREEMENT without restriction on future use. However, any reuse without specific written verification or adaptation by DESIGN CONSULTANT will be at CITY's sole risk and without liability or legal exposure to DESIGN CONSULTANT.
- 9.4 The DESIGN CONSULTANT agrees and covenants to protect any and all proprietary rights of the CITY in any materials provided to the DESIGN CONSULTANT. Such protection of proprietary rights by the DESIGN CONSULTANT shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to the CITY. Additionally, any materials provided to the DESIGN CONSULTANT by the CITY shall not be released to any third party without the written consent of the CITY and shall be returned intact to the CITY upon termination or completion of this Agreement or if instructed to do so by the Director.
- 9.5 **THE DESIGN CONSULTANT HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK THAT IN PART OR IN WHOLE WAS PRODUCED FROM THIS AGREEMENT TO THE CITY, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS AGREEMENT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY THE DESIGN CONSULTANT. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF THE CITY (EXCLUDING ANY PRIOR OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). THE DESIGN CONSULTANT SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST THE CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST THE CITY, INSOFAR AS THE SAME ARE BASED ON ANY CLAIM THAT MATERIALS OR WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.**
- 9.6 The DESIGN CONSULTANT may make copies of any and all documents and items for its files. The DESIGN CONSULTANT shall have no liability for changes made to or use of the drawings, specifications and other documents by other architects and/or engineers, or other persons, subsequent to the completion of the Project. DESIGN CONSULTANT shall appropriately mark all changes or modifications on all drawings, specifications and other documents by other architects and/or engineers or other persons, including electronic copies, subsequent to the completion of the Project.
- 9.7 Copies of documents that may be relied upon by the CITY are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by the DESIGN CONSULTANT. Files in editable electronic media format of text, data, graphics, or other types, (such as DGN) that are furnished by the DESIGN CONSULTANT to the CITY are only for convenience of the CITY or utility. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. However, any reuse without specific written verification or adaptation by DESIGN CONSULTANT will be at CITY's sole risk and without liability or legal exposure to DESIGN CONSULTANT.
- 9.8 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of DESIGN CONSULTANT, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by DESIGN CONSULTANT or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies, or processes used by the DESIGN CONSULTANT to provide the services or protect deliverables to CITY, including without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary

rights inherent therein and appurtenant thereto shall remain the sole and exclusive property of DESIGN CONSULTANT or its suppliers.

ARTICLE X. TERMINATION AND/OR SUSPENSION OF WORK

10.1 Right of Either Party to Terminate for Default

10.1.1 This Agreement may be terminated by either party for substantial failure by the other party to perform (through no fault of the terminating party) in accordance with the terms of this Agreement and a failure to cure as provided in this Paragraph 9.1.

10.1.2 The party not in default must issue a signed, written notice of termination (citing this paragraph) to the other party declaring the other party to be in default and stating the reason(s) why they are in default. Upon receipt of such written notice of default, the party in receipt shall have a period of ten (10) days to cure any failure to perform under this Agreement. Upon the completion of such ten-day period commencing upon receipt of notice of termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.

10.2 Right of CITY to Terminate

10.2.1 The CITY reserves the right to terminate this Agreement for reasons other than substantial failure by the DESIGN CONSULTANT to perform by issuing a signed, written notice of termination (citing this paragraph) which shall take effect on the twentieth day following receipt of said notice and upon the scheduled completion date of the performance phase in which DESIGN CONSULTANT is then currently working, whichever effective termination date occurs first.

10.3 Right of CITY to Suspend Giving Rise to Right of DESIGN CONSULTANT to Terminate

10.3.1 The CITY reserves the right to suspend this Agreement at the end of any phase for the convenience of the CITY by issuing a signed, written notice of suspension (citing this paragraph) which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall in no way will guarantee what the total number of days of suspension will occur. Such suspension shall take effect immediately upon receipt of said notice of suspension by the DESIGN CONSULTANT.

10.3.2 The DESIGN CONSULTANT is hereby given the right to terminate this Agreement in the event such suspension extends for a period in excess of one hundred twenty (120) days. DESIGN CONSULTANT may exercise this right to terminate by issuing a signed, written notice of termination (citing this paragraph) to the CITY after the expiration of one hundred twenty (120) days from the effective date of the suspension. Termination (under this paragraph) shall become effective immediately upon receipt of said written notice by the CITY.

10.4 Procedures DESIGN CONSULTANT to follow upon Receipt of Notice of Termination

10.4.1 Upon receipt of a notice of termination and prior to the effective date of termination, unless the notice otherwise directs or DESIGN CONSULTANT immediately takes action to cure a failure to perform under the cure period set out hereinabove, DESIGN CONSULTANT shall immediately begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts

insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of such notice of termination (unless DESIGN CONSULTANT has successfully cured a failure to perform) the DESIGN CONSULTANT shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. The CITY shall have the option to grant an extension to the time period for submittal of such statement.

- 10.4.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits prepared under this Agreement prior to the effective date of termination shall be delivered to the CITY, in the form requested by the CITY as a pre-condition to final payment. These documents shall be subject to the restrictions and conditions set forth in Article IX above.
 - 10.4.3 Upon the above conditions being met, the CITY shall promptly pay the DESIGN CONSULTANT that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee.
 - 10.4.4 The CITY, as a public entity, has a duty to document the expenditure of public funds. The DESIGN CONSULTANT acknowledges this duty on the part of the CITY. To this end, the DESIGN CONSULTANT understands that failure of the DESIGN CONSULTANT to comply with the submittal of the statement and documents as required above shall constitute a waiver by the DESIGN CONSULTANT of any and all rights or claims to payment for services performed under this Agreement by the DESIGN CONSULTANT .
 - 10.4.5 Failure of the DESIGN CONSULTANT to comply with the submittal of the statement and documents as required above shall constitute a waiver by the DESIGN CONSULTANT of any and all rights or claims to collect monies that DESIGN CONSULTANT may otherwise be entitled to for services performed under this Agreement.
- 10.5 Procedures DESIGN CONSULTANT to Follow upon Receipt of Notice of Suspension
- 10.5.1 Upon receipt of written notice of suspension, which date shall also be the effective date of the suspension, the DESIGN CONSULTANT shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly suspend all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.
 - 10.5.2 DESIGN CONSULTANT shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.
 - 10.5.3 Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the CITY but shall be retained by the DESIGN CONSULTANT until such time as DESIGN CONSULTANT may exercise the right to terminate.
 - 10.5.4 In the event that DESIGN CONSULTANT exercises the right to terminate one hundred twenty (120) days after the effective suspension date, within thirty (30) days after receipt by the CITY of DESIGN CONSULTANT's notice of termination, DESIGN CONSULTANT shall promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement and shall submit the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

- 10.5.5 Any documents prepared in association with this Agreement shall be delivered to the CITY as a pre- condition to final payment.
- 10.5.6 Upon the above conditions being met, the CITY shall promptly pay the DESIGN CONSULTANT that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee.
- 10.5.7 The CITY, as a public entity, has a duty to document the expenditure of public funds. DESIGN CONSULTANT acknowledges this duty on the part of the CITY. To this end, DESIGN CONSULTANT understands that failure of Consultant to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by the DESIGN CONSULTANT of any portion of the fee for which DESIGN CONSULTANT did not supply such necessary statements and/or documents.

**ARTICLE XI.
DESIGN CONSULTANT'S WARRANTY**

- 11.1 The DESIGN CONSULTANT warrants that the services required under this Agreement will be performed with the same degree of professional skill and care that are typically exercised by similar consulting professionals performing similar services in Bexar County, Texas. The DESIGN CONSULTANT further warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the DESIGN CONSULTANT to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, the CITY shall have the right to terminate this Agreement under the provisions of Article X above.

**ARTICLE XII.
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM**

12.1 DEFINITIONS

- 12.1.1 SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the CITY. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:
- 12.1.2 SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.
- 12.1.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.
- 12.1.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the

arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

- 12.1.5 **SBEDA Plan** – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with CONSULTANT’s submittal for this project Agreement, attached hereto and incorporated herein as “Exhibit 3”.

12.2 For this Agreement, the Parties agree that:

- 12.2.1 The terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and
- 12.2.2 The failure of CONSULTANT or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.
- 12.2.3 Failure of CONSULTANT or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.
- 12.2.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in CONSULTANT’s SBEDA Plan (“Exhibit 3”) shall constitute a material breach of the SBEDA Program and this Agreement.
- 12.2.5 CONSULTANT shall pay all suppliers and subcontractors identified in its SBEDA Plan (“Exhibit 3”) in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by CONSULTANT to the CITY Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

12.3 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement:

- 12.3.1 Failure of CONSULTANT to utilize an SE that was originally listed at bid opening or proposal/SOQ submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function; or
- 12.3.2 Modification or elimination by CONSULTANT of all or a portion of the scope of work attributable to an SE upon which the Agreement was awarded; or
- 12.3.3 Termination by CONSULTANT of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or
- 12.3.4 Participation by CONSULTANT in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement.

12.4 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the CITY may have at law or in equity, or under this Agreement for material breach,

including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the CITY shall be entitled, at its election, to exercise any one or more of the following remedies if the CONSULTANT materially breaches the requirements of the SBEDA Program:

- 12.4.1 Terminate this Agreement for default;
- 12.4.2 Suspend this Agreement for default;
- 12.4.3 Withhold all payments due to the CONSULTANT under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
- 12.4.4 Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the CITY pursuant to the Agreement, or from any other amounts due to the CONSULTANT under the Agreement.
- 12.4.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Agreement.

The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

- 12.5 **City Process for Exercising SBEDA Program Remedies.** The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the CITY to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final recommendation regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.
- 12.6 **Special Provisions for Extension of Agreements.** In the event the CITY extends this Agreement without a competitive Bid process, the CITY Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:
 - 12.6.1 A SBEDA Utilization Goal for the extended period; and
 - 12.6.2 A modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CONSULTANT does not meet the SBEDA Utilization Goal; and
 - 12.6.3 The required minimum Good Faith Efforts outreach attempts that CONSULTANT shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA

Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The CONSULTANT entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:

12.6.3.1 Subject CONSULTANT to any of the remedies listed above; and/or

12.6.3.2 Result in resolicitation of the Agreement to be extended.

ARTICLE XIII. ASSIGNMENT OR TRANSFER OF INTEREST

13.1 The DESIGN CONSULTANT shall not assign or transfer DESIGN CONSULTANT's interest in this Agreement without the written consent of the CITY.

ARTICLE XIV. INSURANCE REQUIREMENTS

14.1 Prior to the commencement of any Services under this Agreement, the DESIGN CONSULTANT shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Capital Improvements Management Services Department, which shall be clearly labeled **Fire Station 19** in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Capital Improvements Management Services Department/Public Works Department/Contract Services Department. No officer or employee other than the CITY's Risk Manager shall have authority to waive this requirement.

14.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this contract and any extension or renewal hereof and to request modification of insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this contract. In no instance will CITY allow modification whereupon CITY may incur increased risk.

14.3 A DESIGN CONSULTANT's financial integrity is of interest to the CITY. Therefore, subject to the DESIGN CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by the CITY, the DESIGN CONSULTANT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the DESIGN CONSULTANT's sole expense, insurance coverage written on an occurrence or claims made basis, as appropriate, by companies authorized and approved to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

INSURANCE REQUIREMENTS	
1. Worker's Compensation ** Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General Broad Form (Public) Liability Insurance to include coverage for the following: a. Premises Operations b. Independent contractors* c. Products/completed operations d. Personal Injury e. Contractual Liability f. Fire legal liability*	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its Equivalent in Umbrella or Excess Liability Coverage
3. Business Automobile Liability* a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
4. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums, which the insured shall become legally obligated to pay as damages to the extent caused by any negligent act, error or omission in the performance of professional services.
*If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

14.4 The CITY may request and without expense to CITY, to inspect copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the CITY.

14.5 The DESIGN CONSULTANT agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the CITY and its officers, officials, employees, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
- To the extent not inconsistent with the requirements of the issuing insurance carrier, provide for an endorsement that the "other insurance" clause shall not apply to the CITY where the CITY is an additional insured shown on the policy if such endorsement is permitted by law and regulations;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY; and
- Provide thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation or non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

14.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, the DESIGN CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend the DESIGN

CONSULTANT's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

- 14.7 In addition to any other remedies the CITY may have upon the DESIGN CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order the DESIGN CONSULTANT to stop performing services hereunder and/or withhold any payment(s) which become due to the DESIGN CONSULTANT hereunder until the DESIGN CONSULTANT demonstrates compliance with the requirements hereof.
- 14.8 Nothing herein contained shall be construed as limiting in any way the extent to which the DESIGN CONSULTANT may be held responsible for payments of damages to persons or property resulting from the DESIGN CONSULTANT's or its sub-consultant's performance of the services covered under this Agreement.
- 14.9 It is agreed that the DESIGN CONSULTANT's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this Agreement.
- 14.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement as respects additional insureds.

ARTICLE XV. INDEMNIFICATION

- 15.1 **The DESIGN CONSULTANT, whose work product and services are the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS against any and all claims by third parties, lawsuits, judgments, cost, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY DESIGN CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF DESIGN CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF DESIGN CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the services, rights or duties under this AGREEMENT. The INDEMNITY provided for in this paragraph shall not apply to any liability resulting from the NEGLIGENCE of CITY, its officers or employees, in instances where such NEGLIGENCE causes personal injury, death, or property damage. IN THE EVENT DESIGN CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 15.2 The DESIGN CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or the DESIGN CONSULTANT, known to the Consultant, related to or arising out of the DESIGN CONSULTANT's activities under this Agreement.
- 15.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

- 15.4 Acceptance of the final plans by the CITY shall not constitute nor be deemed a release of the responsibility and liability of the DESIGN CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents and Work; nor shall such acceptance be deemed an assumption of responsibility or liability by the CITY for any defect in the designs, work drawings, Plans and Specifications or other documents and Work prepared by said DESIGN CONSULTANT, its employees, subconsultants, and agents.

ARTICLE XVI. CLAIMS AND DISPUTES

- 16.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and DESIGN CONSULTANT arising out of or relating to the Agreement. Claims must be initiated by written notice. Every Claim of the DESIGN CONSULTANT, whether for additional compensation, additional time, or other relief shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the DESIGN CONSULTANT by his signature) of the DESIGN CONSULTANT, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 16.2 **Time Limit on Claims.** Claims by the DESIGN CONSULTANT or by the Owner must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims by the DESIGN CONSULTANT must be initiated by written notice to the Owner. Claims by the Owner must be initiated by written notice to the DESIGN CONSULTANT.
- 16.3 **Continuing Contract Performance.** Pending final resolution of a Claim except as otherwise agreed in writing, the DESIGN CONSULTANT shall proceed diligently with performance of the Agreement and the Owner shall continue to make payments in accordance with the Agreement.
- 16.4 **Claims for Additional Time.** If the DESIGN CONSULTANT wishes to make Claim for an increase in the time for performance, written notice as provided in this Section 15 shall be given. The DESIGN CONSULTANT's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.
- 16.5 **Claims for Consequential Damages.** Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply both to claims by the DESIGN CONSULTANT and to claims by the Owner:
- 16.5.1 No consequential damages will be allowed.
- 16.5.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible.
- 16.5.3 No profit will be allowed on any damage claim.
- 16.6 **Attorney's Fees.** IN ACCORDANCE WITH SECTION 271.159 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THE DESIGN CONSULTANT SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES OR CERTAIN DIRECT OR CONSEQUENTIAL DAMAGES AS A PART OF ANY CLAIM MADE UNDER THE

AGREEMENT OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING, AND DESIGN CONSULTANT HEREBY EXPRESSLY WAIVES SUCH CLAIMS.

16.7 No Waiver of Governmental Immunity. NOTHING IN THIS SECTION XVI SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.

16.8 Alternative Dispute Resolution.

16.8.1 Continuation of Work Pending Dispute Resolution. Each party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement unless it would be impossible or impracticable under the circumstances.

16.8.2 Requirement for Senior Level Negotiations. Before invoking mediation or any other alternative dispute process set forth herein the parties agree that they shall first try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty days after a party delivers a written notice of such dispute, then the parties shall proceed with mediation alternative dispute resolution process contained herein. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

16.8.3 Mediation.

16.8.3.1 In the event that the Owner or the DESIGN CONSULTANT shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

16.8.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than 30 or more than 90 days following the date of the request, except upon agreement of both parties.

16.8.3.3 In the event the Owner and the DESIGN CONSULTANT are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

16.8.3.4 The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Bexar County, Texas Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

**ARTICLE XVII.
SEVERABILITY**

- 17.1 If for any reason, any one or more paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining paragraphs of this Agreement but shall be confined in its effect to the specific section, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any section, sentence, clause or parts of this Agreement in any one or more instance shall not affect or prejudice in any way the validity of this Agreement in any other instance.

**ARTICLE XVIII.
ESTIMATES OF COST**

- 18.1 Since the DESIGN CONSULTANT has no control over the cost of labor, materials or equipment or over the CONSTRUCTION CONTRACTOR's methods of determining prices, or over competitive bidding or market conditions, DESIGN CONSULTANT's opinions of probable Project Cost or Construction Cost provided for herein are to be made on the basis of DESIGN CONSULTANT's experience and qualifications and represent DESIGN CONSULTANT'S best judgment as a design professional familiar with the construction industry but the DESIGN CONSULTANT cannot and does not guarantee that proposals, bids or the construction cost will not vary from opinions of probable Cost prepared by DESIGN CONSULTANT.

**ARTICLE XIX.
INTEREST IN CITY CONTRACTS PROHIBITED**

- 19.1 No officer or employee of the CITY shall have a financial interest, directly or indirectly, in any contract with the CITY, or shall be financially interested, directly or indirectly, in the sale to the CITY of any land, materials, supplies or service, except on behalf of the CITY as an officer or employee. This prohibition extends to the City Public Service Board, the SAWS, and other CITY boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on CITY projects.
- 19.2 The DESIGN CONSULTANT acknowledges that it is informed that the Charter of the CITY and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the CITY or any the CITY agency such as the CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 19.3 The DESIGN CONSULTANT warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. The DESIGN CONSULTANT further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

**ARTICLE XX.
CONFLICTS OF INTEREST DISCLOSURE**

- 20.1 All DESIGN CONSULTANT's must disclose if they are associated in any manner with a CITY Official or employee in a business venture or business dealings. Failure to do so will constitute a violation of the City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes being in a partnership or joint venture with the officer or employee, having a contract with the officer or employee, being joint owners of a business, owning at least 10% of the stock in a corporation in which a CITY officer or employee also owns at least 10%, or having an established business relationship as client or customer.

**ARTICLE XXI.
STANDARD OF CARE/LICENSING**

- 21.1 Services provided by DESIGN CONSULTANT under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- 21.2 The DESIGN CONSULTANT shall be represented by a registered professional Architect or Engineer licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings, pre-bid meetings, and preconstruction meetings, and other meetings as required by the project.
- 21.3 The Texas Board of Professional Architectural Examiners Hobby Building, 333 Guadalupe, Ste. 2-350, Austin, Texas 78701, (512) 305-9000 and/or Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, (512) 4407723 has jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.
- 21.4 Acceptance of the final plans by CITY shall not constitute nor be deemed a release of the responsibility and liability of DESIGN CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, working drawings, specifications or other documents and work prepared by said DESIGN CONSULTANT, its employees, subcontractors, and agents.

**ARTICLE XXII.
RIGHT OF REVIEW AND AUDIT**

- 22.1 The Consultant grants the City, or its designees, the right to audit, examine or inspect, at the City's election, all of the Consultant's records relating to the performance of the Work under the Agreement during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by the City. The Consultant agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract, then, such retention period shall extend until final resolution of the dispute. "Consultant's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Consultant records include but are not limited to billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

- 22.2 The City agrees that it will exercise the right to audit, examine or inspect only during regular business hours. The Consultant agrees to allow the City's designee access to all of the Consultant's Records, Consultant's facilities, and current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.
- 22.3 Consultant must include this audit clause in any subcontractor, supplier or vendor contract.

**ARTICLE XXIII.
ENTIRE AGREEMENT**

- 23.1 This Agreement represents the entire and integrated Agreement between the CITY and the DESIGN CONSULTANT and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both the CITY and the DESIGN CONSULTANT.

**ARTICLE XXIV.
VENUE**

- 24.1 The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

**ARTICLE XXV.
NOTICES**

- 25.1 Except as may be provided elsewhere herein, all notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective party by depositing the same in the United States Postal Service addressed to the applicable address shown below, unless and until either party is otherwise notified in writing by the other party of a change of such address. Mailed notices shall be deemed communicated as of five days of mailing.

If intended for the CITY, to:

Capital Improvements Management
Services Department
Attention: Debbie Sittre, Assistant
Director
114 West Commerce, 5th Floor
San Antonio, Texas 78205

If intended for the DESIGN CONSULTANT, to:

Debra J. Dockery, Architect, P.C.
Attention: Debra J. Dockery
1118 Broadway, Suite 516
San Antonio, TX 78209

**ARTICLE XXVI.
INDEPENDENT CONTRACTOR**

- 26.1 In performing services under this Agreement, the relationship between the CITY and the DESIGN CONSULTANT is that of independent contractor. By the execution of this Agreement, the DESIGN CONSULTANT and the CITY do not change the independent contractor status of the DESIGN CONSULTANT. The DESIGN CONSULTANT shall exercise independent judgment in performing its duties and obligations under this Agreement and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Agreement or act of the DESIGN CONSULTANT in the performance of this Agreement shall be construed as making the DESIGN CONSULTANT the agent, servant or employee of the CITY, or as making the DESIGN CONSULTANT or any of its agents

or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which the CITY provides to or for its employees.

**ARTICLE XXVII.
LEGAL CONSTRUCTION**

27.1 If any term or provision of this Agreement may be held to be invalid, illegal, or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement, and this Agreement shall be enforced as if such invalid, illegal, or unenforceable provision was not included in this Agreement.

**ARTICLE XXVIII.
CAPTIONS**

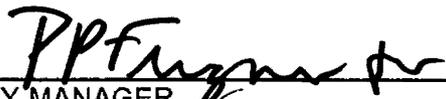
28.1 The captions for the individual provisions of this Agreement are for informational purposes only and shall not be construed to effect or modify the substance of the terms and conditions of this Agreement to which any caption relates.

IN WITNESS WHEREOF, the City of San Antonio has lawfully caused these presents, to be executed by the hand of the City Manager, or designee, acting by the hand of DEBRA J. DOCKERY thereunto authorized President; does now sign, execute and deliver this document.

Executed on this 22 day of December, A. D. 2008.

CITY OF SAN ANTONIO

**DESIGN CONSULTANT
DEBRA J. DOCKERY, ARCHITECT, P.C.**

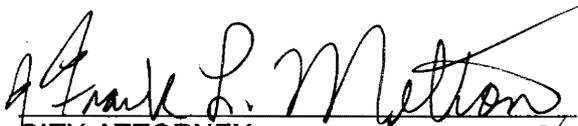


CITY MANAGER *DS*



DEBRA J. DOCKERY, PRESIDENT

APPROVED:



CITY ATTORNEY *22 Dec 08*

**EXHIBIT 1
SCOPE OF SERVICES**

Replacement of Fire Station #19, City of San Antonio
Fee Proposal November 26, 2008 Page 2
DEBRA J. DOCKERY, ARCHITECT, PC

CIVIL PROJECT SPECIFIC

TOPOGRAPHY SURVEY	\$7,500
STORM WATER MANAGEMENT	\$4,500
FIRE FLOW TEST	\$500
FIRE PROTECTION SYSTEM ANALYSIS	\$3,500
TPDES PERMIT (NOT REQUIRED FOR SITES UNDER 1 ACRE)	\$2,500
TRAFFIC IMPACT ANALYSIS	\$500

GEOTECHNICAL AND TESTING SERVICES

LIMITED SITE INVESTIGATIONS, BORINGS, MONITORING	\$9,970
ASBESTOS SURVEY	\$2,010
LEAD BASED PAINT SAMPLING	\$975
GEOTECH ENGINEERING SURVEY	\$3,700

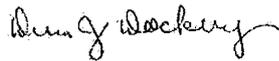
TOTAL ADDITIONAL SERVICES \$35,655

SUB-TOTAL \$304,915

CONTINGENCY \$ 30,492

TOTAL \$335,407

Sincerely,



Debra J. Dockery

Fire Station No. 19
Debra Dockery, Architect, P.C.

Payment for Basic Services breakdown in the following manner:

Schematic Design 15%.....	40,389.00
Design Development 20%.....	53,852.00
Construction Documents 45%.....	121,167.00
<u>Construction Administration 20%.....</u>	<u>53,852.00</u>
Total Basic Services.....	\$269,260.00

Additional Services will be compensated as the services are rendered.

Gerlach Laven, AIA
City Architect's Office
Capital Improvements Management Services
(210) 207-2738

EXHIBIT 2

COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

The Compensation as described in Article II and EXHIBIT I of this Agreement establishes the compensation to the DESIGN CONSULTANT for all services to be performed by DESIGN CONSULTANT or under its direction except the services as set forth below. These additional services and the compensation to be paid by the CITY to the DESIGN CONSULTANT for their performance when authorized in writing by the Director or his representative are set forth as follows:

- A. The basis for compensation for additional services and/or reimbursable expenses may be in one or more of the following forms:
1. Direct salary cost times a multiplier of **3.25** with a stated maximum not to be exceeded, other than testimony of principals.
 2. Reimbursement of non-labor expense and subcontract expense at invoice cost plus a **15%** service charge.
 3. Lump sum per task as negotiated between CITY and DESIGN CONSULTANT shall not exceed a cumulative total of **\$66,147.00**.
- B. Examples of additional services (not all inclusive).
1. Assistance to the CITY as an expert witness in any litigation with third parties arising from the development or construction of the Project including the preparation of architectural and/or engineering data and reports.
 2. Preparation of applications and supporting documents for Governmental grants, loans or advances in connection with the Project; Preparation or review of environmental assessment and impact statements; Review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approval of authorities having jurisdiction over the anticipated environmental impact of the Project.
 3. Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or are due to other causes not solely within the control of the DESIGN CONSULTANT.
 4. Providing detailed information of:
 - a. Owning, operation, maintenance and overhead costs of material and equipment, or
 - b. Quantity surveys of material, equipment and labor, or
 - c. Inventories of material and equipment, or

- d. Investigations, surveys, valuations, inventories or detailed appraisals of facilities, construction and/or services not required by the Base Contract.
5. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by CONSTRUCTION CONTRACTOR(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by CONSTRUCTION CONTRACTOR.
6. Services during out of town travel required of DESIGN CONSULTANT.
7. Additional services during construction made necessary by:
 - a. Work damaged by fire or other cause during construction.
 - b. A significant amount of defective or neglected work of CONSTRUCTION CONTRACTOR(s).
 - c. Failure of performance of CONSTRUCTION CONTRACTOR(s).
 - d. Acceleration of the progress schedule required by the CITY involving services beyond normal working hours.
 - e. Default by CONSTRUCTION CONTRACTOR(s).
8. Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
9. Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.
10. Services after completion of the construction phase, such as inspections during any guaranteed period and reporting observed discrepancies under guarantee called for in any contract for the Project.
11. Providing services of Geotechnical Engineering Firm to perform test borings and other soil or foundation investigations and related analysis.
12. Additional copies of contract documents, review documents, bidding documents, reports, drawings and specifications over the number specified in the Base Contract.
13. Providing photographs, renderings or models for CITY use.
14. Providing services of aerial mapping firm.
15. Providing services to investigate existing conditions or facilities or to make measured drawings thereof or to verify the accuracy of drawings or other information furnished by the CITY.

16. Providing services for exploration of utilities to include detailed measurements, surveys and verification of information provided by CITY and/or utility companies.
17. Providing other services not otherwise included in this Agreement which are not customarily furnished in accordance with generally accepted architectural and/or engineering practice.
18. Providing services of DESIGN CONSULTANT for other than the normal architectural, engineering, structural, mechanical, civil and electrical services for the Project.
19. Providing the services of material testing laboratory for detailed mill, shop and/or laboratory inspection of materials or equipment.

C. Salary Cost

1. Salary cost is defined as the cost of salaries of architects, engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc. for time directly chargeable to the Project, plus customary and statutory benefits including but not limited to social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation and holiday pay applicable thereto.

E. Principals of the Consulting Firm

1. For the purpose of this provision, the Principals of the Consulting Firm and their total hourly charge will be as follows, except as stated previously for testimony as expert witnesses:

PRINCIPALS OF FIRM

\$130 per hour

EXHIBIT 3

SBEDA PLAN

FORM 6
GOOD FAITH EFFORT PLAN
 (Page 1 of 4)

NAME OF PROJECT: Bond Program Architectural Services, RFQ-2007-Arch

BIDDER/PROPOSER INFORMATION:

Name of Bidder/Proposer: Debra J. Dockery, Architect, P.C.

Address: 118 Broadway, Suite 516

City: San Antonio State: Texas Zip: 78205

Phone Number: (210) 225-6130 E-mail address: debra@debradockeryarchitects.com

Is your firm certified? YES - SBE WBE 207020746
 (If yes, please submit Certification Certificate.)

7. List all subcontractors/suppliers that will be used for this contract. (Indicate all MBEs-WBEs-AABEs-SBEs. Use additional sheets as needed.)

NAME AND ADDRESS OF SUBCONTRACTOR'S/SUPPLIER'S COMPANY	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE-AABE- SBE CERTIFICATION NUMBER
Alpha Consulting Engineers		25%	SBE MBE 207041811
Alderson & Associates		20%	SBE 207031727
CDS/Muery Services		4%	
CFZ Group LLC		6%	SBE MBE 207053156

Only companies certified as an MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied toward the contracting goals. All MBE-WBE-AABE-SBE subcontractors or suppliers must submit a copy of their certification certificate through the Prime Contractor. **Proof of certification must be attached to this form.** If a business is not certified, please call the Small Business Program Office at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.

GOOD FAITH EFFORT PLAN

(Page 2 of 4)

PROJECT NAME: Bond Program Architectural Services, RFQ-2007-Arch

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of Economic Development and Director of the appropriate contracting department (through the submittal of the Request for Approval of Change to Original Affirmed Good Faith Effort Plan).

NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.

8. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

We have met all goals except 2.2% AABE. The scope of each project varies considerably. We have listed sub-contractors for the traditional sub-consulting areas. Until such time as a project is actually awarded, it is unknown what other sub-contracting opportunities may exist.

9. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

SCTRCA Members list

10. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

11. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

Debra J. Dockery, Architect, P.C. SBE and WBE – 45% of the project. Alpha Consulting Engineers and CFZ Group, SBE and MBE – 31% of the project. Percent of project to SBE's – 96% (Alderson, Alpha, CFZ and Dockery) All firms are headquartered in San Antonio.

12. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

GOOD FAITH EFFORT PLAN

(Page 3 of 4)

PROJECT NAME: Bond Program Architectural Services, RFQ-2007-Arch

13. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	REASON FOR REJECTION

14. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.

15. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.

Contact Person: Debra J. Dockery

Phone Number: (210) 225-6130

16. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

GOOD FAITH EFFORT PLAN AFFIRMATION

I HEREBY AFFIRM THAT THE INFORMATION PROVIDED IN THIS GOOD FAITH EFFORT PLAN IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Debra J. Dockery
SIGNATURE OF AUTHORIZED OFFICIAL
President

TITLE OF OFFICIAL
December 12, 2007 (210) 225-6130

DATE PHONE NUMBER

GOOD FAITH EFFORT PLAN

(Page 4 of 4)

PROJECT NAME: Bond Program Architectural Services, RFQ-2007-Arch

FOR CITY USE

Plan Reviewed By: _____

Recommendation: Approval Denial

Action Taken: Approved Denied

DIRECTOR OF ECONOMIC DEVELOPMENT

DATE



SCTRCA

Minority and Women Business Enterprise
(MWBE) Program

Debra J. Dockery, Architects, P.C.

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified, in accordance with SCTRCA Policies and Procedures, as a:

SBE WBE

This Certification Certificate must be updated by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantage status, ownership, or control requirements and any material changes in the information provided in the submission of the business application for certification.

CERTIFICATE EXPIRES: **02/28/09**

CERTIFICATE NO. **207020746**

Certified in the following work categories:
North American Industry Classification System (NAICS) code(s):

541310 Architectural Services

Sheena D Suber
EXECUTIVE DIRECTOR



SCTRCA

Minority and Women Business Enterprise
(MWBE) Program

Alpha Consulting Engineers

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified, in accordance with SCTRCA Policies and Procedures, as a:

SBE MBE

This Certification Certificate must be updated by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantage status, ownership, or control requirements and any material changes in the information provided in the submission of the business application for certification.

CERTIFICATE EXPIRES: 04/30/09

CERTIFICATE NO. 207041811

Certified in the following work categories:
North American Industry Classification System (NAICS) code(s):

541330 Engineering Services

Sheena D Suber
EXECUTIVE DIRECTOR

(ATTACHMENT 6-A)
CITY OF SAN ANTONIO

LETTER OF INTENT FOR CONTRACTS
UTILIZING SMALL BUSINESS CONTRACTING GOALS

City of San Antonio Bond Program Engineering Services RFQ-2007-Arch

NAME OF PROJECT: _____

Name of bidder's/proposer's firm: Debra Dockery Architects

Address: 118 Broadway, Suite 516

City: San Antonio State: Texas Zip: 78205

Name of Subcontractor/Supplier: Alderson & Associates, Inc.

Address: 8415 Datapoint Drive, Suite 725

City: San Antonio State: Texas Zip: 78229

Telephone: (210) 614-1110 Contact Person: Dean Alderson, PE

Is the above firm Certified?: Yes No If certified, Certification No: 207031727

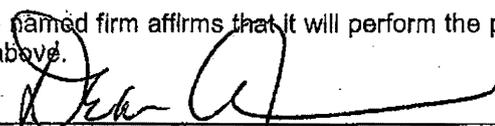
If firm is certified, please attach a copy of the Certification Certificate with this form.

Description of work to be performed by firm:
Mechanical, Plumbing and Electrical Engineering services.

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ 5%

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: 
Signature of Firm's Representative

12-6-07
Date

Title: Principal

Submit this page for each Subcontractor/Supplier to be utilized on this contract/project.



SCTRCA

Small, Minority, Women Business Enterprise

(S/M/WBE) Program

Alderson & Associates, Inc.

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified, in accordance with SCTRCA Policies and Procedures, as a:

SBE

This Certification Certificate must be updated by submission of a Certification Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size requirements and any material changes in the information provided in the submission of the business application for certification.

CERTIFICATE EXPIRES: **03/31/09**

CERTIFICATE NO. **207031727**

Certified in the following work categories:
North American Industry Classification System (NAICS) code(s):

541330 Engineering Services

Sheena D Suber
EXECUTIVE DIRECTOR

(ATTACHMENT 6-A)
CITY OF SAN ANTONIO

LETTER OF INTENT FOR CONTRACTS
UTILIZING SMALL BUSINESS CONTRACTING GOALS

NAME OF PROJECT: Bond Architectural Services RFQ-2007-Arch

Name of bidder's/proposer's firm: Debra Dockery Architects

Address: 118 Broadway Ste.516

City: San Antonio State: Texas Zip: 78205

Name of Subcontractor/Supplier: CFZ Group, LLC

Address: 302 West Rhapsody Drive

City: San Antonio State: Texas Zip: 78216

Telephone: 210-366-1911 Contact Person: Cullen Coltrane

Is the above firm Certified?: Yes No If certified, Certification No: 207053156

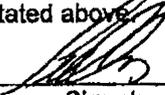
If firm is certified, please attach a copy of the Certification Certificate with this form.

Description of work to be performed by firm:
Landscape design

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$TBD_____.

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: 
Signature of Firm's Representative

December 10, 2007
Date

Title: Vice President



SCTRCA

Minority and Women Business Enterprise
(MWBE) Program

**Coltrane, Fernandez, Zavala Group,
LLC**

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified, in accordance with SCTRCA Policies and Procedures, as a:

SBE MBE WBE

This Certification Certificate must be updated by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantage status, ownership, or control requirements and any material changes in the information provided in the submission of the business application for certification.

CERTIFICATE EXPIRES: 05/31/09

CERTIFICATE NO. 207053156

Certified in the following work categories:
North American Industry Classification System (NAICS) code(s):

541320 Landscape Architectural Services

**Sheena D Suber
EXECUTIVE DIRECTOR**



CMS or Ordinance Number: CN4600008296

TSLGRS File Code:1075-16

Document Title:

CONT - Proj. No.s 40-00010/ 40-00011/ 40-00012 District 4,6,7

Pedestrian Mobility & Traffic Calming Initiatives

Commencement Date:

2/17/2009

Expiration Date:

5/1/2011

**PROFESSIONAL SERVICES AGREEMENT
ENGINEERING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

**AGREEMENT FOR ENGINEERING SERVICES
DISTRICTS 4, 6, & 7 PEDESTRIAN MOBILITY & TRAFFIC CALMING INITIATIVES
(40-00010 | 40-00011 | 40-00012)**

This Agreement is made and entered into in San Antonio, Bexar County, Texas; between the City of San Antonio, a Texas Municipal Corporation, hereinafter termed "CITY" and/or "OWNER", and

**RJ RIVERA ASSOCIATES, INC.
7410 BLANCO ROAD, SAN ANTONIO, TX 78216, SUITE 250**

Engineer(s), duly licensed, and practicing under the laws of the State of Texas, hereinafter termed "DESIGN CONSULTANT", said Agreement being executed by the CITY pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by the DESIGN CONSULTANT for engineering services hereinafter set forth in connection with the above designated Project for the City of San Antonio.

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ATTACHMENT 5 – SAWS SCOPE OF SERVICES

ARTICLE I. DEFINITIONS

As used in this AGREEMENT, the following terms shall have meanings as set out below:

- 1.1 "Application for Compensation" means form DESIGN CONSULTANT uses to make a request to be paid for completed services.
- 1.2 "Application for Payment" - means form CONSTRUCTION CONTRACTOR uses to make a request to be paid for completed work.
- 1.3 "Certificate for Payment" means a form DESIGN CONSULTANT uses to make recommendations on Construction Contractor's Application for Payment.
- 1.4 "CITY" and "Owner" means the City of San Antonio, Texas.
- 1.5 "Claim" is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and DESIGN CONSULTANT arising out of or relating to the Agreement.
- 1.6 "Compensation" means amounts paid by City to DESIGN CONSULTANT for completed services under this Agreement.
- 1.7 "CONSTRUCTION CONTRACTOR" means the firm hired by the CITY to construct the Project.
- 1.8 "Construction Contract Documents" means the contract between the CITY and the firm contracted by CITY to construct the project and all documents therein.
- 1.9 "CPS Energy" means City Public Service.
- 1.10 "DESIGN CONSULTANT" means **RJ RIVERA ASSOCIATES, INC.** and its officers, partners, employees, agents and representatives, and all its sub-consultants, if any, and all other persons or entities for which the DESIGN CONSULTANT is legally responsible.
- 1.11 "Director" means the Director of CITY's Capital Improvements Management Services Department, Public Works Department or the designated project manager identified by the Notice to Proceed.
- 1.12 "Final Compensation" means the final amounts paid by CITY to DESIGN CONSULTANT for completed services under this Agreement.
- 1.13 "Final Payment" means the final amounts paid by CITY to CONSTRUCTION CONTRACTOR for completed work under the construction contract.

- 1.14 "JOINT UTILITY" or "JOINT UTILITIES" or "UTILITY" means the City Public Service Board also known as CPS Energy and the San Antonio Water System also known as SAWS.
- 1.15 "Payment" means amounts paid by City to Construction Contractor for work performed under construction contract documents.
- 1.16 "Plans and Specifications" means the construction documents.
- 1.17 "Project" means the capital improvement/construction development undertaking of CITY for which DESIGN CONSULTANT's services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.
- 1.18 "Proposal" means Design Consultant's Proposal to provide services for this Project.
- 1.19 "Request for Payment" means a form the Construction Contractor uses to be paid for completed work.
- 1.20 "SAWS" means the San Antonio Water System, Inc.
- 1.21 "Schedule of Values" means the fees allocated to services, reimbursables and/or various portions of the services or Work, prepared in such form, and supported by such data to substantiate its accuracy as Owner may require.
- 1.22 "Scope of Services" mean the services described in Article IV Scope of Services.
- 1.23 "Services" means design services performed by the DESIGN CONSULTANT.
- 1.24 "Statement of Probable Construction Cost" means DESIGN CONSULTANT's estimate of probable Construction costs based on its experience and qualifications as a practitioner of its profession and the current, area, volume and/or other unit costs.
- 1.25 "Total Compensation" means the amount of this Agreement.
- 1.26 "Work" means the construction performed by the Construction Contractor.

**ARTICLE II.
COMPENSATION FOR BASIC SERVICES**

- 2.1 The Total Compensation for BASIC services defined by this Agreement is the lump sum of **TWO HUNDRED FOURTY SEVEN THOUSAND EIGHT HUNDRED EIGHTY SIX DOLLARS AND TWENTY FIVE CENTS (\$247,886.25)**. Additional compensation in the amount of **\$24,788.63** is provided for services and contingency items requested by individual task per Attachments 1, 2, 3, and 5. It is agreed and understood that compensation to the DESIGN CONSULTANT shall not exceed these amounts. Such amounts have been approved and appropriated by the San Antonio City Council for expenditure under this Agreement. Unless and until the CITY makes further appropriations for any services not included in the Scope of Services in combination with additional services, the obligation of the CITY to the DESIGN CONSULTANT for Total Compensation in connection with this Agreement cannot and will not exceed the sum of **\$272,674.88** without further amendment to this Agreement.

- 2.2 A Schedule of Values shall be used as the basis for reviewing the DESIGN CONSULTANT's Applications for Compensation. The Schedule of Values shall include a schedule for both the design phase and construction phase of the project.
- 2.2.1 Before the first Application for Compensation, the Owner shall receive from the DESIGN CONSULTANT a Schedule of Values allocated to the Phases in Paragraph 2.2.3 prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This Schedule of Values shall be used as the basis for reviewing the DESIGN CONSULTANT's Applications for Compensation during each phase of the Services.
- 2.2.2 Before the first Application for Compensation during the construction phase, the DESIGN CONSULTANT shall receive from the Construction Contractor a draw schedule allocated to various portions of the Work prepared in such form and supported by such data to substantiate accuracy as the DESIGN CONSULTANT may require. This schedule shall be used as the basis for reviewing the DESIGN CONSULTANT'S Applications for Compensation during the construction phase.
- 2.2.3 DESIGN CONSULTANT shall complete the PROJECT in accordance with the following Phases. For the purpose of establishing portions of the above compensation for separate phases, the percentage allocations of compensation as indicated in Attachment 2 hereto, and more particularly described in the Scope of Services shall apply:

PROJECT DESIGN PHASES

Preliminary Engineering Report 20% Design (required by CPS Energy for joint CPS Energy design projects) – may not be required for all projects
 40% Design
 70% Design
 95% Design
 Bid Documents
 Construction Engineering Services
 Project Close Out & Final Payment

- 2.3 The DESIGN CONSULTANT shall submit an itemized Application for Compensation for services performed in accordance with the Schedule of Values. Such Application for Compensation shall be notarized, if required, and supported by such data substantiating the DESIGN CONSULTANT's right to Compensation as the Owner may require. Such Application for Compensation shall be used to substantiate the DESIGN CONSULTANT's right to compensation from the Owner.
- 2.3.1 Such applications may include Applications for Compensation for additional services on account of changes in the Work which have been properly authorized by the Director, or by interim determination approved by the Director, but not yet included in Amendments to this Agreement.
- 2.3.2 The DESIGN CONSULTANT and the CITY acknowledge the fact that the Total Compensation amount contained in paragraph 2.1 above has been established predicated upon the total estimated costs of services to be rendered under this Agreement and the Scope of Services for this Agreement.
- 2.3.3 The DESIGN CONSULTANT shall, within ten (10) days following receipt of Compensation from the Owner, pay all bills for services performed and furnished hereunder by subconsultants of DESIGN CONSULTANT in connection with the Project and the performance of services and shall, if requested, provide the Owner with evidence of such payment. DESIGN CONSULTANT's failure to make payments within such time shall constitute a material breach of this Agreement unless the DESIGN CONSULTANT is able to demonstrate to Owner bona fide disputes associated with the services of the unpaid subconsultant and its services. DESIGN CONSULTANT shall include a provision in each of its subagreements imposing the same payment obligations on its subconsultants as are

applicable to the DESIGN CONSULTANT hereunder, and if the Owner so requests, shall provide evidence of such payments by the DESIGN CONSULTANT to the Owner. If the DESIGN CONSULTANT has failed to make payment promptly to the subconsultant for undisputed services for which the Owner has made payment to the DESIGN CONSULTANT, the Owner shall be entitled to withhold future payment to the DESIGN CONSULTANT to the extent remaining unpaid by DESIGN CONSULTANT necessary to protect the Owner.

- 2.3.4 The DESIGN CONSULTANT warrants that title to all deliverables produced in the performance of services covered by an Application for Compensation will pass to the Owner no later than the time of payment. The DESIGN CONSULTANT further warrants that upon submittal of an Application for Compensation, all Services for which Applications for Compensation have been previously issued and payments received from the Owner shall, to the best of the DESIGN CONSULTANT's knowledge, information and belief be free and clear of liens, claims, security interests or encumbrance in favor of the DESIGN CONSULTANT, or other persons or entities under Contract with the DESIGN CONSULTANT making a claim by reason of having provided labor or services relating to the DESIGN CONSULTANT's Services. DESIGN CONSULTANT SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO DESIGN CONSULTANT.

ARTICLE III. METHOD OF PAYMENT

- 3.1 Compensation may be made to the DESIGN CONSULTANT based upon the several phases as described in Article II and in accordance with and subject to the following:
- 3.1.1 Preliminary Engineering Report (If Required) - The Total Compensation due the DESIGN CONSULTANT under this Phase shall be payable after approval and acceptance of this Phase by the CITY in accordance with Attachments 1 and 2.
 - 3.1.2 40% Design - The Total Compensation due the DESIGN CONSULTANT under this Phase shall be payable after approval and acceptance of this Phase by the CITY in accordance with Attachments 1 and 2.
 - 3.1.3 70% Design - The Total Compensation due the DESIGN CONSULTANT under this Phase shall be payable after approval and acceptance of this Phase by the CITY in accordance with Attachments 1 and 2.
 - 3.1.4 95% Design - The Total Compensation due the DESIGN CONSULTANT under this Phase shall be payable after approval and acceptance of this Phase by the CITY in accordance with Attachments 1 and 2.
 - 3.1.5 Bid Documents - The Total Compensation due the DESIGN CONSULTANT under this Phase in accordance with Attachments 1 and 2 shall be payable after the DESIGN CONSULTANT provides the CITY the bid tabulation and a letter of recommendation.
 - 3.1.6 Construction Engineering Services - The Total Compensation due DESIGN CONSULTANT during the Construction of the Project in accordance with Attachments 1 and 2 will be made in monthly installments for this Phase in proportion to the percentage of construction completed by the CONSTRUCTION CONTRACTOR. Percentage of construction will be determined by the Director in his sole discretion.

3.1.7 Project Close Out and Final Payment:

a. The DESIGN CONSULTANT shall not be entitled to final payment unless and until it submits to the Owner its affidavit that the invoices for services, and other liabilities connected with the services for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied or will be paid from final payment; releases and waivers of liens from all the DESIGN CONSULTANT's subconsultants and of any and all other parties required by the Owner that are either unconditional or conditional on receipt of final payment; Certificates of insurance showing continuation of required insurance coverages; such other documents as Owner may request; and consent of Surety to final payment.

b. Final Compensation - The final compensation to be made by the CITY to the DESIGN CONSULTANT will be payable upon submission of the "Record Drawings". DESIGN CONSULTANT agrees to submit "Record Drawings" in print media, electronic format (PDF and DGN format) and final billing within 45 days of final acceptance of construction. Additionally, DESIGN CONSULTANT agrees to submit a statement of release with the final billing notifying the CITY that, unless expressly noted otherwise, there are no further compensation owed to the DESIGN CONSULTANT by the CITY beyond the final bill, Final billing shall indicate "Final Bill - no additional compensation is due to DESIGN CONSULTANT".

3.1.8 The Owner may withhold compensation to such extent as may be necessary, in the Owner's opinion, to protect the Owner from damage or loss for which the DESIGN CONSULTANT is responsible, because of:

3.1.8.1 delays in the performance of the DESIGN CONSULTANT's Services;

3.1.8.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the DESIGN CONSULTANT;

3.1.8.3 failure of the DESIGN CONSULTANT to make payments properly to sub-consultants or vendors for labor, materials or equipment;

3.1.8.4 reasonable evidence that the DESIGN CONSULTANT's work cannot be completed for the amount unpaid under this Agreement;

3.1.8.5 damage to the Owner or the CONSTRUCTION CONTRACTOR; or

3.1.8.6 persistent failure by the DESIGN CONSULTANT to carry out the performance of its services in accordance with this Agreement.

3.1.9 When the above reasons for withholding are removed or remedied by the DESIGN CONSULTANT, compensation of the amount withheld will be made within a reasonable time. The Owner shall not be deemed in default by reason of withholding compensation as provided for in this Article.

3.1.10 In the event of any dispute(s) between the parties regarding the amount properly payable for any Phase or as final compensation, or regarding any amount that may be withheld by the Owner, the DESIGN CONSULTANT shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the

event DESIGN CONSULTANT does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.

- 3.1.11 The Owner shall make final compensation for all sums due the DESIGN CONSULTANT not more than thirty (30) days after the DESIGN CONSULTANT's final Application for Compensation.
- 3.1.12 Acceptance of final compensation by the DESIGN CONSULTANT shall constitute a waiver of claims except those previously made in writing and identified by DESIGN CONSULTANT as unsettled at the time of final Application for Compensation.
- 3.2 Internet-based Project Management Systems. Owner will administer its design and construction management through an Internet-Based Management System. In such case, the DESIGN CONSULTANT shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, amendment, change orders and other administrative activities. The Owner shall administer the software, shall provide training to Project Team Members, and shall make the software available at no cost via the Internet to all Project Team Members.
- 3.3 All Applications for Compensation shall be submitted through the CITY's Project Management Portal. Prior to submittal of the first Application for Compensation, DESIGN CONSULTANT will submit a schedule of values for compensation to be approved by the CITY and the JOINT UTILITIES, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.
- 3.4 It is understood that this Project is a joint Project with the utility provider(s) and that the utility providers are ultimately responsible for the cost of design for utilities. Accordingly, the CITY will seek reimbursement from the Utility provider(s). Therefore, DESIGN CONSULTANT will invoice separately for the utility design costs according to the Schedule of Values for utility design in Requests for Compensation to facilitate the CITY's reimbursement claims.
- 3.5 Prior to submittal of the first Applications for Compensation for utility design, DESIGN CONSULTANT will submit a schedule of values for compensation of utility design to be approved by the CITY and the JOINT UTILITY, which approval shall not be unreasonably withheld, conditioned or delayed. Schedule of values will identify costs attributable separately to each of the several types of utilities involved, independently from the others, so that CITY can properly substantiate its reimbursement claims against each separate utility provider. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.
- 3.6 DESIGN CONSULTANT may submit a request for Partial Compensation prior to submittal of a Request for Compensation in this Article. A request for Partial Compensation must be accompanied by a progress report detailing the Services performed for that Phase. Any partial payment made shall be in proportion to the percent of the Services performed as reflected in the progress report and approved solely by the Director. Partial Compensation shall not exceed seventy percent (70%) of the compensation allowed for the Phase in which the Partial Compensation is requested. The balance due for the Phase in which Partial Compensation is approved will be paid to DESIGN CONSULTANT upon approval and acceptance of the Phase.

**ARTICLE IV.
SCOPE OF SERVICES**

- 4.1 The DESIGN CONSULTANT shall not commence work on this proposed Project until being thoroughly briefed on the scope of the project and being notified in writing to proceed. The scope of the project and the DESIGN CONSULTANT's services required shall be reduced by the DESIGN CONSULTANT to a written Summary of the Scope meeting approved by the City and included as a part of this Agreement. Should the scope subsequently change, either the DESIGN CONSULTANT, the CITY or Utility may request a review of the anticipated services, with an appropriate adjustment in compensation.
- 4.1.1 In developing the Scoping Minutes, the DESIGN CONSULTANT shall make every effort to minimize utility adjustments, where possible.
- 4.1.2 Prior to completing the Preliminary Engineering/Schematic Report, the DESIGN CONSULTANT shall request block maps from the respective JOINT UTILITIES and, from the block maps, shall identify any and all utilities within the Project area.
- 4.1.3 In the event electrical or gas facilities are encountered, the DESIGN CONSULTANT ENGINEER shall identify and incorporate those facilities at the completion of each Project Phase in order to determine the magnitude of any potential adjustment.
- 4.1.4 The DESIGN CONSULTANT shall take into consideration, shall consult with CPS Energy, and shall incorporate into the Project Plans and Specifications that the CPS Energy electric and gas systems cannot be shut down during certain conditions, such as extreme weather, or without permission from the Electric Reliability Council of Texas.
- 4.2 The DESIGN CONSULTANT, in consideration for the compensation herein provided, shall render the professional services described in this Section that are necessary for the development of the Project, including plans and specifications, construction management services, any special and general conditions, and instructions to bidders as acceptable to the Director, or his duly authorized representative.
- 4.3 The DESIGN CONSULTANT shall perform its services under this Agreement in accordance with Phases outlined in 2.2.3 and DESIGN CONSULTANT's Scope of Services attached and incorporated herein as Attachments "1 and 2". The Scope of Services shall be as specifically defined on a per phase basis in Attachment "1 and 2" attached hereto.
- 4.4 The DESIGN CONSULTANT will advise and consult with the CITY. The CITY's instructions to the CONSTRUCTION CONTRACTOR may be issued through the DESIGN CONSULTANT but the CITY reserves the right to issue instructions directly to the CONSTRUCTION CONTRACTOR through inspectors or others designated CITY representatives.
- 4.5 Upon acceptance and approval of the plans, reports or other deliverables required for a phase of work, as set forth in the Scope of Services, Director shall authorize DESIGN CONSULTANT, in writing, to proceed with the next phase of Work.
- 4.6 The DESIGN CONSULTANT will make a minimum of two visits (2) per month to the Site at intervals appropriate to the phases (1) to become generally familiar with and to keep the CITY informed about the progress and quality of the portion of the Work completed, and (2) to endeavor to guard the CITY against defects in Work. However, the DESIGN CONSULTANT will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

- 4.7 The DESIGN CONSULTANT will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work since these are solely the Contractor's rights and responsibilities under the Contract Documents. The DESIGN CONSULTANT'S efforts will be directed toward providing for CITY a greater degree of confidence that the completed Work will generally conform to the Contract Documents.
- 4.8 The DESIGN CONSULTANT will not be responsible for the CONSTRUCTION CONTRACTOR'S failure to perform the Work in accordance with the requirements of the Contract Documents. The DESIGN CONSULTANT will not have control over or charge of and will not be responsible for acts or omissions of the CONSTRUCTION CONTRACTOR, Subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work
- 4.9 Communications by and with the DESIGN CONSULTANT's subconsultants shall be through the DESIGN CONSULTANT. Communications by and with Subcontractors and material suppliers shall be through the CONSTRUCTION CONTRACTOR.
- 4.10 Except as otherwise provided in the Construction Specifications, Supplementary or Special Conditions, the CITY and the JOINT UTILITIES have authority to reject Work that does not conform to the Contract Documents. Whenever the DESIGN CONSULTANT, CITY, or JOINT UTILITIES considers it necessary or advisable, either the City, JOINT UTILITIES or DESIGN CONSULTANT may require inspection or testing of the Work whether or not such Work is fabricated, installed or completed. However, neither this authority of the DESIGN CONSULTANT, CITY, or JOINT UTILITIES nor a decision made by either, in good faith, to require or not require an inspection shall give rise to a duty or responsibility of the DESIGN CONSULTANT, the CITY, or JOINT UTILITIES to the CONSTRUCTION CONTRACTOR, subcontractors, material and equipment suppliers, agents or employees, or other persons or entities performing portions of the Work.
- 4.11 The DESIGN CONSULTANT will review and recommend approval or take other appropriate action upon the CONSTRUCTION CONTRACTOR's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The DESIGN CONSULTANT will respond to submittals such as Shop Drawings, Product Data, and Samples pursuant to the procedures set forth in the Project specifications. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of the CONSTRUCTION CONTRACTOR as required by the Contract Documents. The DESIGN CONSULTANT's review of the Contractor's submittals shall not relieve the CONSTRUCTION CONTRACTOR of its obligations. The DESIGN CONSULTANT's review shall not constitute approval of safety precautions or any construction means, methods, techniques, sequences or procedures unless otherwise specifically stated by the DESIGN CONSULTANT. The DESIGN CONSULTANT's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 4.12 The DESIGN CONSULTANT will, within three (3) work days after receipt of the Construction Contractor's Application for Payment review the Application for Payment and either issue to the Owner and/or the affected utility a recommendation for approval for Payment for such amount as the DESIGN CONSULTANT determines is properly due, or notify the Owner, affected utility, and CONSTRUCTION CONTRACTOR in writing of the DESIGN CONSULTANT's reasons for withholding approval in whole or in part.
- 4.13 The issuance of an approval for Payment will constitute a representation by the DESIGN CONSULTANT to the Owner, based on the DESIGN CONSULTANT's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the DESIGN CONSULTANT's knowledge, information and belief, the quality of the work is in accordance with the Design

Agreement Documents or Construction Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Agreement Documents, to results of subsequent tests and inspections, to correction of minor deviations from the Agreement Documents prior to completion, and to any specific qualifications expressed by the DESIGN CONSULTANT. The issuance of a recommendation for approval for Payment will further constitute a representation that the Construction Contractor is entitled to payment in accordance with the Schedule of Values. The issuance of a recommendation for approval for Payment will not be a representation that the DESIGN CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from SubContractors and material suppliers and other data requested by the Owner to substantiate the Construction Contractor's right to payment, or (4) made any examination to ascertain how or for what purpose the CONSTRUCTION CONTRACTOR has used money previously paid on account of the Agreement Sum.

4.13.1 The DESIGN CONSULTANT shall not issue a Certificate for Payment related to any CPS Energy electric and/or gas infrastructure until CPS Energy has conducted its final inspection of the CPS Energy electric and/or gas infrastructure and authorized DESIGN CONSULTANT to issue the Certificate for Payment.

4.14 The DESIGN CONSULTANT may recommend withholding an approval for Payment in whole or in part, to the extent reasonably necessary to protect the Owner and/or the JOINT UTILITIES if, in the DESIGN CONSULTANT's opinion, the representations to the Owner required by Section 4.13 cannot be made. If the DESIGN CONSULTANT is unable to recommend approval of payment in the amount of the Application, the DESIGN CONSULTANT will notify the Owner and the affected utility and Construction Contractor as provided in Section 4.12. If the Owner and the DESIGN CONSULTANT cannot agree on a revised amount, the DESIGN CONSULTANT will promptly issue a recommendation for approval of Payment for the amount for which the DESIGN CONSULTANT is able to make such representations to the Owner and the affected utility. The DESIGN CONSULTANT may also recommend withholding a Payment, because of subsequently discovered evidence, may modify the whole or a part of a recommendation for approval of Payment to such extent as may be necessary, in the DESIGN CONSULTANT's opinion, to protect the Owner and the affected utility from loss for which the CONSTRUCTION CONTRACTOR is responsible, including loss resulting from acts and omissions described below:

4.14.1 defective Work not remedied;

4.14.2 third party claims filed or reasonable evidence indicating probable filing of such claims for which CONSTRUCTION CONTRACTOR is responsible hereunder unless security acceptable to the Owner and the affected utility is provided by the CONSTRUCTION CONTRACTOR;

4.14.3 failure of the CONSTRUCTION CONTRACTOR to make payments properly to the subcontractors and/or material providers; or

4.14.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Agreement Sum and CONSTRUCTION CONTRACTOR has failed to provide Owner and the affected utility adequate assurance of its continued performance within a reasonable time after demand;

4.14.5 damage to the Owner and the affected utility or another Contractor;

4.14.6 reasonable evidence that the Work will not be completed within the Agreement Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

4.14.7 persistent failure by the CONSTRUCTION CONTRACTOR to carry out the Work in accordance with the Plans and Specifications.

The Owner will pay the undisputed portions of such Application for Compensation within the time frames established in Article III.

- 4.15 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld. The Owner and the affected utility shall not be deemed in default by DESIGN CONSULTANT by reason of withholding payment as provided.
- 4.16 The DESIGN CONSULTANT, with concurrence of the Owner, will prepare Change Orders and Field Work Directives. The Owner's Designated Representative "ODR" will have authority to order minor changes in the Work not involving an adjustment in the Total Compensation or an extension of the time for construction. Such changes shall be effected by written order, which the Contractor shall carry out promptly and record on the as-built record documents.
- 4.17 The DESIGN CONSULTANT, the CITY, and JOINT UTILITIES will conduct observations to determine the date of final completion. The DESIGN CONSULTANT will receive and forward to the CITY, for the CITY's and JOINT UTILITIES review and records, written warranties and related documents required by the Contract and assembled by the CONSTRUCTION CONTRACTOR, and will issue a final Approval for Payment upon compliance with the requirements of the Contract Documents.
- 4.18 Upon written request of the CITY, the JOINT UTILITIES or CONSTRUCTION CONTRACTOR the DESIGN CONSULTANT will issue its interpretation of the requirements of the plans and specifications. The DESIGN CONSULTANT's response to such requests will be made in writing within any agreed time limits or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required by the DESIGN CONSULTANT shall be furnished in compliance with Article IV, then delay shall not be recognized on account of failure by the DESIGN CONSULTANT to furnish such interpretations until 15 days after written request is made for DESIGN CONSULTANT's interpretation.
- 4.19 Interpretations of the DESIGN CONSULTANT will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.
- 4.20 The DESIGN CONSULTANT's recommendations on matters relating to aesthetic effect will be consistent with the intent expressed in the Agreement Documents unless expressly overruled in writing by the CITY.

ARTICLE V. DESIGN PHASES REQUIREMENTS

- 5.1 The DESIGN CONSULTANT shall:
 - 5.1.1. Follow and comply with the requirements for the DESIGN PHASES listed in this Agreement, Chapter 35 of the City of San Antonio Unified Development Code, if applicable, and City's Design Guidance Manual, in effect as of the effective date of this Agreement, both of which are incorporated by reference herein.
 - 5.1.2. Follow and comply with the requirements for the DESIGN PHASES listed in the CPS Energy and SAWS Design Guidance Manuals, both of which are incorporated by reference herein.
 - 5.1.3. Provide a minimum of five (5) paper copies and one electronic pdf file copy of all submittals and deliverables, except where the number and/or type of submittals and deliverables are specifically addressed in the Scope of Services (Attachment A), or any other attachment(s) incorporated herein as part of this Agreement.

5.1.4. In case of conflicts, follow and comply with the most stringent requirements for the DESIGN PHASES.

ARTICLE VI. TIME AND PERIOD OF SERVICE

- 6.1 Prior to commencement of any work, Design Consultant shall provide CITY with a schedule of PROJECT DESIGN PHASES, Attachment 2.
- 6.2 Time is of the essence in this Agreement. The DESIGN CONSULTANT shall perform and complete its obligations for the various Phases of Services under Section IV "Scope of Service" of this Agreement in a prompt and continuous manner so as to not delay the development of the design work and so as to not delay the construction of the work for the Project in accordance with the schedules approved by the CITY with the CONSTRUCTION CONTRACTOR. Upon review of phase work, if corrections, modifications, alterations, or additions are required of the DESIGN CONSULTANT, these items shall be completed by the DESIGN CONSULTANT before that Phase is approved.
- 6.3 The DESIGN CONSULTANT shall not proceed with the next appropriate Phase of Services without written authorization from the Director. The CITY may elect to discontinue the DESIGN CONSULTANT's services at the end of any Phase for any reason. Notwithstanding any other provisions of this Agreement, if circumstance dictates, the Director may make adjustments to the scope of the DESIGN CONSULTANT's obligations at any time to achieve the required design.
- 6.4 The DESIGN CONSULTANT shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations, or any other causes beyond DESIGN CONSULTANT's reasonable control. Within twenty one (21) days from the occurrence of any event for which time for performance by DESIGN CONSULTANT shall be significantly extended under this provision, DESIGN CONSULTANT shall give written notice thereof to the CITY stating the reason for such extension and the actual or estimated time thereof. If the CITY determines that the DESIGN CONSULTANT is responsible for the need for extended time, the CITY shall have the right to make a Claim as provided in this Agreement.
- 6.5 This Agreement shall remain in force for a period which may reasonably be required for the design, award of the contract, and construction of the Project including any extra work and any required extensions thereto unless discontinued as provided for elsewhere in this Agreement.

ARTICLE VII. COORDINATION WITH THE CITY

- 7.1 The DESIGN CONSULTANT shall hold periodic conferences with the Director or his representatives to the end that the Project as developed shall have the full benefit of the CITY's experience and knowledge of existing needs and facilities, and be consistent with its current policies and standards. To assist the DESIGN CONSULTANT in this coordination, the CITY shall make available for the DESIGN CONSULTANT's use in planning and designing the Project all existing plans, maps, statistics, computations and other data in its possession relative to existing facilities and to this particular Project, at no cost to the DESIGN CONSULTANT. However, any and all such information shall remain the property of the CITY and shall be returned by the DESIGN CONSULTANT upon termination or completion of the Project or if instructed to do so by the Director.
- 7.2 The Director will act on behalf of the CITY with respect to the Services to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information, interpret and define the CITY'S policies and decisions with respect to materials, equipment, elements and systems pertinent to the DESIGN

CONSULTANT's services.

- 7.3 The CITY will give prompt written notice to the DESIGN CONSULTANT whenever the CITY and/or JOINT UTILITIES observe or otherwise become aware of any defect in the DESIGN CONSULTANT's services, in the work of the CONSTRUCTION CONTRACTOR, or any development that affects the scope or timing of the DESIGN CONSULTANT's services.
- 7.4 All appraisals, notices, and permits shall be furnished by the DESIGN CONSULTANT under the Scope of Services unless otherwise assigned to the CITY in the Scope of Services. Approvals and permits assigned to the CITY shall be obtained from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for the completion of the Project. The DESIGN CONSULTANT will provide the CITY reasonable assistance in connection with such approvals and permits such as the furnishing of data compiled by the DESIGN CONSULTANT pursuant to other provisions of the Agreement, but the DESIGN CONSULTANT shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefore under other provisions of this Agreement.

ARTICLE VIII. REVISIONS TO DRAWINGS AND SPECIFICATIONS

- 8.1 The DESIGN CONSULTANT shall make without expense to the CITY such revisions to the drawings, reports or other documents as may be required to meet the needs of the CITY or JOINT UTILITIES which are within the Scope of Services, but after the approval of drawings, reports or other documents and specifications by the CITY or JOINT UTILITIES, any revisions, additions, or other modifications made at the CITY's or JOINT UTILITIES request which involve extra services and expenses to the DESIGN CONSULTANT shall be at additional compensation to the DESIGN CONSULTANT for such extra services and expenses, in accordance with Attachment 3.

ARTICLE IX. OWNERSHIP OF DOCUMENTS

- 9.1 All previously owned documents, including the original drawings, estimates, specifications, and all other documents and data, will remain the property of the DESIGN CONSULTANT as instruments of service. However, the DESIGN CONSULTANT understands and agrees that the CITY and JOINT UTILITIES shall have free access to all such information with the right to make and retain copies of previously owned drawings, estimates, specifications and all other documents and data. Any reuse without specific written verification or adaptation by DESIGN CONSULTANT will be at CITY's and JOINT UTILITIES sole risk and without liability or legal exposure to DESIGN CONSULTANT.
- 9.2 All completed documents submitted by DESIGN CONSULTANT for final approval or issuance of a permit shall bear the seal with signature and date adjacent thereto of a Texas registered professional Engineer licensed to practice in Texas.
- 9.3 The DESIGN CONSULTANT acknowledges and agrees that upon payment, the CITY and JOINT UTILITIES shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this Agreement and shall be used as the CITY and JOINT UTILITIES desire and documents, including the original drawings, estimates, specifications and all other documents and data shall be delivered to the CITY at no additional cost to the CITY and JOINT UTILITIES upon request or termination or completion of this AGREEMENT without restriction on future use. However, any reuse without specific written verification or adaptation by DESIGN CONSULTANT will be at CITY's and JOINT UTILITIES sole risk and without liability or legal exposure to DESIGN CONSULTANT.

- 9.4 The DESIGN CONSULTANT agrees and covenants to protect any and all proprietary rights of the CITY and JOINT UTILITIES in any materials provided to the DESIGN CONSULTANT. Such protection of proprietary rights by the DESIGN CONSULTANT shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to the CITY and JOINT UTILITIES. Additionally, any materials provided to the DESIGN CONSULTANT by the CITY and JOINT UTILITIES shall not be released to any third party without the written consent of the CITY and JOINT UTILITIES and shall be returned intact to the CITY and JOINT UTILITIES upon termination or completion of this Agreement or if instructed to do so by the Director.
- 9.5 THE DESIGN CONSULTANT HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK THAT IN PART OR IN WHOLE WAS PRODUCED FROM THIS AGREEMENT TO THE CITY AND JOINT UTILITIES, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS AGREEMENT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY THE DESIGN CONSULTANT. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF THE CITY AND JOINT UTILITIES (EXCLUDING ANY PRIOR OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). **THE DESIGN CONSULTANT SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND JOINT UTILITIES AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST THE CITY AND JOINT UTILITIES AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST THE CITY AND JOINT UTILITIES, INsofar AS THE SAME ARE BASED ON ANY CLAIM THAT MATERIALS OR WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.**
- 9.6 The DESIGN CONSULTANT may make copies of any and all documents and items for its files. The DESIGN CONSULTANT shall have no liability for changes made to or use of the drawings, specifications and other documents by other engineers, or other persons, subsequent to the completion of the Project. DESIGN CONSULTANT shall appropriately mark all changes or modifications on all drawings, specifications and other documents by other engineers or other persons, including electronic copies, subsequent to the completion of the Project.
- 9.7 Copies of documents that may be relied upon by the CITY and JOINT UTILITIES are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by the DESIGN CONSULTANT. Files in editable electronic media format of text, data, graphics, or other types, (such as DGN) that are furnished by the DESIGN CONSULTANT to the CITY and JOINT UTILITIES are only for convenience of the CITY and JOINT UTILITIES or utility. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. However, any reuse without specific written verification or adaptation by DESIGN CONSULTANT will be at CITY's and JOINT UTILITIES sole risk and without liability or legal exposure to DESIGN CONSULTANT.
- 9.8 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of DESIGN CONSULTANT, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by DESIGN CONSULTANT or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies, or processes used by the DESIGN CONSULTANT to provide the services or protect deliverables to CITY, including without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto shall remain the sole and exclusive property of DESIGN CONSULTANT or its suppliers.

**ARTICLE X.
TERMINATION AND/OR SUSPENSION OF WORK**

10.1 Right of Either Party to Terminate for Default

10.1.1 This Agreement may be terminated by either party for substantial failure by the other party to perform (through no fault of the terminating party) in accordance with the terms of this Agreement and a failure to cure as provided in this Article X.

10.1.2 The party not in default must issue a signed, written notice of termination (citing this paragraph) to the other party declaring the other party to be in default and stating the reason(s) why they are in default. Upon receipt of such written notice of default, the party in receipt shall have a period of ten (10) days to cure any failure to perform under this Agreement. Upon the completion of such ten-day period commencing upon receipt of notice of termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.

10.2 Right of CITY to Terminate

10.2.1 The CITY reserves the right to terminate this Agreement for reasons other than substantial failure by the DESIGN CONSULTANT to perform by issuing a signed, written notice of termination (citing this paragraph) which shall take effect on the twentieth day following receipt of said notice or upon the scheduled completion date of the performance phase in which DESIGN CONSULTANT is then currently working, whichever effective termination date occurs first.

10.3 Right of CITY to Suspend Giving Rise to Right of DESIGN CONSULTANT to Terminate

10.3.1 The CITY reserves the right to suspend this Agreement at the end of any phase for the convenience of the CITY by issuing a signed, written notice of suspension (citing this paragraph) which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall in no way guarantee what the total number of days of suspension will occur. Such suspension shall take effect immediately upon receipt of said notice of suspension by the DESIGN CONSULTANT.

10.3.2 The DESIGN CONSULTANT is hereby given the right to terminate this Agreement in the event such suspension extends for a period in excess of one hundred twenty (120) days. DESIGN CONSULTANT may exercise this right to terminate by issuing a signed, written notice of termination (citing this paragraph) to the CITY after the expiration of one hundred twenty (120) days from the effective date of the suspension. Termination (under this paragraph) shall become effective immediately upon receipt of said written notice by the CITY.

10.4 Procedures DESIGN CONSULTANT to follow upon Receipt of Notice of Termination

10.4.1 Upon receipt of a notice of termination and prior to the effective date of termination, unless the notice otherwise directs or DESIGN CONSULTANT immediately takes action to cure a failure to perform under the cure period set out in this ARTICLE. DESIGN CONSULTANT shall immediately begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of such notice of termination (unless DESIGN

CONSULTANT has successfully cured a failure to perform) the DESIGN CONSULTANT shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. The CITY shall have the option to grant an extension to the time period for submittal of such statement.

- 10.4.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and attachments prepared under this Agreement prior to the effective date of termination shall be delivered to the CITY, in the form requested by the CITY as a precondition to final payment. These documents shall be subject to the restrictions and conditions set forth in Article IX above.
 - 10.4.3 Upon the above conditions being met, the CITY shall promptly pay the DESIGN CONSULTANT that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee.
 - 10.4.4 The CITY, as a public entity, has a duty to document the expenditure of public funds. The DESIGN CONSULTANT acknowledges this duty on the part of the CITY. To this end, the DESIGN CONSULTANT understands that failure of the DESIGN CONSULTANT to comply with the submittal of the statement and documents as required above shall constitute a waiver by the DESIGN CONSULTANT of any and all rights or claims for compensation for services performed under this Agreement by the DESIGN CONSULTANT.
 - 10.4.5 Failure of the DESIGN CONSULTANT to comply with the submittal of the statement and documents as required above shall constitute a waiver by the DESIGN CONSULTANT of any and all rights or claims to collect monies that DESIGN CONSULTANT may otherwise be entitled to for services performed under this Agreement.
- 10.5 Procedures DESIGN CONSULTANT to Follow upon Receipt of Notice of Suspension
- 10.5.1 Upon receipt of written notice of suspension, which date shall also be the effective date of the suspension, the DESIGN CONSULTANT shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly suspend all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.
 - 10.5.2 DESIGN CONSULTANT shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.
 - 10.5.3 Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the CITY and JOINT UTILITIES but shall be retained by the DESIGN CONSULTANT until such time as DESIGN CONSULTANT may exercise the right to terminate.
 - 10.5.4 In the event that DESIGN CONSULTANT exercises the right to terminate one hundred twenty (120) days after the effective suspension date, within thirty (30) days after receipt by the CITY of DESIGN CONSULTANT's notice of termination, DESIGN CONSULTANT shall promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement and shall submit the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

- 10.5.5 Any documents prepared in association with this Agreement shall be delivered to the CITY and/or JOINT UTILITIES as a precondition to final payment.
- 10.5.6 Upon the above conditions being met, the CITY shall pay the DESIGN CONSULTANT that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee.
- 10.5.7 The CITY and JOINT UTILITIES, as public entities, have a duty to document the expenditure of public funds. DESIGN CONSULTANT acknowledges this duty on the part of the CITY and JOINT UTILITIES. To this end, DESIGN CONSULTANT understands that failure of Consultant to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by the DESIGN CONSULTANT of any portion of the fee for which DESIGN CONSULTANT did not supply such necessary statements and/or documents.

ARTICLE XI. DESIGN CONSULTANT'S WARRANTY

- 11.1 The DESIGN CONSULTANT warrants that the services required under this Agreement will be performed with the same degree of professional skill and care that are typically exercised by similar consulting professionals performing similar services in Bexar County, Texas. The DESIGN CONSULTANT further warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the DESIGN CONSULTANT to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, the CITY shall have the right to terminate this Agreement under the provisions of Article X above.

ARTICLE XII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

12.1 DEFINITIONS

- 12.1.1 SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the CITY. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:
- 12.1.2 SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.
- 12.1.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.
- 12.1.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In

this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

- 12.1.5 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with CONSULTANT’s submittal for this project Agreement, attached hereto and incorporated herein as “Attachment 4”.

12.2 For this Agreement, the Parties agree that:

- 12.2.1 The terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and
- 12.2.2 The failure of CONSULTANT or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.
- 12.2.3 Failure of CONSULTANT or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.
- 12.2.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in CONSULTANT’s SBEDA Plan (“Attachment 4”) shall constitute a material breach of the SBEDA Program and this Agreement.
- 12.2.5 CONSULTANT shall pay all suppliers and subcontractors identified in its SBEDA Plan (“Attachment 4”) in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by CONSULTANT to the CITY Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

12.3 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement:

- 12.3.1 Failure of CONSULTANT to utilize an SE that was originally listed at bid opening or proposal/SOQ submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function; or
- 12.3.2 Modification or elimination by CONSULTANT of all or a portion of the scope of work attributable to an SE upon which the Agreement was awarded; or
- 12.3.3 Termination by CONSULTANT of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or
- 12.3.4 Participation by CONSULTANT in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement.

12.4 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any

other remedies the CITY may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the CITY shall be entitled, at its election, to exercise any one or more of the following remedies if the CONSULTANT materially breaches the requirements of the SBEDA Program:

- 12.4.1 Terminate this Agreement for default;
- 12.4.2 Suspend this Agreement for default;
- 12.4.3 Withhold all payments due to the CONSULTANT under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
- 12.4.4 Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the CITY pursuant to the Agreement, or from any other amounts due to the CONSULTANT under the Agreement.
- 12.4.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Agreement.

The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

12.5 City Process for Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the CITY to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

12.6 Special Provisions for Extension of Agreements. In the event the CITY extends this Agreement without a competitive Bid process, the CITY Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:

- 12.6.1 A SBEDA Utilization Goal for the extended period; and
- 12.6.2 A modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CONSULTANT does not meet the SBEDA Utilization Goal; and
- 12.6.3 The required minimum Good Faith Efforts outreach attempts that CONSULTANT shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA

Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The CONSULTANT entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:

12.6.3.1 Subject CONSULTANT to any of the remedies listed above; and/or

12.6.3.2 Result in re-solicitation of the Agreement that was considered for extension.

ARTICLE XIII. ASSIGNMENT OR TRANSFER OF INTEREST

13.1 The DESIGN CONSULTANT shall not assign or transfer its interest in this Agreement without the written consent of the CITY and the JOINT UTILITIES.

ARTICLE XIV. INSURANCE REQUIREMENTS

14.1 Prior to the commencement of any Services under this Agreement, the DESIGN CONSULTANT shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Capital Improvement Management Services Department/Public Works Department/Contract Services Department, which shall be clearly labeled **PEDESTRIAN MOBILITY AND TRAFFIC CALMING INITIATIVES (40-MPPMT)** in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Capital Improvements Management Services Department/Public Works Department/Contract Services Department. No officer or employee other than the CITY's Risk Manager shall have authority to waive this requirement.

14.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this contract and any extension or renewal hereof and to request modification of insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager and JOINT UTILITIES based upon changes in statutory law, court decisions, or circumstances surrounding this contract. In no instance will CITY and JOINT UTILITIES allow modification whereupon CITY and JOINT UTILITIES may incur increased risk.

14.3 A DESIGN CONSULTANT's financial integrity is of interest to the CITY and JOINT UTILITIES. Therefore, subject to the DESIGN CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by the CITY and JOINT UTILITIES, the DESIGN CONSULTANT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the DESIGN CONSULTANT's sole expense, insurance coverage written on an occurrence or claims made basis, as appropriate, by companies authorized and approved to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

INSURANCE REQUIREMENTS	
1. Worker's Compensation ** Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General Broad Form (Public) Liability Insurance to include coverage for the following: a. Premises Operations b. Independent contractors* c. Products/completed operations d. Personal Injury e. Contractual Liability f. Fire legal liability*	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its Equivalent in Umbrella or Excess Liability Coverage
3. Business Automobile Liability* a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
4. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums, which the insured shall become legally obligated to pay as damages to the extent caused by any negligent act, error or omission in the performance of professional services.
*If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

14.4 The CITY may request and without expense to CITY, to inspect copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the CITY and JOINT UTILITIES.

14.5 The DESIGN CONSULTANT agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the CITY and its officers, officials, employees, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
- Name each JOINT UTILITY and its officers, officials, employees, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under this AGREEMENT, with the exception of the workers' compensation and professional liability policies;
- To the extent not inconsistent with the requirements of the issuing insurance carrier, provide for an endorsement that the "other insurance" clause shall not apply to the CITY where the CITY is an additional insured shown on the policy if such endorsement is permitted by law and regulations;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY; and

- Provide thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation or non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- 14.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, the DESIGN CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend the DESIGN CONSULTANT's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- 14.7 In addition to any other remedies the CITY may have upon the DESIGN CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order the DESIGN CONSULTANT to stop performing services hereunder and/or withhold any payment(s) which become due to the DESIGN CONSULTANT hereunder until the DESIGN CONSULTANT demonstrates compliance with the requirements hereof.
- 14.8 Nothing herein contained shall be construed as limiting in any way the extent to which the DESIGN CONSULTANT may be held responsible for payments of damages to persons or property resulting from the DESIGN CONSULTANT's or its sub-consultant's performance of the services covered under this Agreement.
- 14.9 It is agreed that the DESIGN CONSULTANT's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY and JOINT UTILITIES for liability arising out of operations under this Agreement.
- 14.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement as respects additional insureds.

ARTICLE XV. INDEMNIFICATION

- 15.1 **The DESIGN CONSULTANT, whose work product and services are the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS against any and all claims by third parties, lawsuits, judgments, cost, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY A NEGLIGENT ACT, ERROR, OR OMISSION OF DESIGN CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF DESIGN CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the services, rights or duties under this AGREEMENT. The INDEMNITY provided for in this paragraph shall not apply to any liability resulting from the NEGLIGENCE of CITY, its officers or employees, in instances where such NEGLIGENCE causes personal injury, death, or property damage. IN THE EVENT DESIGN CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

- 15.2 The DESIGN CONSULTANT, whose work product and services are the subject of this AGREEMENT for professional services, agrees to INDEMNIFY AND HOLD EACH JOINT UTILITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY A NEGLIGENT ACT, ERROR, OR OMISSION OF DESIGN CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF DESIGN CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this AGREEMENT. The INDEMNITY provided for in this paragraph shall not apply to any liability resulting from the NEGLIGENCE of the joint utility, its officers or employees, in instances where such NEGLIGENCE causes personal injury, death or property damage. IN THE EVENT DESIGN CONSULTANT AND JOINT UTILITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY.
- 15.3 The DESIGN CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or the DESIGN CONSULTANT, known to the Consultant, related to or arising out of the DESIGN CONSULTANT's activities under this Agreement.
- 15.4 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 15.5 Acceptance of the final plans by the CITY and/or JOINT UTILITIES shall not constitute nor be deemed a release of the responsibility and liability of the DESIGN CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents and Work; nor shall such acceptance be deemed an assumption of responsibility or liability by the CITY and/or JOINT UTILITIES for any defect in the designs, work drawings, Plans and Specifications or other documents and Work prepared by said DESIGN CONSULTANT, its employees, subconsultants, and agents.

ARTICLE XVI. CLAIMS AND DISPUTES

- 16.1 Definition. A Claim is a demand or assertion by one of the parties and/or JOINT UTILITY seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and/or JOINT UTILITY and DESIGN CONSULTANT arising out of or relating to the Agreement. Claims must be initiated by written notice. Every Claim of the DESIGN CONSULTANT, whether for additional compensation, additional time, or other relief shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the DESIGN CONSULTANT by his signature) of the DESIGN CONSULTANT, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 16.2 Time Limit on Claims. Claims by the DESIGN CONSULTANT or by the Owner must be initiated within twenty-one (21) calendar days after discovery of the event giving rise to such Claim. Claims by the DESIGN CONSULTANT must be initiated by written notice to the Owner and/or JOINT UTILITY. Claims by the Owner and/or JOINT UTILITY must be initiated by written notice to the DESIGN CONSULTANT.

- 16.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing, the DESIGN CONSULTANT shall proceed diligently with performance of the Agreement and the Owner shall continue to make payments in accordance with the Agreement.
- 16.4 Claims for Additional Time. If the DESIGN CONSULTANT wishes to make Claim for an increase in the time for performance, written notice as provided in this Article 16 shall be given. The DESIGN CONSULTANT's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.
- 16.5 Claims for Consequential Damages. Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply both to claims by the DESIGN CONSULTANT and to claims by the Owner and/or JOINT UTILITY:
- 16.5.1 No consequential damages will be allowed.
- 16.5.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible.
- 16.5.3 No profit will be allowed on any damage claim.
- 16.6 Attorney's Fees. IN ACCORDANCE WITH SECTION 271.159 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THE DESIGN CONSULTANT SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES OR CERTAIN DIRECT OR CONSEQUENTIAL DAMAGES AS A PART OF ANY CLAIM MADE UNDER THE AGREEMENT OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING, AND DESIGN CONSULTANT HEREBY EXPRESSLY WAIVES SUCH CLAIMS.
- 16.7 No Waiver of Governmental Immunity. NOTHING IN THIS ARTICLE 16 SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.
- 16.8 Alternative Dispute Resolution.
- 16.8.1 Continuation of Work Pending Dispute Resolution. Each party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement unless it would be impossible or impracticable under the circumstances.
- 16.8.2 Requirement for Senior Level Negotiations. Before invoking mediation or any other alternative dispute process set forth herein the parties agree that they shall first try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a party delivers a written notice of such dispute, then the parties shall proceed with mediation alternative dispute resolution process contained herein. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

16.8.3 Mediation.

- 16.8.3.1 In the event that the Owner, the JOINT UTILITY or the DESIGN CONSULTANT shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.
- 16.8.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both parties.
- 16.8.3.3 In the event the Owner, the JOINT UTILITY and the DESIGN CONSULTANT are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.
- 16.8.3.4 The parties and the JOINT UTILITY engaging in the mediation shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Bexar County, Texas Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of the Mediation Agreement or this Agreement shall waive any immunity or defense. No provision the Mediation Agreement or of this Agreement is a consent to suit.

**ARTICLE XVII.
SEVERABILITY**

- 17.1 If for any reason, any one or more paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining paragraphs of this Agreement but shall be confined in its effect to the specific section, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any section, sentence, clause or parts of this Agreement in any one or more instance shall not affect or prejudice in any way the validity of this Agreement in any other instance.

**ARTICLE XVIII.
ESTIMATES OF COST**

- 18.1 Since the DESIGN CONSULTANT has no control over the cost of labor, materials or equipment or over the CONSTRUCTION CONTRACTOR's methods of determining prices, or over competitive bidding or market conditions, DESIGN CONSULTANT's opinions of probable Project Cost or Construction Cost provided for herein are to be made on the basis of DESIGN CONSULTANT's experience and qualifications and represent DESIGN CONSULTANT'S best judgment as a design professional familiar with the construction industry but the DESIGN CONSULTANT cannot and does not guarantee that proposals, bids or the construction cost will not vary from opinions of probable Cost prepared by DESIGN CONSULTANT.

**ARTICLE XIX.
INTEREST IN CITY CONTRACTS PROHIBITED**

- 19.1 No officer or employee of the CITY shall have a financial interest, directly or indirectly, in any contract with the CITY, or shall be financially interested, directly or indirectly, in the sale to the CITY of any land, materials, supplies or service, except on behalf of the CITY as an officer or employee. This prohibition extends to the City Public Service Board, the SAWS, and other CITY boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on CITY projects.
- 19.2 The DESIGN CONSULTANT acknowledges that it is informed that the Charter of the CITY and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as the CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 19.3 The DESIGN CONSULTANT warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. The DESIGN CONSULTANT further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

**ARTICLE XX.
CONFLICTS OF INTEREST DISCLOSURE**

- 20.1 All DESIGN CONSULTANT's must disclose if they are associated in any manner with a CITY Official or employee in a business venture or business dealings. Failure to do so will constitute a violation of the City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes being in a partnership or joint venture with the officer or employee, having a contract with the officer or employee, being joint owners of a business, owning at least 10% of the stock in a corporation in which a CITY officer or employee also owns at least 10%, or having an established business relationship as client or customer.

**ARTICLE XXI.
STANDARD OF CARE IN LICENSING**

- 21.1 Services provided by DESIGN CONSULTANT under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- 21.2 The DESIGN CONSULTANT shall be represented by a registered professional Engineer licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings, pre-bid meetings, and preconstruction meetings.
- 21.3 The Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, (512) 4407723 has jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.

- 21.4 Acceptance of the final plans by CITY and the JOINT UTILITY shall not constitute nor be deemed a release of the responsibility and liability of DESIGN CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents and Work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY or JOINT UTILITY for any defect in the designs, work drawings, Plans and Specifications or other documents and Work prepared by said DESIGN CONSULTANT, its employees, subconsultants, and agents.

**ARTICLE XXII.
RIGHT OF REVIEW AND AUDIT**

22.1 Right to Audit:

The Consultant grants the City, or its designees, the right to audit, examine or inspect, at the City's election, all of the Consultant's records relating to the performance of the Work under the Agreement during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by the City. The Consultant agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract, then, such retention period shall extend until final resolution of the dispute. "Consultant's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Consultant records include but are not limited to billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

The City agrees that it will exercise the right to audit, examine or inspect only during regular business hours. The Consultant agrees to allow the City's designee access to all of the Consultant's Records, Consultant's facilities, and current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

Consultant must include this audit clause in any subcontractor, supplier or vendor contract.

**ARTICLE XXIII.
ENTIRE AGREEMENT**

- 23.1 This Agreement represents the entire and integrated Agreement between the CITY and the DESIGN CONSULTANT and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both the CITY and the DESIGN CONSULTANT.

**ARTICLE XXIV.
VENUE**

- 24.1 The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

**ARTICLE XXV.
NOTICES**

- 25.1 Except as may be provided elsewhere herein, all notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective party by depositing the same in the United States Postal Service addressed to the applicable address shown below, unless and until either party is otherwise notified in writing by the other party of a change of such address. Mailed notices shall be deemed communicated as of five (5) calendar days of mailing. Notices provided via the Portal shall be deemed communicated as of the next business day after the notice is sent.

If intended for the CITY, to:	If intended for the DESIGN CONSULTANT, to:
City of San Antonio, CIMS Department	RJ RIVERA ASSOCIATES, INC.
Attention: Debbie Sittre, Assistant Director	Attention: Clinton L. Ray, P.E.
114 West Commerce, 5 th Floor	7410 Blanco Road, SUITE 250
San Antonio, Texas 78205	San Antonio, Texas 78216

**ARTICLE XXVI.
INDEPENDENT CONTRACTOR**

- 26.1 In performing services under this Agreement, the relationship between the CITY and the DESIGN CONSULTANT is that of independent contractor. By the execution of this Agreement, the DESIGN CONSULTANT and the CITY do not change the independent contractor status of the DESIGN CONSULTANT. The DESIGN CONSULTANT shall exercise independent judgment in performing its duties and obligations under this Agreement and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the services are to be performed. No term or provision of this Agreement or act of the DESIGN CONSULTANT in the performance of this Agreement shall be construed as making the DESIGN CONSULTANT the agent, servant or employee of the CITY, or as making the DESIGN CONSULTANT or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which the CITY provides to or for its employees.

**ARTICLE XXVII.
CAPTIONS**

- 27.1 The captions for the individual provisions of this Agreement are for informational purposes only and shall not be construed to effect or modify the substance of the terms and conditions of this Agreement to which any caption relates.

IN WITNESS WHEREOF, the City of San Antonio has lawfully caused these presents, to be executed by the hand of the City Manager, or designee, acting by the hand of Rodolfo "Rudy" J Rivera, thereunto authorized PRESIDENT; does now sign, execute and deliver this document.

Executed on this 17 day of February, A. D. 2009.

CITY OF SAN ANTONIO

DESIGN CONSULTANT
RJ RIVERA ASSOCIATES, INC.

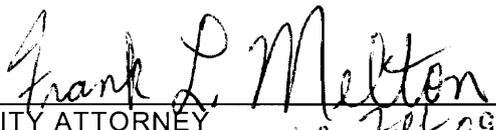


CITY MANAGER



RODOLFO "RUDY" J RIVERA, PRESIDENT

APPROVED:



CITY ATTORNEY
for
12 Feb 09

ATTACHMENT 1
SCOPE OF SERVICES

Attachment A

RJ RIVERA ASSOCIATES, INC. CONSULTANT SCOPE OF SERVICES FOR:

AREA PEDESTRIAN MOBILITY & TRAFFIC CALMING INITIATIVES DISTRICTS 4, 6, & 7

RJ RIVERA Associates, Inc. (RJRA) is pleased to provide engineering, surveying, geotechnical and construction phase services for the Pedestrian Mobility and Traffic Calming Initiatives projects for COSA districts 4, 6, & 7. Funding for these projects is the City of San Antonio (COSA) 2007-2012 Bond Program. Nine projects have been initially assigned to RJRA and consist of various improvements in each of the three districts previously mentioned. The following scope of services will define each of these projects and outline the scope of services required to develop plans, specifications, and estimates as well as bid documents. RJRA proposes to complete the engineering and construction phase services for a fixed fee of **\$247,886.25**.

The division of labor per district will be as follows:

District 4 = \$48,796.68

District 6 = \$166,529.80

District 7 = \$32,559.77

Two (2) sets of bid documents will be developed for this effort as follows:

1. All projects, excluding Westover Hills and Hunt Lane/Wiseman
2. Westover Hills only, including NB, SB, and EB legs
 - a. Additive alternate #1 to include sidewalks (all legs)
 - b. Additive alternate #2 to include WB leg

Descriptions and locations of the nine (9) projects are as follows:

1. **Pedestrian Refuge Island: S Zarzamora @ HEB Plus** - *Install a pedestrian refuge island on Zarzamora near the HEB Plus to include necessary striping and signage.*
2. **Pedestrian Refuge Island: Gillette @ Kazen High School** - *Install a pedestrian refuge island on Gillette near Kazen High School to include necessary striping and signage.*
3. **Traffic Circle Modification: Bridlge Ridge at Golden Walk** - *Increase an existing traffic circle located on Bridlge Ridge at Golden Walk to include striping and signage.*
4. **Sidewalk/Curbs: Portside @ Fischer Bend** - *Install an elevated sidewalk and curb on Portside near Fischer Bend.*

5. **Curb Extension: Village Parkway at Cross Springs** - *Construct Curb Extension on Village Parkway at Cross Springs.*
6. **Curb Ramp: Ingram Rd at Holmes H. S.(Shared Project between D6 and D7)** - *Modify existing curb ramps on Ingram near Holmes H. S.*
7. **Turning Lanes: Westover Hills at Hunt Lane/Wiseman** - *Install sidewalks and turning lanes at Westover Hills and Hunt Ln/Wiseman.*
 - a. WB Westover Hills - 750 feet of dual left turn
 - b. EB Westover Hills –125 feet of single left turn
 - c. NB Hunt Lane – 200 feet of right turn lane
 - d. SB Wiseman – 250 feet of dual left turn
8. **Sidewalks: E. Quill Dr from Donaldson Avenue to Woodlawn Hills Elementary** - *Install sidewalks and curb ramps along both sides of E. Quill Dr. from Donaldson to Woodlawn Hills Elementary.*
9. **Curb Extension: 100 Block John Page Dr** - *Construct Curb Extension on the 100 Block of John Page Dr.*

The design for all of these projects will be in accordance with the *City of San Antonio Capital Improvements Management Services Design Guidance Manual* dated June 2008. General scope of services will be as follows:

1. Design Concept Conference

- 1.1. Complete DSR

2. Right of Way Surveying and Mapping

While no additional right of way is anticipated at this time, the location of apparent right of way will be important in the determination of the limits of topographic survey, utility relocations, excavation limits, and determining if driveways may be reconstructed within the existing right of way. Due to ADA requirements, some driveways located on East Quill Drive will need to be reconstructed as a result of the addition of sidewalks.

- 2.1. Acquire Ownership information for public meeting notifications
- 2.3. Survey ROW
 - 2.3.2. Apparent ROW only

3. Base Mapping

Base mapping will be required for the Westover Hills-Hunt/Wiseman project only. Base mapping will extend approximately 100' beyond the limits of construction for each of the 4-legs of the intersection and be inclusive between the limits of apparent right of way (fencelines). Utility locations should be at a Level C, only (see DGM for further description). If it is deemed necessary by the engineer to acquire additional utility information in order to confirm the potential conflicts, this shall be done through a supplemental work authorization. A tree survey will be required for this project.

- 3.1. Establish Primary Project Control
 - 3.1.1. Horizontal
 - 3.1.2. Vertical
- 3.2. Establish Secondary Project Control
 - 3.2.1. Horizontal

- 3.2.2. Vertical
- 3.4. Set Project centerline or baseline
 - 3.4.1. Interval - 100 feet
- 3.5. Survey topographic features
- 3.6. Survey Cross sections / spot elevations to develop DTM/cross sections
 - 3.6.1. To ROW only
- 3.7. Secure utility maps
 - 3.7.1. Water
 - 3.7.2. Sanitary Sewer
 - 3.7.3. Natural Gas
 - 3.7.4. Underground Electric
 - 3.7.5. Overhead Electric
 - 3.7.6. Underground Telephone
 - 3.7.7. Overhead Telephone
 - 3.7.8. Underground Cable Television
 - 3.7.9. Overhead Cable Television
- 3.10. Develop Utility Masterplan
 - 3.10.1. Mains only
- 3.11. Survey Trees
 - 3.11.1. All trees
 - 3.11.3. Show
 - 3.11.3.1. Species
 - 3.11.3.2. Trunk diameter
 - 3.11.3.3. Spread
- 3.13. Develop Comprehensive Planimetric mapping for 1" = 40' plans
 - 3.13.3. From ground survey
 - 3.13.4. Integrate with rectified aerial photos

4. Roadway and Drainage Design

- 4.1. Establish Typical Roadway Cross sections showing lane, sidewalk, and clear zone widths, etc. for various roadways in project area
- 4.2. Develop Plan and Profile sheets for 1" = 40' plans; Existing ground profiles at
 - 4.2.1. Top of Curb
- 4.3. Establish Horizontal Roadway alignments showing
 - 4.3.1. Centerline geometry (centerline bearings, PI, PC, and PT stations, centerline curve data, curb return radii, etc.)
 - 4.3.2. Curb locations and geometry
 - 4.3.3. Lane widths
 - 4.3.4. Sidewalk widths and locations
 - 4.3.5. Transitions and extent of construction of intersecting streets (coordinate with SAWS)
- 4.5. Establish Roadway profiles
 - 4.5.1. Estimate storm drainage velocities
 - 4.5.2. Establish maximum flow capacity
- 4.6. Establish Design Discharges – Existing drainage data such as drainage areas, runoff coefficients, and times of concentration will be contrived from existing

plans and/or drainage reports that may have been developed during the original construction of the Westover Hills & Wiseman/Hunt Lane construction project. This data will be reviewed, modified, and re-analyzed to incorporate the effects of any additional impervious cover required for the construction of turn lanes and sidewalks. Five (5) and 25 year storms will be evaluated to confirm ponding widths, velocities, and inlet capacities for the existing system. Any upgrades that may be required due to the addition of impervious cover will not be paid for under this scope of work but will be added as additional services at a later date.

- 4.6.1. Delineate drainage areas and establish flow patterns
- 4.6.2. Develop runoff coefficients
- 4.6.3. Develop times of concentration and related intensities
- 4.6.4. Calculate preliminary design discharges
- 4.7. Design storm drainage facilities
 - 4.7.1. Roadways
 - 4.7.1.1. Establish inlet locations and design discharges

5. Pavement Design

5.1 Design pavement sections using City of San Antonio Pavement Design Standards (See attached scope from HVJ for further details)

6. Prepare Cross sections

Roadway cross sections will be prepared with approximate horizontal and vertical utility locations. If it is determined during the course of the project that the possibility of one or more of the existing utilities will be affected by construction, a SUE contractor will be hired under a supplemental work authorization.

- 6.1. Roadway cross sections with approximate location of underground utilities.
 - Depth of existing utilities will be assumed three (3) feet under existing ground unless noted otherwise.

7. Utility Plans

Plans for the removal of existing illumination poles located within the existing median and construction of new poles outside of the roadway will be developed by City Public Service (CPS) and joint bid. Any adjustments or additions to underground service connections will be shown on the plans developed by CPS.

8. Other Plans

- 8.1. Prepare Pavement Marking and Signing Plan
- 8.2. Prepare Traffic Signal Plans for relocation of pole on Ingram Rd at Holmes H. S. project.
- 8.3. Prepare Construction Sequencing Plan
- 8.4. Prepare Traffic Control Plan
- 8.5. Prepare SW3P
- 8.6. Prepare Driveway Plats on Sidewalks: E. Quill Dr from Donaldson Avenue to Woodlawn Hills Elementary
- 8.7. Prepare additional set of bid documents
 - 8.7.1. Include additive alternative #1

8.7.2. Include additive alternative #2

9. Meetings and Coordination

- 9.1. Public meetings - 2
- 9.2. Utility coordination meetings - 3
- 9.3. Design Concept Conference - 1
- 9.5. 40% Plans Review Meeting - 1
- 9.6. 70% Plans Review Meeting - 1
- 9.7. 95% Plans Review Meeting - 1
- 9.8. Pre bid Meeting - 1
- 9.9. Pre construction meeting - 1
- 9.10. Site visits during construction
- 9.11. Review shop drawings
- 9.12. Review construction pay requests

10. Cost Estimating

- 10.5. Verify preliminary cost estimates received from COSA
- 10.6. 40% Plans Cost Estimate
- 10.7. 70% Plans Cost Estimate
- 10.8. 95% Plans Cost Estimate
- 10.9. Evaluate bids and recommend award, etc

11. Construction Phase

- 11.5. Stake center line of roadway for utility adjustment prior to the project bid
- 11.6. Reestablish project control points for contractor's use during construction
- 11.7. Attend citizen meeting(s) during design phase(s) and at the start of construction
- 11.8. Assist in preparation and review of the monthly pay estimates
- 11.9. Assist in preparation and review of change orders
- 11.10. Review shop drawings
- 11.11. Respond to request for information
- 11.12. Perform a minimum of two (2) project site visits per month and prepare a report for each visit to the City regarding progress of construction
- 11.13. Participate in final inspection of project
- 11.14. Prepare over and under quantities for project closeout
- 11.15. Prepare project record drawings
- 11.16. Participate in one-year warranty inspection of project

Plan Production Information

Provide following plans

- 5 [half size] sets of 40% review plans
- 5 [half size] sets of 70% review plans
- 5 [half size] sets of 95% review plans
- 20 [half size] sets of bid documents

Composition of plan sets at designated milestones:

40% 70% 95% Bid

Documents

General Sheets

Title sheet
 Estimated and Final Quantities Sheet
 Index sheet
 Project layout sheet(s)
 Typical sections (existing and proposed for all conditions/locations)
 General Notes and Specifications

Summary sheets

Preparation of ROW and Removal Items
 Grading, Paving, Curbs, Sidewalks , and Driveways
 Signing and Pavement Marking
 Traffic control measures
 SW3P items
 Illumination (by CPS) _____

Traffic Control Sheets

Sequence of Construction Layouts
 Detour Plan/Profile/Typical Sections
 Traffic Control Summary

Environmental Sheets

SW3P Narrative
 SW3P Layouts
 EPIC sheet

Roadway Sheets

Roadway plan and profile sheets
 Intersection grading sheets
 Roadway detail sheets

Drainage Sheets

Drainage Overall
 Drainage Area Map and Table
 Hydraulic Calculations

Pavement Markings and Signing Sheets

Pavement markings and signing details
 Traffic signal layouts
 Traffic signal details

Illumination Sheets

Illumination plans and conduit layouts (by CPS)
 Illumination details (by CPS)

Cross Sections

Street Cross Sections

Standard detail sheets

ATTACHMENT 2 PROJECTS DESIGN PHASES TIMELINE

Activity District 4	Pricing	Timeline in Calendar Days
Preliminary Engineering Report (if required)	-	-
40% Design	-	-
70% Design	\$19,000.00	45
95% Design	\$9,000.00	30
Bid Documents	\$4,596.00	30
Construction Engineering DESIGN CONSULTANT will be paid 10% of the total compensation due DESIGN CONSULTANT during this Phase in proportion to the percentage of construction completed by the CONSTRUCTION CONTRACTOR. DESIGN CONSULTANT will be paid 100% of this Phase upon completion, Final Inspection and upon Project acceptance.	\$9,100.00	-
Project Closeout	\$7,100.68	-

Activity District 6	Pricing	Timeline in Calendar Days
Preliminary Engineering Report (if required)	-	-
40% Design	\$90,000.00	52
70% Design	\$28,500.00	45
95% Design	\$15,000.00	30
Bid Documents	\$14,000.00	28
Construction Engineering DESIGN CONSULTANT will be paid 10% of the total compensation due DESIGN CONSULTANT during this Phase in proportion to the percentage of construction completed by the CONSTRUCTION CONTRACTOR. DESIGN CONSULTANT will be paid 100% of this Phase upon completion, Final Inspection and upon Project acceptance.	\$12,000.00	-
Project Closeout	\$7,029.80	-

Activity District 7	Pricing	Timeline in Calendar Days
Preliminary Engineering Report (if required)	-	-
40% Design	-	-
70% Design	\$14,000.00	45
95% Design	\$6,000.00	30
Bid Documents	\$3,000.00	30
Construction Engineering DESIGN CONSULTANT will be paid 10% of the total compensation due DESIGN CONSULTANT during this Phase in proportion to the percentage of construction completed by the CONSTRUCTION CONTRACTOR. DESIGN CONSULTANT will be paid 100% of this Phase upon completion, Final Inspection and upon Project acceptance.	\$5,500.00	-
Project Closeout	\$4,059.77	-

A. DESIGN CONSULTANT shall complete the PROJECTS in accordance with the

Phases as indicated above. All Phases and any additional services to be performed in connection with this AGREEMENT shall be performed under Task Orders. CONSULTANT shall complete a Task Order for each Work Task that the City requests to be performed under this AGREEMENT. Task Orders shall be numbered sequentially starting with number one and must reference this contract. The CITY will either approve or disapprove each Task Order. Once a Task Order is approved, it will become a part of this AGREEMENT. A Sample Task Order Form is included as part of this Attachment 2.

- B. A negotiated fixed price, hourly, or lump-sum amount for each Work Task may be derived based on the scope of services, and will be based substantially on contractual pre-described and not to exceed pre-priced tasks and/or hourly rates included in this Agreement and in Attachments “1,” “2” and “3”.
- C. Payment may also be made based solely on the tasks completed and approved by the Director, and the associated unit price for each Work Task as may be described in fee schedule and/or hourly rates included in Attachments “1,” “2” and “3”.
- D. **CONSULTANT** must obtain the prior written approval of the **CITY** for any additional line items not described in the Contract Documents. Additional services which are not included in the Documents (not described in Attachment 1 hereto), must be approved by the Director as being appropriately within the SCOPE OF SERVICES of this **AGREEMENT**.
- E. All Task Orders and Applications for Compensation shall be submitted using the CITY’s Program Management Portal.

Project Name: D4 Pedestrian Mobility and Traffic Calming Initiatives
Project Number: 40-00010

Fee Summary and Timeline for Design Phase Services		
Activity	Pricing	Timeline in Calendar Days
Preliminary Engineering Report	\$ -	
40% Design	\$ -	
70% Design	\$ 19,000.00	45
95% Design	\$ 9,000.00	30
Bid Documents	\$ 4,596.00	30
Construction Phase	\$ 9,100.00	
Project Closeout	\$ 7,100.68	
Base Fee	\$ 48,796.68	

Additional Services	
SUE	\$ -
Plats & Field Notes (_____ x\$)	\$ -
Design Enhancements Support (15%x1%)	\$ -
Environmental Support	\$ -
Permits Support	\$ -
CLOMR/ LOMR	\$ -
Subtotal	\$ -
10% Contingency of Base Fee	\$ 4,879.67
Additional Services Subtotal	\$ -

Project Total	\$ 53,676.35
----------------------	---------------------

Project Name: D6 Pedestrian Mobility and Traffic Calming Initiatives
Project Number: 40-00011

Fee Summary and Timeline for Design Phase Services		
Activity	Pricing	Timeline in Calendar Days
Preliminary Engineering Report	\$ -	
40% Design	\$ 90,000.00	52
70% Design	\$ 28,500.00	45
95% Design	\$ 15,000.00	30
Bid Documents	\$ 14,000.00	28
Construction Phase	\$ 12,000.00	
Project Closeout	\$ 7,029.80	
Base Fee	\$ 166,529.80	

Additional Services	
SUE	\$ -
Plats & Field Notes (_____ x\$ _____)	\$ -
Design Enhancements Support (15%x1%)	\$ -
Environmental Support	\$ -
Permits Support	\$ -
CLOMR/ LOMR	\$ -
Subtotal	\$ -
10% Contingency of Base Fee	\$ 16,652.98
Additional Services Subtotal	\$ -

Project Total	\$ 183,182.78
----------------------	----------------------

Project Name: D7 Pedestrian Mobility and Traffic Calming Initiatives

Project Number: 40-00012

Fee Summary and Timeline for Design Phase Services		
Activity	Pricing	Timeline in Calendar Days
Preliminary Engineering Report	\$ -	
40% Design	\$ -	
70% Design	\$ 14,000.00	45
95% Design	\$ 6,000.00	30
Bid Documents	\$ 3,000.00	30
Construction Phase	\$ 5,500.00	
Project Closeout	\$ 4,059.77	
Base Fee	\$ 32,559.77	

Additional Services	
SUE	\$ -
Plats & Field Notes (_____ x\$ _____)	\$ -
Design Enhancements Support (15%x1%)	\$ -
Environmental Support	\$ -
Permits Support	\$ -
CLOMR/ LOMR	\$ -
Subtotal	\$ -
10% Contingency of Base Fee	\$ 3,255.98
Additional Services Subtotal	\$ -

Project Total	\$ 35,815.75
----------------------	---------------------

**CITY OF SAN ANTONIO
PUBLIC WORKS DEPARTMENT
TASK ORDER**

Form PW-15-TO
Rev. 4 4/2007

Date Prepared: _____ Task Order Title: _____

Project Name: _____ Project No. _____

Project Name as shown on the Work Project Authorization

The revision or amendment described below is to the work originally or previously specified is hereby requested, including all changes in costs. (Describe work to be added or deleted, including SAP Material number. Attach a revised plan sheet affected or drawings.)

Justification for Proposed Alteration (Describe in detail why this work is to be added or deleted. Use attachments if necessary.):

Task Order will result in change to Contract Cost as:

Task Order will result in change to Contract Days as: Working Days Calendar Days # Days _____
(To be negotiated by the Contractor and the City.)

The project is not to exceed to authorized amount. Any expenditures in excess of the authorized amount will not be approved for reimbursement.

REQUESTED BY:

City, TXDOT/Architect, Other (Please Specify)	Date	Contractor	Date
		Title:	
		Firm:	

RECOMMENDED BY:

District Program Manager (Project Engineer Only)	Date	Others:	
		(If required; i.e., City Dept., S.A.W.S., etc.)	
COSA Project Manager	Date	COSA Program Manager	Date
COSA Capital Programs Manager	Date		

APPROVED BY:

City Engineer	Date	(If over \$25,000) Director of Public Works	Date
---------------	------	--	------

FOR CITY USE ONLY

Ordinance Required: Yes No Change Order \$25,000 (+ or -) Additional funds required: _____ \$0.00

PO Line Item #: _____ Original PO/Line Amount: _____ \$0.00 Previous PO/Line Task Orders: _____ \$0.00 This Task Order: _____ \$0.00 Total PO/Line Task Order: _____ \$0.00 Available PO/Line Amount: _____ \$0.00	Total Contract Capacity: _____ \$0.00 Previous Approved Task Orders: _____ \$0.00 This Task Order: _____ \$0.00 Total Task Orders: _____ \$0.00 Available Contract Amount: _____ \$0.00
---	---

Fund #: _____ Ordinance #: _____ Ordinance Date: _____

Purchase Requisition #: _____ Contract #: _____ Purchase Order #: _____

Fiscal Remarks: _____

NOTE: This form is a local government record and shall be retained in accordance with the provisions of the Local Government Code, Section 201. Provide (2) originals with supporting documents.

City of San Antonio

PO Box 839966

Phone: 210-207-2540

San Antonio, TX 78205

TITLE:

DATE:

PROJECT:

JOB:

TO:

CONTRACT NO:

RE:

To:

From:

Number:

DESCRIPTION OF CHANGE

Item	Description	Quantity	Units	Unit Price	Net Amount
-------------	--------------------	-----------------	--------------	-------------------	-------------------

Total Cost

The Original Contract Sum was

Net Change by Previously Authorized Requests and Changes

The Contract Sum Prior to This Change Order was

The Contract Sum Will be Increased

The New Contract Sum Including This Change Order

The Contract Time Will Not Be Changed

ATTACHMENT 3

COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

The Compensation as described in Article II and Attachment I of this Agreement establishes the compensation to the DESIGN CONSULTANT for all services to be performed by DESIGN CONSULTANT or under its direction except the services as set forth below. These additional services and the compensation to be paid by the CITY to the DESIGN CONSULTANT for their performance when authorized in writing by the Director or his representative are set forth as follows:

- A. The basis for compensation for additional services may be in one or more of the following forms:
1. \$220.00 per hour for testimony of principals.
 2. Direct salary cost times a multiplier of 3 with a stated maximum not to be exceeded, other than testimony of principals to be negotiated if applicable.
 3. Reimbursement of non-labor expense and subcontract expense at invoice cost plus a 10% service charge.
 4. A Lump sum for all additional services is not applicable to this project.
 5. Lump sum per item of work to be negotiated per taskorder with a total not to exceed an amount of \$24,788.63.
- B. Examples of additional services (not all inclusive).
1. Assistance to the CITY as an expert witness in any litigation with third parties arising from the development or construction of the Project including the preparation of engineering data and reports.
 2. Preparation of plats and field notes for acquisition of property required for the construction of the project.
 3. Preparation of applications and supporting documents for Governmental grants, loans or advances in connection with the Project; Preparation or review of environmental assessment and impact statements; Review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approval of authorities having jurisdiction over the anticipated environmental impact of the Project.
 4. Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or are due to other causes not solely within the control of the DESIGN CONSULTANT.
 5. Providing detailed information of:

- a. Owning, operation, maintenance and overhead costs of material and equipment, or
 - b. Quantity surveys of material, equipment and labor, or
 - c. Inventories of material and equipment, or
 - d. Investigations, surveys, valuations, inventories or detailed appraisals of facilities, construction and/or services not required by the Base Contract.
6. Cash flow and economic evaluations, rate schedules and appraisals.
 7. Audit or inventories required in connection with construction performed by the CITY.
 8. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by CONSTRUCTION CONTRACTOR(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by CONSTRUCTION CONTRACTOR.
 9. Services during out of town travel required of DESIGN CONSULTANT.
 10. Additional services during construction made necessary by:
 - a. Work damaged by fire or other cause during construction.
 - b. A significant amount of defective or neglected work of CONSTRUCTION CONTRACTOR(s).
 - c. Failure of performance of CONSTRUCTION CONTRACTOR(s).
 - d. Acceleration of the progress schedule required by the CITY involving services beyond normal working hours.
 - e. Default by CONSTRUCTION CONTRACTOR(s).
 11. Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
 12. Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.
 13. Services after completion of the construction phase, such as inspections during any guaranteed period and reporting observed discrepancies under guarantee called for in any contract for the Project.

14. Additional copies of contract documents, review documents, bidding documents, reports, drawings and specifications over the number specified in the Base Contract.
15. Preparation of all documents dealing with 404 permits, highway permits, and railroad agreements, and any other specialized permits as required (i.e., CLOMR/LOMR).
16. Preparation of driveway plats (specialized design).
17. Providing photographs, renderings or models for CITY use.
18. Providing services of aerial mapping firm.
19. Providing services to investigate existing conditions or facilities or to make measured drawings thereof or to verify the accuracy of drawings or other information furnished by the CITY.
20. Providing services for exploration of utilities to include detailed measurements, surveys and verification of information provided by CITY and/or utility companies, to include Level A and B Subsurface Utility Exploration (SUE) work.
21. Preparing drawings, specifications and supporting data and providing other services in connection with Change Order Requests to the extent that the adjustment in the basic compensation resulting from the adjusted construction cost is not commensurate with the services required of the DESIGN CONSULTANT, provided such Change Order Requests are required by causes not solely within the control of the DESIGN CONSULTANT.
22. Providing other services not otherwise included in this Agreement which are not customarily furnished in accordance with generally accepted engineering practice to include design enhancement and utility design.

C. Fee Eligible

1. Fee eligible as it relates to Change Orders is defined as requiring significant engineering effort to compute and document the Work effort reflected by the Change Order. Determination of "Fee Eligible" shall be made by the CITY Engineer.

D. Salary Cost

1. Salary cost is defined as the cost of salaries of architects, engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc. for time directly chargeable to the Project, plus customary and statutory benefits including but not limited to social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation and holiday pay applicable thereto.

E. Principals of the Consulting Firm

1. For the purpose of this provision, the Principals of the Consulting Firm and their total hourly charge will be as follows, except as stated previously for testimony as expert witnesses:

PRINCIPAL	\$180 Per hour
PROJECT MANAGER	\$160 Per hour
PROJECT ENGINEER	\$125 Per hour
EIT	\$110 Per hour
ENGINEERING TECH	\$ 75 Per hour
CADD TECH	\$ 60 Per hour
CLERICAL/ADMIN	\$ 60 Per hour

ATTACHMENT 4
SBEDA PLAN DOCUMENTS



FORM 6
GOOD FAITH EFFORT PLAN
 (Page 1 of 4)

NAME OF PROJECT: City of San Antonio Bond Program Engineering Services

BIDDER/PROPOSER INFORMATION:

Name of Bidder/Proposer: RJ RIVERA Associates, Inc.

Address: 7410 Blanco Road, Suite 250

City: San Antonio

State: TX

Zip: 78216

Phone Number: 210.785.0888

E-mail address: ray@rjrivera.com

Is your firm certified? Yes No
 (If yes, please submit Certification Certificate.)

7. List all subcontractors/suppliers that will be used for this contract. (Indicate all MBEs-WBEs-AABEs-SBEs. Use additional sheets as needed.)

NAME AND ADDRESS OF SUBCONTRACTOR'S/SUPPLIER'S COMPANY	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE-AABE- SBE CERTIFICATION NUMBER
Vickrey & Associates, Inc. (SBE/WBE)	TBD	30	207051507
Structural Engineering Associates, Inc. (SBE/MBE)	TBD	10	20703228
HVJ Associates, Inc. (SBE/AABE/MBE)	TBD	3	201041554
Half Associates, Inc.	TBD	5	N/A
SWCA Environmental Consultants	TBD	2	N/A
Cobb, Fendley & Associates, Inc.	TBD	5	N/A

Only companies certified as an MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied toward the contracting goals. All MBE-WBE-AABE-SBE subcontractors or suppliers must submit a copy of their certification certificate through the Prime Contractor. **Proof of certification must be attached to this form.** If a business is not certified, please call the Small Business Program Office at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.



GOOD FAITH EFFORT PLAN
(Page 2 of 4)

PROJECT NAME: City of San Antonio Bond Program Engineering Services

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of Economic Development and Director of the appropriate contracting department (through the submittal of the Request for Approval of Change to Original Affirmed Good Faith Effort Plan).

NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.

8. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

9. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

South Central Texas Regional Certification Agency (SCTRCA)

10. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

RJ RIVERA Associates, Inc. used its reputation on past performance and working relationship contacts to solicit bids from MBE-WBE-AABE-SBEs. We have worked with the members of this team in the past. All of our team members have a local presence and know the city and its policies. Therefore, no contractor associations were solicited for referrals.

11. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

The RJ RIVERA Associates, Inc. team is comprised of four (4) firms that qualify as MBE-WBE-AABE-SBE. The sum total of participation anticipated for these firms is 88%. This is a substantial amount of any contract that may be awarded. In addition, we have diversified the tasks assigned to each of the team members to assure the need for their participation. As a S/MBE, RJRA consistently seeks to meet and exceed MBE-WBE-AABE-SBE goals on every contract.

12. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

RJ RIVERA Associates, Inc. used past performance and current working relationships solicit to bids from MBE-WBE-AABE-SBEs. We have worked with the members of this team in the past. Therefore, no mediums were used for soliciting bids.



GOOD FAITH EFFORT PLAN

(Page 3 of 4)

PROJECT NAME: City of San Antonio Bond Program Engineering Services

13. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	REASON FOR REJECTION
N/A	N/A	N/A

14. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.

15. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.

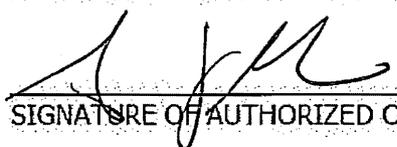
Contact Person: Clinton L. Ray, PE

Phone Number: 210-785-0888

16. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

GOOD FAITH EFFORT PLAN AFFIRMATION

I HEREBY AFFIRM THAT THE INFORMATION PROVIDED IN THIS GOOD FAITH EFFORT PLAN IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.


SIGNATURE OF AUTHORIZED OFFICIAL

President, RJ RIVERA Associates, Inc.
TITLE OF OFFICIAL

12.10.07
DATE

210.785.0888
PHONE NUMBER



GOOD FAITH EFFORT PLAN

(Page 4 of 4)

PROJECT NAME: City of San Antonio Bond Program Engineering Services

FOR CITY USE

Plan Reviewed By: _____

Recommendation: Approval Denial

Action Taken: Approved Denied

DIRECTOR OF ECONOMIC DEVELOPMENT

DATE



**RJ RIVERA ASSOCIATES, INC.
SUBCONSULTING OPPORTUNITIES
POLICY**

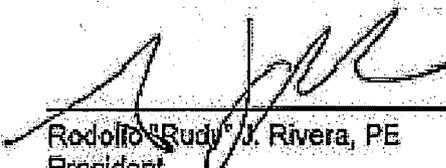
1.0 Subconsulting Policy

It is the policy of RJ RIVERA Associates, Inc. to proactively seek out qualified local HUB-MBE-WBE-AABE-SBE firms for teaming opportunities and to engage these firms in significant and substantive work assignments.

RJ RIVERA Associates, Inc.'s policy applies to all contracts in which sub consultant services are required to fulfill a task for a proposal/contract. The purpose of this policy is to promote full and equal business opportunities of all businesses in State, private, or other contracting.

2.0 Subconsulting Mentoring

RJ RIVERA Associates, Inc.'s policy is to also mentor these firms in the areas of expertise of RJ RIVERA Associates, Inc. during the time the subconsultant is under contract.



Rodolfo "Rudy" J. Rivera, PE
President
RJ RIVERA Associates, Inc.

11.27.04

Date



SCTRCA

Minority and Women Business Enterprise
(MWBE) Program

RJ Rivera Associates, Inc.

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified, in accordance with SCTRCA Policies and Procedures, as a:

SBE MBE

This Certification Certificate must be updated by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantage status, ownership, or control requirements and any material changes in the information provided in the submission of the business application for certification.

CERTIFICATE EXPIRES: 10/31/09

CERTIFICATE NO. 207105066

Certified in the following work categories:
North American Industry Classification System (NAICS) code(s):

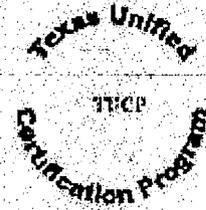
541330 Engineering Services

Sheena D Suber
EXECUTIVE DIRECTOR



SCTRCA

Small, Disadvantaged, Minority, Women
Business Enterprise (S/D/M/WBE)
Program



Vickrey & Associates

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified in the Texas Unified Certification Program, in accordance with 49 CFR Part 26 and SCTRCA Policies and Procedures, as a:

SBE WBE DBE

This Certification Certificate must be updated by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantage status, ownership, or control requirements and any material changes in the information provided in the submission of the business application for DBE certification.

CERTIFICATE EXPIRES: 05/31/08

CERTIFICATE NO. 207051507

Certified in the following work categories:
North American Industry Classification System (NAICS) code(s):

- 541340 Drafting Services
- 541330 Engineering Services
- 237310 Highway, Street, and Bridge Construction
- 541690 Scientific and Technical Consulting Services
- 541370 Surveying and Mapping (Except Geophysical) Services
- 237990 Other Heavy and Civil Engineering Construction
- 237110 Water and Sewer Line and Related Structures Construction (pt)

Sheena D Suber
EXECUTIVE DIRECTOR



SOUTH CENTRAL TEXAS REGIONAL CERTIFICATION AGENCY

Your unified certification source

www.sctrca.org

March 23, 2007

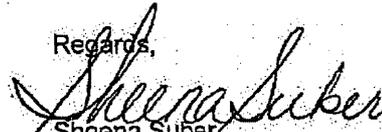
Structural Engineering Associates, Inc.
Jesse Covarrubias
3838 NW Loop 410
San Antonio, TX 78229

RE: ENGINEERING SERVICES CERTIFICATION

Mr. Covarrubias,

This letter serves as formal and verified notice that your firm is still considered a **MBE** under the NAICS code 541330 Engineering Services. Please attach this letter to any submittals of your certification for certification verification of your MBE classification.

Regards,


Sheena Suber
Executive Director



SCTRCA

Small, Disadvantaged, Minority, Women
Business Enterprise (S/D/M/WBE)
Program



Structural Engineering Associates, Inc.

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified in the Texas Unified Certification Program, in accordance with 49 CFR Part 26 and SCTRCA Policies and Procedures, as a:

SBE MBE DBE

This Certification Certificate must be updated by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantage status, ownership, or control requirements and any material changes in the information provided in the submission of the business application for DBE certification.

CERTIFICATE EXPIRES: **03/31/08**

CERTIFICATE NO. **20703228**

Certified in the following work categories:
North American Industry Classification System (NAICS) code(s):

- 541611 Administrative Management and General Management Consulting Services**
- 541380 Testing Laboratories**

**Sheena D Suber
EXECUTIVE DIRECTOR**



SCTRCA

Small, Disadvantaged, Minority,
Women
Business Enterprise (S/D/M/WBE)
Program



HVJ Associates, Inc.

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified in the Texas Unified Certification Program, in accordance with 49 CFR Part 26 and SCTRCA Policies and Procedures, as a:

SBE AABE MBE DBE

This Certification Certificate must be updated by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantage status, ownership, or control requirements and any material changes in the information provided in the submission of the business application for DBE certification.

CERTIFICATE EXPIRES: **12/31/07**

CERTIFICATE NO. **201041554**

Certified in the following work categories:
North American Industry Classification System (NAICS) code(s):

- 541330 Engineering Services**
- 541620 Environmental Consulting Services**
- 541380 Testing Laboratories**

Bridget Negron Booth
EXECUTIVE DIRECTOR



(ATTACHMENT 6-A)
CITY OF SAN ANTONIO

LETTER OF INTENT FOR CONTRACTS
UTILIZING SMALL BUSINESS CONTRACTING GOALS

NAME OF PROJECT: City of San Antonio Bond Program Engineering Services

Name of bidder's/proposer's firm: RJ RIVERA Associates, Inc.

Address: 7410 Blanco Road, Suite 250

City: San Antonio State: TX Zip: 78216

Name of Subcontractor/Supplier: Vickrey & Associates, Inc.

Address: 12940 Country Parkway

City: San Antonio State: TX Zip: 78216

Telephone: 210.349.3271 Contact Person: Brenda Vickrey Johnson

Is the above firm Certified? Yes No If certified, Certification No: _____

If firm is certified, please attach a copy of the Certification Certificate with this form.

Description of work to be performed by firm:

Drainage, Utility, Survey

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ TBD based on contract(s) awarded. Work constitutes ~ 30% of contract.

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: [Signature]
Signature of Firm's Representative

December 3, 2007
Date

Title: President

Submit this page for each Subcontractor/Supplier to be utilized on this contract/project.



**(ATTACHMENT 6-A)
CITY OF SAN ANTONIO**

**LETTER OF INTENT FOR CONTRACTS
UTILIZING SMALL BUSINESS CONTRACTING GOALS**

Bond Program Engineering Services - RFQ-2007-Eng

NAME OF PROJECT: _____

Name of bidder's/proposer's firm: R.J RIVERA Associates, Inc.

Address: 7410 Blanco Road, Suite 250

City: San Antonio State: TX Zip: 78216
.....

Name of Subcontractor/Supplier: Structural Engineering Associates, Inc.

Address: 3838 NW Loop 410

City: San Antonio State: TX Zip: 78229

Telephone: (210)735-9202 Contact Person: Jesse S. Covarrubias, P.E.

Is the above firm Certified?: Yes No If certified, Certification No: 20703228

If firm is certified, please attach a copy of the Certification Certificate with this form.

Description of work to be performed by firm:
Structural Engineering Design

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ TBD based on contract(s) awarded. Work constitutes ~ 10% of contract.

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: Jesse S. Covarrubias
Signature of Firm's Representative

November 27, 2007 Date

Title: President

Submit this page for each Subcontractor/Supplier to be utilized on this contract/project.



(ATTACHMENT 6-A)
CITY OF SAN ANTONIO

LETTER OF INTENT FOR CONTRACTS
UTILIZING SMALL BUSINESS CONTRACTING GOALS

NAME OF PROJECT: Bond Program Engineering Services

Name of bidder's/proposer's firm: RJ Rivera Associates, Inc.

Address: 7410 Blanco Road, Suite 250

City: San Antonio

State: Texas

Zip: 78216



Name Hossam Esmail of HVJ Associates, Inc. Subcontractor/Supplier:

Address: 10100 Reunion Place, Suite 850

City: San Antonio

State: Texas

Zip: 78216

Telephone: 866-447-9081 Contact Person: Hossam Esmail

Is the above firm Certified?: Yes No If certified, Certification No: 201-04-1554

If firm is certified, please attach a copy of the Certification Certificate with this form.

Description of work to be performed by firm:
Geotechnical services

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ 3% of project

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: 
Signature of Firm's Representative

November 15, 2007
Date

Title: Vice President

Submit this page for each Subcontractor/Supplier to be utilized on this contract/project.



(ATTACHMENT 6-A)
CITY OF SAN ANTONIO

LETTER OF INTENT FOR CONTRACTS
UTILIZING SMALL BUSINESS CONTRACTING GOALS

NAME OF PROJECT: City of San Antonio Bond Program Engineering Services

Name of bidder's/proposer's firm: RJ RIVERA Associates, Inc.

Address: 7410 Blanco Road, Suite 250

City: San Antonio State: TX Zip: 78216

Name of Subcontractor/Supplier: Halff Associates, Inc.

Address: 300 E. Sontera Blvd., Suite 230

City: San Antonio State: TX Zip: 78258

Telephone: (210) 798-1895 Contact Person: H. Wayne Cooper, ASLA, AICP

Is the above firm Certified? Yes ___ No X If certified, Certification No: _____

If firm is certified, please attach a copy of the Certification Certificate with this form.

Description of work to be performed by firm:

Landscape Architecture

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ TBD based on contract(s) awarded. Work constitutes ~ 5% of contract.

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: H. Wayne Cooper
Signature of Firm's Representative

November 27, 2007
Date

Title: Regional Director

Submit this page for each Subcontractor/Supplier to be utilized on this contract/project.



(ATTACHMENT 6-A)
CITY OF SAN ANTONIO

LETTER OF INTENT FOR CONTRACTS
UTILIZING SMALL BUSINESS CONTRACTING GOALS

Bond Program Engineering Services

NAME OF PROJECT: _____

Name of bidder's/proposer's firm: RJ Rivera Associates, Inc.

Address: 7410 Blanco Road, Suite 250

City: San Antonio

State: Texas

Zip: 78216

.....
Name of Subcontractor/Supplier: SWCA, Inc.

Address: 6200 UTSA Blvd., Suite 102

City: San Antonio

State: TX

Zip: 78249

Telephone: 210-877-2847

Contact Person: Christine A. Westerman

Is the above firm Certified?: Yes _____ No X If certified, Certification No: _____

If firm is certified, please attach a copy of the Certification Certificate with this form.

Description of work to be performed by firm:

Permitting Services

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ TBD based on contract(s) awarded. Work constitutes ~ 2% of contract.

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: Christine A. Westerman
Signature of Firm's Representative

12/3/07
Date

Title: Program Director - Natural Resources

Submit this page for each Subcontractor/Supplier to be utilized on this contract/project.

ATTACHMENT 5

SAWS SCOPE OF SERVICES

NOT APPLICABLE TO THIS AGREEMENT



CMS or Ordinance Number: CN4600008009

TSLGRS File Code:1075-16

Document Title:

CONT - Project No. 40-00038 Tesla - Culebra Rd. to Mayberry

Contract in the amt. of \$513,083.23

Commencement Date:

12/4/2008

Expiration Date:

12/31/2015

**PROFESSIONAL SERVICES AGREEMENT
ENGINEERING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

AGREEMENT FOR ENGINEERING SERVICES

TESLA – CULEBRA ROAD TO MAYBERRY

This Agreement is made and entered into in San Antonio, Bexar County, Texas; between the City of San Antonio, a Texas Municipal Corporation, hereinafter termed "CITY" and/or "OWNER", and

AIA ENGINEERS, LTD.
8535 Wurzbach Road, Suite 210, San Antonio, Texas 78240

Engineer(s), duly licensed, and practicing under the laws of the State of Texas, hereinafter termed "DESIGN CONSULTANT", said Agreement being executed by the CITY pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by the DESIGN CONSULTANT for engineering services hereinafter set forth in connection with the above designated Project for the City of San Antonio.

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- ATTACHMENT 5 – SAWS SCOPE OF SERVICES

ARTICLE I. DEFINITIONS

As used in this AGREEMENT, the following terms shall have meanings as set out below:

- 1.1 "Application for Compensation" means form DESIGN CONSULTANT uses to make a request to be paid for completed services.
- 1.2 "Application for Payment" - means form CONSTRUCTION CONTRACTOR uses to make a request to be paid for completed work.
- 1.3 "Certificate for Payment" means a form DESIGN CONSULTANT uses to make recommendations on Construction Contractor's Application for Payment.
- 1.4 "CITY" and "Owner" means the City of San Antonio, Texas.
- 1.5 "Claim" is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and DESIGN CONSULTANT arising out of or relating to the Agreement.
- 1.6 "Compensation" means amounts paid by City to DESIGN CONSULTANT for completed services under this Agreement.
- 1.7 "CONSTRUCTION CONTRACTOR" means the firm hired by the CITY to construct the Project.
- 1.8 "Construction Contract Documents" means the contract between the CITY and the firm contracted by CITY to construct the project and all documents therein.
- 1.9 "CPS Energy" means City Public Service.
- 1.10 "DESIGN CONSULTANT" means AIA ENGINEERS, LTD and its officers, partners, employees, agents and representatives, and all its sub-consultants, if any, and all other persons or entities for which the DESIGN CONSULTANT is legally responsible.
- 1.11 "Director" means the Director of CITY's Capital Improvements Management Services Department, Public Works Department or the designated project manager identified by the Notice to Proceed.
- 1.12 "Final Compensation" means the final amounts paid by CITY to DESIGN CONSULTANT for completed services under this Agreement.
- 1.13 "Final Payment" means the final amounts paid by CITY to CONSTRUCTION CONTRACTOR for completed work under the construction contract.

- 1.14 "JOINT UTILITY" or "JOINT UTILITIES" or "UTILITY" means the City Public Service Board also known as CPS Energy and the San Antonio Water System also known as SAWS.
- 1.15 "Payment" means amounts paid by City to Construction Contractor for work performed under construction contract documents.
- 1.16 "Plans and Specifications" means the construction documents.
- 1.17 "Project" means the capital improvement/construction development undertaking of CITY for which DESIGN CONSULTANT's services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.
- 1.18 "Proposal" means Design Consultant's Proposal to provide services for this Project.
- 1.19 "Request for Payment" means a form the Construction Contractor uses to be paid for completed work.
- 1.20 "SAWS" means the San Antonio Water System, Inc.
- 1.21 "Schedule of Values" means the fees allocated to services, reimbursables and/or various portions of the services or Work, prepared in such form, and supported by such data to substantiate its accuracy as Owner may require.
- 1.22 "Scope of Services" mean the services described in Article IV Scope of Services.
- 1.23 "Services" means design services performed by the DESIGN CONSULTANT.
- 1.24 "Statement of Probable Construction Cost" means DESIGN CONSULTANT's estimate of probable Construction costs based on its experience and qualifications as a practitioner of its profession and the current, area, volume and/or other unit costs.
- 1.25 "Total Compensation" means the amount of this Agreement.
- 1.26 "Work" means the construction performed by the Construction Contractor.

ARTICLE II. COMPENSATION FOR BASIC SERVICES

- 2.1 The Total Compensation for BASIC services defined by this Agreement is the lump sum of **FOUR HUNDRED THIRTEEN THOUSAND SIX HUNDRED EIGHTY EIGHT DOLLARS AND THIRTY NINE CENTS (\$413,688.39)**. Additional compensation in the amount of **\$47,496.00** for SAWS design and an allowance of **\$51,898.84** are provided for services and contingency items requested by individual task per Attachments 1, 2, 3, and 5. It is agreed and understood that compensation to the DESIGN CONSULTANT shall not exceed these amounts. Such amounts have been approved and appropriated by the San Antonio City Council for expenditure under this Agreement. Unless and until the CITY makes further appropriations for any services not included in the Scope of Services in combination with additional services, the obligation of the CITY to the DESIGN CONSULTANT for Total Compensation in connection with this Agreement cannot and will not exceed the sum of **\$513,083.23** without further amendment to this Agreement.

- 2.2 A Schedule of Values shall be used as the basis for reviewing the DESIGN CONSULTANT's Applications for Compensation. The Schedule of Values shall include a schedule for both the design phase and construction phase of the project.
- 2.2.1 Before the first Application for Compensation, the Owner shall receive from the DESIGN CONSULTANT a Schedule of Values allocated to the Phases in Paragraph 2.2.3 prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This Schedule of Values shall be used as the basis for reviewing the DESIGN CONSULTANT's Applications for Compensation during each phase of the Services.
- 2.2.2 Before the first Application for Compensation during the construction phase, the DESIGN CONSULTANT shall receive from the Construction Contractor a draw schedule allocated to various portions of the Work prepared in such form and supported by such data to substantiate accuracy as the DESIGN CONSULTANT may require. This schedule shall be used as the basis for reviewing the DESIGN CONSULTANT'S Applications for Compensation during the construction phase.
- 2.2.3 DESIGN CONSULTANT shall complete the PROJECT in accordance with the following Phases. For the purpose of establishing portions of the above compensation for separate phases, the percentage allocations of compensation as indicated in Attachment 2 hereto, and more particularly described in the Scope of Services shall apply:

PROJECT DESIGN PHASES

Preliminary Engineering Report 20% Design (required by CPS Energy for joint CPS Energy design projects) – may not be required for all projects
40% Design
70% Design
95% Design
Bid Documents
Construction Engineering Services
Project Close Out & Final Payment

- 2.3 The DESIGN CONSULTANT shall submit an itemized Application for Compensation for services performed in accordance with the Schedule of Values. Such Application for Compensation shall be notarized, if required, and supported by such data substantiating the DESIGN CONSULTANT's right to Compensation as the Owner may require. Such Application for Compensation shall be used to substantiate the DESIGN CONSULTANT's right to compensation from the Owner.
- 2.3.1 Such applications may include Applications for Compensation for additional services on account of changes in the Work which have been properly authorized by the Director, or by interim determination approved by the Director, but not yet included in Amendments to this Agreement.
- 2.3.2 The DESIGN CONSULTANT and the CITY acknowledge the fact that the Total Compensation amount contained in paragraph 2.1 above has been established predicated upon the total estimated costs of services to be rendered under this Agreement and the Scope of Services for this Agreement.
- 2.3.3 The DESIGN CONSULTANT shall, within ten (10) days following receipt of Compensation from the Owner, pay all bills for services performed and furnished hereunder by subconsultants of DESIGN CONSULTANT in connection with the Project and the performance of services and shall, if requested, provide the Owner with evidence of such payment. DESIGN CONSULTANT's failure to make payments within such time shall constitute a material breach of this Agreement unless the DESIGN CONSULTANT is able to demonstrate to Owner bona fide disputes associated with the services of the unpaid subconsultant and its services. DESIGN CONSULTANT shall include a provision in each of its subagreements imposing the same payment obligations on its subconsultants as are

applicable to the DESIGN CONSULTANT hereunder, and if the Owner so requests, shall provide evidence of such payments by the DESIGN CONSULTANT to the Owner. If the DESIGN CONSULTANT has failed to make payment promptly to the subconsultant for undisputed services for which the Owner has made payment to the DESIGN CONSULTANT, the Owner shall be entitled to withhold future payment to the DESIGN CONSULTANT to the extent remaining unpaid by DESIGN CONSULTANT necessary to protect the Owner.

- 2.3.4 The DESIGN CONSULTANT warrants that title to all deliverables produced in the performance of services covered by an Application for Compensation will pass to the Owner no later than the time of payment. The DESIGN CONSULTANT further warrants that upon submittal of an Application for Compensation, all Services for which Applications for Compensation have been previously issued and payments received from the Owner shall, to the best of the DESIGN CONSULTANT's knowledge, information and belief be free and clear of liens, claims, security interests or encumbrance in favor of the DESIGN CONSULTANT, or other persons or entities under Contract with the DESIGN CONSULTANT making a claim by reason of having provided labor or services relating to the DESIGN CONSULTANT's Services. DESIGN CONSULTANT SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO DESIGN CONSULTANT.

ARTICLE III. METHOD OF PAYMENT

- 3.1 Compensation may be made to the DESIGN CONSULTANT based upon the several phases as described in Article II and in accordance with and subject to the following:
- 3.1.1 Preliminary Engineering Report (If Required) - The Total Compensation due the DESIGN CONSULTANT under this Phase shall be payable after approval and acceptance of this Phase by the CITY in accordance with Attachments 1 and 2.
 - 3.1.2 40% Design - The Total Compensation due the DESIGN CONSULTANT under this Phase shall be payable after approval and acceptance of this Phase by the CITY in accordance with Attachments 1 and 2.
 - 3.1.3 70% Design - The Total Compensation due the DESIGN CONSULTANT under this Phase shall be payable after approval and acceptance of this Phase by the CITY in accordance with Attachments 1 and 2.
 - 3.1.4 95% Design - The Total Compensation due the DESIGN CONSULTANT under this Phase shall be payable after approval and acceptance of this Phase by the CITY in accordance with Attachments 1 and 2.
 - 3.1.5 Bid Documents - The Total Compensation due the DESIGN CONSULTANT under this Phase in accordance with Attachments 1 and 2 shall be payable after the DESIGN CONSULTANT provides the CITY the bid tabulation and a letter of recommendation.
 - 3.1.6 Construction Engineering Services - The Total Compensation due DESIGN CONSULTANT during the Construction of the Project in accordance with Attachments 1 and 2 will be made in monthly installments for this Phase in proportion to the percentage of construction completed by the CONSTRUCTION CONTRACTOR. Percentage of construction will be determined by the Director in his sole discretion.

3.1.7 Project Close Out and Final Payment:

a. The DESIGN CONSULTANT shall not be entitled to final payment unless and until it submits to the Owner its affidavit that the invoices for services, and other liabilities connected with the services for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied or will be paid from final payment; releases and waivers of liens from all the DESIGN CONSULTANT's subconsultants and of any and all other parties required by the Owner that are either unconditional or conditional on receipt of final payment; Certificates of insurance showing continuation of required insurance coverages; such other documents as Owner may request; and consent of Surety to final payment.

b. Final Compensation - The final compensation to be made by the CITY to the DESIGN CONSULTANT will be payable upon submission of the "Record Drawings". DESIGN CONSULTANT agrees to submit "Record Drawings" in print media, electronic format (PDF and DGN format) and final billing within 45 days of final acceptance of construction. Additionally, DESIGN CONSULTANT agrees to submit a statement of release with the final billing notifying the CITY that, unless expressly noted otherwise, there are no further compensation owed to the DESIGN CONSULTANT by the CITY beyond the final bill, Final billing shall indicate "Final Bill - no additional compensation is due to DESIGN CONSULTANT".

3.1.8 The Owner may withhold compensation to such extent as may be necessary, in the Owner's opinion, to protect the Owner from damage or loss for which the DESIGN CONSULTANT is responsible, because of:

3.1.8.1 delays in the performance of the DESIGN CONSULTANT's Services;

3.1.8.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the DESIGN CONSULTANT;

3.1.8.3 failure of the DESIGN CONSULTANT to make payments properly to sub-consultants or vendors for labor, materials or equipment;

3.1.8.4 reasonable evidence that the DESIGN CONSULTANT's work cannot be completed for the amount unpaid under this Agreement;

3.1.8.5 damage to the Owner or the CONSTRUCTION CONTRACTOR; or

3.1.8.6 persistent failure by the DESIGN CONSULTANT to carry out the performance of its services in accordance with this Agreement.

3.1.9 When the above reasons for withholding are removed or remedied by the DESIGN CONSULTANT, compensation of the amount withheld will be made within a reasonable time. The Owner shall not be deemed in default by reason of withholding compensation as provided for in this Article.

3.1.10 In the event of any dispute(s) between the parties regarding the amount properly payable for any Phase or as final compensation, or regarding any amount that may be withheld by the Owner, the DESIGN CONSULTANT shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the

event DESIGN CONSULTANT does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.

- 3.1.11 The Owner shall make final compensation for all sums due the DESIGN CONSULTANT not more than thirty (30) days after the DESIGN CONSULTANT's final Application for Compensation.
- 3.1.12 Acceptance of final compensation by the DESIGN CONSULTANT shall constitute a waiver of claims except those previously made in writing and identified by DESIGN CONSULTANT as unsettled at the time of final Application for Compensation.
- 3.2 Internet-based Project Management Systems. Owner will administer its design and construction management through an Internet-Based Management System. In such case, the DESIGN CONSULTANT shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, amendment, change orders and other administrative activities. The Owner shall administer the software, shall provide training to Project Team Members, and shall make the software available at no cost via the Internet to all Project Team Members.
- 3.3 All Applications for Compensation shall be submitted through the CITY's Project Management Portal. Prior to submittal of the first Application for Compensation, DESIGN CONSULTANT will submit a schedule of values for compensation to be approved by the CITY and the JOINT UTILITIES, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.
- 3.4 It is understood that this Project is a joint Project with the utility provider(s) and that the utility providers are ultimately responsible for the cost of design for utilities. Accordingly, the CITY will seek reimbursement from the Utility provider(s). Therefore, DESIGN CONSULTANT will invoice separately for the utility design costs according to the Schedule of Values for utility design in Requests for Compensation to facilitate the CITY's reimbursement claims.
- 3.5 Prior to submittal of the first Applications for Compensation for utility design, DESIGN CONSULTANT will submit a schedule of values for compensation of utility design to be approved by the CITY and the JOINT UTILITY, which approval shall not be unreasonably withheld, conditioned or delayed. Schedule of values will identify costs attributable separately to each of the several types of utilities involved, independently from the others, so that CITY can properly substantiate its reimbursement claims against each separate utility provider. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.
- 3.6 DESIGN CONSULTANT may submit a request for Partial Compensation prior to submittal of a Request for Compensation in this Article. A request for Partial Compensation must be accompanied by a progress report detailing the Services performed for that Phase. Any partial payment made shall be in proportion to the percent of the Services performed as reflected in the progress report and approved solely by the Director. Partial Compensation shall not exceed seventy percent (70%) of the compensation allowed for the Phase in which the Partial Compensation is requested. The balance due for the Phase in which Partial Compensation is approved will be paid to DESIGN CONSULTANT upon approval and acceptance of the Phase.

**ARTICLE IV.
SCOPE OF SERVICES**

- 4.1 The DESIGN CONSULTANT shall not commence work on this proposed Project until being thoroughly briefed on the scope of the project and being notified in writing to proceed. The scope of the project and the DESIGN CONSULTANT's services required shall be reduced by the DESIGN CONSULTANT to a written Summary of the Scope meeting approved by the City and included as a part of this Agreement. Should the scope subsequently change, either the DESIGN CONSULTANT, the CITY or Utility may request a review of the anticipated services, with an appropriate adjustment in compensation.
- 4.1.1 In developing the Scoping Minutes, the DESIGN CONSULTANT shall make every effort to minimize utility adjustments, where possible.
- 4.1.2 Prior to completing the Preliminary Engineering/Schematic Report, the DESIGN CONSULTANT shall request block maps from the respective JOINT UTILITIES and, from the block maps, shall identify any and all utilities within the Project area.
- 4.1.3 In the event electrical or gas facilities are encountered, the DESIGN CONSULTANT ENGINEER shall identify and incorporate those facilities at the completion of each Project Phase in order to determine the magnitude of any potential adjustment.
- 4.1.4 The DESIGN CONSULTANT shall take into consideration, shall consult with CPS Energy, and shall incorporate into the Project Plans and Specifications that the CPS Energy electric and gas systems cannot be shut down during certain conditions, such as extreme weather, or without permission from the Electric Reliability Council of Texas.
- 4.2 The DESIGN CONSULTANT, in consideration for the compensation herein provided, shall render the professional services described in this Section that are necessary for the development of the Project, including plans and specifications, construction management services, any special and general conditions, and instructions to bidders as acceptable to the Director, or his duly authorized representative.
- 4.3 The DESIGN CONSULTANT shall perform its services under this Agreement in accordance with Phases outlined in 2.2.3 and DESIGN CONSULTANT's Scope of Services attached and incorporated herein as Attachments "1 and 2". The Scope of Services shall be as specifically defined on a per phase basis in Attachment "1 and 2" attached hereto.
- 4.4 The DESIGN CONSULTANT will advise and consult with the CITY. The CITY's instructions to the CONSTRUCTION CONTRACTOR may be issued through the DESIGN CONSULTANT but the CITY reserves the right to issue instructions directly to the CONSTRUCTION CONTRACTOR through inspectors or others designated CITY representatives.
- 4.5 Upon acceptance and approval of the plans, reports or other deliverables required for a phase of work, as set forth in the Scope of Services, Director shall authorize DESIGN CONSULTANT, in writing, to proceed with the next phase of Work.
- 4.6 The DESIGN CONSULTANT will make a minimum of two visits (2) per month to the Site at intervals appropriate to the phases (1) to become generally familiar with and to keep the CITY informed about the progress and quality of the portion of the Work completed, and (2) to endeavor to guard the CITY against defects in Work. However, the DESIGN CONSULTANT will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

- 4.7 The DESIGN CONSULTANT will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work since these are solely the Contractor's rights and responsibilities under the Contract Documents. The DESIGN CONSULTANT'S efforts will be directed toward providing for CITY a greater degree of confidence that the completed Work will generally conform to the Contract Documents.
- 4.8 The DESIGN CONSULTANT will not be responsible for the CONSTRUCTION CONTRACTOR'S failure to perform the Work in accordance with the requirements of the Contract Documents. The DESIGN CONSULTANT will not have control over or charge of and will not be responsible for acts or omissions of the CONSTRUCTION CONTRACTOR, Subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work
- 4.9 Communications by and with the DESIGN CONSULTANT's subconsultants shall be through the DESIGN CONSULTANT. Communications by and with Subcontractors and material suppliers shall be through the CONSTRUCTION CONTRACTOR.
- 4.10 Except as otherwise provided in the Construction Specifications, Supplementary or Special Conditions, the CITY and the JOINT UTILITIES have authority to reject Work that does not conform to the Contract Documents. Whenever the DESIGN CONSULTANT, CITY, or JOINT UTILITIES considers it necessary or advisable, either the City, JOINT UTILITIES or DESIGN CONSULTANT may require inspection or testing of the Work whether or not such Work is fabricated, installed or completed. However, neither this authority of the DESIGN CONSULTANT, CITY, or JOINT UTILITIES nor a decision made by either, in good faith, to require or not require an inspection shall give rise to a duty or responsibility of the DESIGN CONSULTANT, the CITY, or JOINT UTILITIES to the CONSTRUCTION CONTRACTOR, subcontractors, material and equipment suppliers, agents or employees, or other persons or entities performing portions of the Work.
- 4.11 The DESIGN CONSULTANT will review and recommend approval or take other appropriate action upon the CONSTRUCTION CONTRACTOR's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The DESIGN CONSULTANT will respond to submittals such as Shop Drawings, Product Data, and Samples pursuant to the procedures set forth in the Project specifications. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of the CONSTRUCTION CONTRACTOR as required by the Contract Documents. The DESIGN CONSULTANT's review of the Contractor's submittals shall not relieve the CONSTRUCTION CONTRACTOR of its obligations. The DESIGN CONSULTANT's review shall not constitute approval of safety precautions or any construction means, methods, techniques, sequences or procedures unless otherwise specifically stated by the DESIGN CONSULTANT. The DESIGN CONSULTANT's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 4.12 The DESIGN CONSULTANT will, within three (3) work days after receipt of the Construction Contractor's Application for Payment review the Application for Payment and either issue to the Owner and/or the affected utility a recommendation for approval for Payment for such amount as the DESIGN CONSULTANT determines is properly due, or notify the Owner, affected utility, and CONSTRUCTION CONTRACTOR in writing of the DESIGN CONSULTANT's reasons for withholding approval in whole or in part.
- 4.13 The issuance of an approval for Payment will constitute a representation by the DESIGN CONSULTANT to the Owner, based on the DESIGN CONSULTANT's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the DESIGN CONSULTANT's knowledge, information and belief, the quality of the work is in accordance with the Design

Agreement Documents or Construction Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Agreement Documents, to results of subsequent tests and inspections, to correction of minor deviations from the Agreement Documents prior to completion, and to any specific qualifications expressed by the DESIGN CONSULTANT. The issuance of a recommendation for approval for Payment will further constitute a representation that the Construction Contractor is entitled to payment in accordance with the Schedule of Values. The issuance of a recommendation for approval for Payment will not be a representation that the DESIGN CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from SubContractors and material suppliers and other data requested by the Owner to substantiate the Construction Contractor's right to payment, or (4) made any examination to ascertain how or for what purpose the CONSTRUCTION CONTRACTOR has used money previously paid on account of the Agreement Sum.

4.13.1 The DESIGN CONSULTANT shall not issue a Certificate for Payment related to any CPS Energy electric and/or gas infrastructure until CPS Energy has conducted its final inspection of the CPS Energy electric and/or gas infrastructure and authorized DESIGN CONSULTANT to issue the Certificate for Payment.

4.14 The DESIGN CONSULTANT may recommend withholding an approval for Payment in whole or in part, to the extent reasonably necessary to protect the Owner and/or the JOINT UTILITIES if, in the DESIGN CONSULTANT's opinion, the representations to the Owner required by Section 4.13 cannot be made. If the DESIGN CONSULTANT is unable to recommend approval of payment in the amount of the Application, the DESIGN CONSULTANT will notify the Owner and the affected utility and Construction Contractor as provided in Section 4.12. If the Owner and the DESIGN CONSULTANT cannot agree on a revised amount, the DESIGN CONSULTANT will promptly issue a recommendation for approval of Payment for the amount for which the DESIGN CONSULTANT is able to make such representations to the Owner and the affected utility. The DESIGN CONSULTANT may also recommend withholding a Payment, because of subsequently discovered evidence, may modify the whole or a part of a recommendation for approval of Payment to such extent as may be necessary, in the DESIGN CONSULTANT's opinion, to protect the Owner and the affected utility from loss for which the CONSTRUCTION CONTRACTOR is responsible, including loss resulting from acts and omissions described below:

4.14.1 defective Work not remedied;

4.14.2 third party claims filed or reasonable evidence indicating probable filing of such claims for which CONSTRUCTION CONTRACTOR is responsible hereunder unless security acceptable to the Owner and the affected utility is provided by the CONSTRUCTION CONTRACTOR;

4.14.3 failure of the CONSTRUCTION CONTRACTOR to make payments properly to the subcontractors and/or material providers; or

4.14.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Agreement Sum and CONSTRUCTION CONTRACTOR has failed to provide Owner and the affected utility adequate assurance of its continued performance within a reasonable time after demand;

4.14.5 damage to the Owner and the affected utility or another Contractor;

4.14.6 reasonable evidence that the Work will not be completed within the Agreement Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

4.14.7 persistent failure by the CONSTRUCTION CONTRACTOR to carry out the Work in accordance with the Plans and Specifications.

The Owner will pay the undisputed portions of such Application for Compensation within the time frames established in Article III.

- 4.15 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld. The Owner and the affected utility shall not be deemed in default by DESIGN CONSULTANT by reason of withholding payment as provided.
- 4.16 The DESIGN CONSULTANT, with concurrence of the Owner, will prepare Change Orders and Field Work Directives. The Owner's Designated Representative "ODR" will have authority to order minor changes in the Work not involving an adjustment in the Total Compensation or an extension of the time for construction. Such changes shall be effected by written order, which the Contractor shall carry out promptly and record on the as-built record documents.
- 4.17 The DESIGN CONSULTANT, the CITY, and JOINT UTILITIES will conduct observations to determine the date of final completion. The DESIGN CONSULTANT will receive and forward to the CITY, for the CITY's and JOINT UTILITIES review and records, written warranties and related documents required by the Contract and assembled by the CONSTRUCTION CONTRACTOR, and will issue a final Approval for Payment upon compliance with the requirements of the Contract Documents.
- 4.18 Upon written request of the CITY, the JOINT UTILITIES or CONSTRUCTION CONTRACTOR the DESIGN CONSULTANT will issue its interpretation of the requirements of the plans and specifications. The DESIGN CONSULTANT's response to such requests will be made in writing within any agreed time limits or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required by the DESIGN CONSULTANT shall be furnished in compliance with Article IV, then delay shall not be recognized on account of failure by the DESIGN CONSULTANT to furnish such interpretations until 15 days after written request is made for DESIGN CONSULTANT's interpretation.
- 4.19 Interpretations of the DESIGN CONSULTANT will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.
- 4.20 The DESIGN CONSULTANT's recommendations on matters relating to aesthetic effect will be consistent with the intent expressed in the Agreement Documents unless expressly overruled in writing by the CITY.

ARTICLE V. DESIGN PHASES REQUIREMENTS

- 5.1 The DESIGN CONSULTANT shall:
 - 5.1.1. Follow and comply with the requirements for the DESIGN PHASES listed in this Agreement, Chapter 35 of the City of San Antonio Unified Development Code, if applicable, and City's Design Guidance Manual, in effect as of the effective date of this Agreement, both of which are incorporated by reference herein.
 - 5.1.2. Follow and comply with the requirements for the DESIGN PHASES listed in the CPS Energy and SAWS Design Guidance Manuals, both of which are incorporated by reference herein.
 - 5.1.3. Provide a minimum of five (5) paper copies and one electronic pdf file copy of all submittals and deliverables, except where the number and/or type of submittals and deliverables are specifically addressed in the Scope of Services (Attachment A), or any other attachment(s) incorporated herein as part of this Agreement.

5.1.4. In case of conflicts, follow and comply with the most stringent requirements for the DESIGN PHASES.

ARTICLE VI. TIME AND PERIOD OF SERVICE

- 6.1 Prior to commencement of any work, Design Consultant shall provide CITY with a schedule of PROJECT DESIGN PHASES, Attachment 2.
- 6.2 Time is of the essence in this Agreement. The DESIGN CONSULTANT shall perform and complete its obligations for the various Phases of Services under Section IV "Scope of Service" of this Agreement in a prompt and continuous manner so as to not delay the development of the design work and so as to not delay the construction of the work for the Project in accordance with the schedules approved by the CITY with the CONSTRUCTION CONTRACTOR. Upon review of phase work, if corrections, modifications, alterations, or additions are required of the DESIGN CONSULTANT, these items shall be completed by the DESIGN CONSULTANT before that Phase is approved.
- 6.3 The DESIGN CONSULTANT shall not proceed with the next appropriate Phase of Services without written authorization from the Director. The CITY may elect to discontinue the DESIGN CONSULTANT's services at the end of any Phase for any reason. Notwithstanding any other provisions of this Agreement, if circumstance dictates, the Director may make adjustments to the scope of the DESIGN CONSULTANT's obligations at any time to achieve the required design.
- 6.4 The DESIGN CONSULTANT shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations, or any other causes beyond DESIGN CONSULTANT's reasonable control. Within twenty one (21) days from the occurrence of any event for which time for performance by DESIGN CONSULTANT shall be significantly extended under this provision, DESIGN CONSULTANT shall give written notice thereof to the CITY stating the reason for such extension and the actual or estimated time thereof. If the CITY determines that the DESIGN CONSULTANT is responsible for the need for extended time, the CITY shall have the right to make a Claim as provided in this Agreement.
- 6.5 This Agreement shall remain in force for a period which may reasonably be required for the design, award of the contract, and construction of the Project including any extra work and any required extensions thereto unless discontinued as provided for elsewhere in this Agreement.

ARTICLE VII. COORDINATION WITH THE CITY

- 7.1 The DESIGN CONSULTANT shall hold periodic conferences with the Director or his representatives to the end that the Project as developed shall have the full benefit of the CITY's experience and knowledge of existing needs and facilities, and be consistent with its current policies and standards. To assist the DESIGN CONSULTANT in this coordination, the CITY shall make available for the DESIGN CONSULTANT's use in planning and designing the Project all existing plans, maps, statistics, computations and other data in its possession relative to existing facilities and to this particular Project, at no cost to the DESIGN CONSULTANT. However, any and all such information shall remain the property of the CITY and shall be returned by the DESIGN CONSULTANT upon termination or completion of the Project or if instructed to do so by the Director.
- 7.2 The Director will act on behalf of the CITY with respect to the Services to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information, interpret and define the CITY'S policies and decisions with respect to materials, equipment, elements and systems pertinent to the DESIGN

CONSULTANT's services.

- 7.3 The CITY will give prompt written notice to the DESIGN CONSULTANT whenever the CITY and/or JOINT UTILITIES observe or otherwise become aware of any defect in the DESIGN CONSULTANT's services, in the work of the CONSTRUCTION CONTRACTOR, or any development that affects the scope or timing of the DESIGN CONSULTANT's services.
- 7.4 All appraisals, notices, and permits shall be furnished by the DESIGN CONSULTANT under the Scope of Services unless otherwise assigned to the CITY in the Scope of Services, Approvals and permits assigned to the CITY shall be obtained from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for the completion of the Project. The DESIGN CONSULTANT will provide the CITY reasonable assistance in connection with such approvals and permits such as the furnishing of data compiled by the DESIGN CONSULTANT pursuant to other provisions of the Agreement, but the DESIGN CONSULTANT shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefore under other provisions of this Agreement.

ARTICLE VIII. REVISIONS TO DRAWINGS AND SPECIFICATIONS

- 8.1 The DESIGN CONSULTANT shall make without expense to the CITY such revisions to the drawings, reports or other documents as may be required to meet the needs of the CITY or JOINT UTILITIES which are within the Scope of Services , but after the approval of drawings, reports or other documents and specifications by the CITY or JOINT UTILITIES, any revisions, additions, or other modifications made at the CITY's or JOINT UTILITIES request which involve extra services and expenses to the DESIGN CONSULTANT shall be at additional compensation to the DESIGN CONSULTANT for such extra services and expenses, in accordance with Attachment 3.

ARTICLE IX. OWNERSHIP OF DOCUMENTS

- 9.1 All previously owned documents, including the original drawings, estimates, specifications, and all other documents and data, will remain the property of the DESIGN CONSULTANT as instruments of service. However, the DESIGN CONSULTANT understands and agrees that the CITY and JOINT UTILITIES shall have free access to all such information with the right to make and retain copies of previously owned drawings, estimates, specifications and all other documents and data. Any reuse without specific written verification or adaptation by DESIGN CONSULTANT will be at CITY's and JOINT UTILITIES sole risk and without liability or legal exposure to DESIGN CONSULTANT.
- 9.2 All completed documents submitted by DESIGN CONSULTANT for final approval or issuance of a permit shall bear the seal with signature and date adjacent thereto of a Texas registered professional Engineer licensed to practice in Texas.
- 9.3 The DESIGN CONSULTANT acknowledges and agrees that upon payment, the CITY and JOINT UTILITIES shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this Agreement and shall be used as the CITY and JOINT UTILITIES desire and documents, including the original drawings, estimates, specifications and all other documents and data shall be delivered to the CITY at no additional cost to the CITY and JOINT UTILITIES upon request or termination or completion of this AGREEMENT without restriction on future use. However, any reuse without specific written verification or adaptation by DESIGN CONSULTANT will be at CITY's and JOINT UTILITIES sole risk and without liability or legal exposure to DESIGN CONSULTANT.

- 9.4 The DESIGN CONSULTANT agrees and covenants to protect any and all proprietary rights of the CITY and JOINT UTILITIES in any materials provided to the DESIGN CONSULTANT. Such protection of proprietary rights by the DESIGN CONSULTANT shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to the CITY and JOINT UTILITIES. Additionally, any materials provided to the DESIGN CONSULTANT by the CITY and JOINT UTILITIES shall not be released to any third party without the written consent of the CITY and JOINT UTILITIES and shall be returned intact to the CITY and JOINT UTILITIES upon termination or completion of this Agreement or if instructed to do so by the Director.
- 9.5 **THE DESIGN CONSULTANT HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK THAT IN PART OR IN WHOLE WAS PRODUCED FROM THIS AGREEMENT TO THE CITY AND JOINT UTILITIES, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS AGREEMENT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY THE DESIGN CONSULTANT. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF THE CITY AND JOINT UTILITIES (EXCLUDING ANY PRIOR OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). THE DESIGN CONSULTANT SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND JOINT UTILITIES AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST THE CITY AND JOINT UTILITIES AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST THE CITY AND JOINT UTILITIES, INsofar AS THE SAME ARE BASED ON ANY CLAIM THAT MATERIALS OR WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.**
- 9.6 The DESIGN CONSULTANT may make copies of any and all documents and items for its files. The DESIGN CONSULTANT shall have no liability for changes made to or use of the drawings, specifications and other documents by other engineers, or other persons, subsequent to the completion of the Project. DESIGN CONSULTANT shall appropriately mark all changes or modifications on all drawings, specifications and other documents by other engineers or other persons, including electronic copies, subsequent to the completion of the Project.
- 9.7 Copies of documents that may be relied upon by the CITY and JOINT UTILITIES are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by the DESIGN CONSULTANT. Files in editable electronic media format of text, data, graphics, or other types, (such as DGN) that are furnished by the DESIGN CONSULTANT to the CITY and JOINT UTILITIES are only for convenience of the CITY and JOINT UTILITIES or utility. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. However, any reuse without specific written verification or adaptation by DESIGN CONSULTANT will be at CITY's and JOINT UTILITIES sole risk and without liability or legal exposure to DESIGN CONSULTANT.
- 9.8 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of DESIGN CONSULTANT, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by DESIGN CONSULTANT or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies, or processes used by the DESIGN CONSULTANT to provide the services or protect deliverables to CITY, including without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto shall remain the sole and exclusive property of DESIGN CONSULTANT or its suppliers.

**ARTICLE X.
TERMINATION AND/OR SUSPENSION OF WORK**

10.1 Right of Either Party to Terminate for Default

10.1.1 This Agreement may be terminated by either party for substantial failure by the other party to perform (through no fault of the terminating party) in accordance with the terms of this Agreement and a failure to cure as provided in this Article X.

10.1.2 The party not in default must issue a signed, written notice of termination (citing this paragraph) to the other party declaring the other party to be in default and stating the reason(s) why they are in default. Upon receipt of such written notice of default, the party in receipt shall have a period of ten (10) days to cure any failure to perform under this Agreement. Upon the completion of such ten-day period commencing upon receipt of notice of termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.

10.2 Right of CITY to Terminate

10.2.1 The CITY reserves the right to terminate this Agreement for reasons other than substantial failure by the DESIGN CONSULTANT to perform by issuing a signed, written notice of termination (citing this paragraph) which shall take effect on the twentieth day following receipt of said notice or upon the scheduled completion date of the performance phase in which DESIGN CONSULTANT is then currently working, whichever effective termination date occurs first.

10.3 Right of CITY to Suspend Giving Rise to Right of DESIGN CONSULTANT to Terminate

10.3.1 The CITY reserves the right to suspend this Agreement at the end of any phase for the convenience of the CITY by issuing a signed, written notice of suspension (citing this paragraph) which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall in no way guarantee what the total number of days of suspension will occur. Such suspension shall take effect immediately upon receipt of said notice of suspension by the DESIGN CONSULTANT.

10.3.2 The DESIGN CONSULTANT is hereby given the right to terminate this Agreement in the event such suspension extends for a period in excess of one hundred twenty (120) days. DESIGN CONSULTANT may exercise this right to terminate by issuing a signed, written notice of termination (citing this paragraph) to the CITY after the expiration of one hundred twenty (120) days from the effective date of the suspension. Termination (under this paragraph) shall become effective immediately upon receipt of said written notice by the CITY.

10.4 Procedures DESIGN CONSULTANT to follow upon Receipt of Notice of Termination

10.4.1 Upon receipt of a notice of termination and prior to the effective date of termination, unless the notice otherwise directs or DESIGN CONSULTANT immediately takes action to cure a failure to perform under the cure period set out in this ARTICLE. DESIGN CONSULTANT shall immediately begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of such notice of termination (unless DESIGN

CONSULTANT has successfully cured a failure to perform) the DESIGN CONSULTANT shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. The CITY shall have the option to grant an extension to the time period for submittal of such statement.

- 10.4.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and attachments prepared under this Agreement prior to the effective date of termination shall be delivered to the CITY, in the form requested by the CITY as a precondition to final payment. These documents shall be subject to the restrictions and conditions set forth in Article IX above.
 - 10.4.3 Upon the above conditions being met, the CITY shall promptly pay the DESIGN CONSULTANT that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee.
 - 10.4.4 The CITY, as a public entity, has a duty to document the expenditure of public funds. The DESIGN CONSULTANT acknowledges this duty on the part of the CITY. To this end, the DESIGN CONSULTANT understands that failure of the DESIGN CONSULTANT to comply with the submittal of the statement and documents as required above shall constitute a waiver by the DESIGN CONSULTANT of any and all rights or claims for compensation for services performed under this Agreement by the DESIGN CONSULTANT.
 - 10.4.5 Failure of the DESIGN CONSULTANT to comply with the submittal of the statement and documents as required above shall constitute a waiver by the DESIGN CONSULTANT of any and all rights or claims to collect monies that DESIGN CONSULTANT may otherwise be entitled to for services performed under this Agreement.
- 10.5 Procedures DESIGN CONSULTANT to Follow upon Receipt of Notice of Suspension
- 10.5.1 Upon receipt of written notice of suspension, which date shall also be the effective date of the suspension, the DESIGN CONSULTANT shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly suspend all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.
 - 10.5.2 DESIGN CONSULTANT shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.
 - 10.5.3 Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the CITY and JOINT UTILITIES but shall be retained by the DESIGN CONSULTANT until such time as DESIGN CONSULTANT may exercise the right to terminate.
 - 10.5.4 In the event that DESIGN CONSULTANT exercises the right to terminate one hundred twenty (120) days after the effective suspension date, within thirty (30) days after receipt by the CITY of DESIGN CONSULTANT's notice of termination, DESIGN CONSULTANT shall promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement and shall submit the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

- 10.5.5 Any documents prepared in association with this Agreement shall be delivered to the CITY and/or JOINT UTILITIES as a precondition to final payment.
- 10.5.6 Upon the above conditions being met, the CITY shall pay the DESIGN CONSULTANT that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee.
- 10.5.7 The CITY and JOINT UTILITIES, as public entities, have a duty to document the expenditure of public funds. DESIGN CONSULTANT acknowledges this duty on the part of the CITY and JOINT UTILITIES. To this end, DESIGN CONSULTANT understands that failure of Consultant to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by the DESIGN CONSULTANT of any portion of the fee for which DESIGN CONSULTANT did not supply such necessary statements and/or documents.

**ARTICLE XI.
DESIGN CONSULTANT'S WARRANTY**

- 11.1 The DESIGN CONSULTANT warrants that the services required under this Agreement will be performed with the same degree of professional skill and care that are typically exercised by similar consulting professionals performing similar services in Bexar County, Texas. The DESIGN CONSULTANT further warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the DESIGN CONSULTANT to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, the CITY shall have the right to terminate this Agreement under the provisions of Article X above.

**ARTICLE XII.
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)**

12.1 **DEFINITIONS**

- 12.1.1 **SBEDA Program**. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the CITY. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:
- 12.1.2 **SBEDA Enterprise ("SE")** – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.
- 12.1.3 **Commercially Useful Function** – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.
- 12.1.4 **Conduit** – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In

this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

- 12.1.5 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with CONSULTANT’s submittal for this project Agreement, attached hereto and incorporated herein as “Attachment 4”.

12.2 For this Agreement, the Parties agree that:

- 12.2.1 The terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and
- 12.2.2 The failure of CONSULTANT or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.
- 12.2.3 Failure of CONSULTANT or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.
- 12.2.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in CONSULTANT’s SBEDA Plan (“Attachment 4”) shall constitute a material breach of the SBEDA Program and this Agreement.
- 12.2.5 CONSULTANT shall pay all suppliers and subcontractors identified in its SBEDA Plan (“Attachment 4”) in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by CONSULTANT to the CITY Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

12.3 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement:

- 12.3.1 Failure of CONSULTANT to utilize an SE that was originally listed at bid opening or proposal/SOQ submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function; or
- 12.3.2 Modification or elimination by CONSULTANT of all or a portion of the scope of work attributable to an SE upon which the Agreement was awarded; or
- 12.3.3 Termination by CONSULTANT of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or
- 12.3.4 Participation by CONSULTANT in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement.

12.4 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any

other remedies the CITY may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the CITY shall be entitled, at its election, to exercise any one or more of the following remedies if the CONSULTANT materially breaches the requirements of the SBEDA Program:

- 12.4.1 Terminate this Agreement for default;
- 12.4.2 Suspend this Agreement for default;
- 12.4.3 Withhold all payments due to the CONSULTANT under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
- 12.4.4 Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the CITY pursuant to the Agreement, or from any other amounts due to the CONSULTANT under the Agreement.
- 12.4.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Agreement.

The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

12.5 City Process for Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the CITY to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

12.6 Special Provisions for Extension of Agreements. In the event the CITY extends this Agreement without a competitive Bid process, the CITY Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:

- 12.6.1 A SBEDA Utilization Goal for the extended period; and
- 12.6.2 A modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CONSULTANT does not meet the SBEDA Utilization Goal; and
- 12.6.3 The required minimum Good Faith Efforts outreach attempts that CONSULTANT shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA

Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The CONSULTANT entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:

12.6.3.1 Subject CONSULTANT to any of the remedies listed above; and/or

12.6.3.2 Result in re-solicitation of the Agreement that was considered for extension.

ARTICLE XIII. ASSIGNMENT OR TRANSFER OF INTEREST

- 13.1 The DESIGN CONSULTANT shall not assign or transfer its interest in this Agreement without the written consent of the CITY and the JOINT UTILITIES.

ARTICLE XIV. INSURANCE REQUIREMENTS

- 14.1 Prior to the commencement of any Services under this Agreement, the DESIGN CONSULTANT shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Capital Improvement Management Services Department/Public Works Department/Contract Services Department, which shall be clearly labeled **TESLA - CULEBRA ROAD TO MAYBERRY (40-00038)** in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Capital Improvements Management Services Department/Public Works Department/Contract Services Department. No officer or employee other than the CITY's Risk Manager shall have authority to waive this requirement.
- 14.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this contract and any extension or renewal hereof and to request modification of insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager and JOINT UTILITIES based upon changes in statutory law, court decisions, or circumstances surrounding this contract. In no instance will CITY and JOINT UTILITIES allow modification whereupon CITY and JOINT UTILITIES may incur increased risk.
- 14.3 A DESIGN CONSULTANT's financial integrity is of interest to the CITY and JOINT UTILITIES. Therefore, subject to the DESIGN CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by the CITY and JOINT UTILITIES, the DESIGN CONSULTANT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the DESIGN CONSULTANT's sole expense, insurance coverage written on an occurrence or claims made basis, as appropriate, by companies authorized and approved to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

INSURANCE REQUIREMENTS	
1. Worker's Compensation ** Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General Broad Form (Public) Liability Insurance to include coverage for the following: a. Premises Operations b. Independent contractors* c. Products/completed operations d. Personal Injury e. Contractual Liability f. Fire legal liability*	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its Equivalent in Umbrella or Excess Liability Coverage
3. Business Automobile Liability* a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
4. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums, which the insured shall become legally obligated to pay as damages to the extent caused by any negligent act, error or omission in the performance of professional services.
*If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

14.4 The CITY may request and without expense to CITY, to inspect copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the CITY and JOINT UTILITIES.

14.5 The DESIGN CONSULTANT agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the CITY and its officers, officials, employees, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
- Name each JOINT UTILITY and its officers, officials, employees, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under this AGREEMENT, with the exception of the workers' compensation and professional liability policies;
- To the extent not inconsistent with the requirements of the issuing insurance carrier, provide for an endorsement that the "other insurance" clause shall not apply to the CITY where the CITY is an additional insured shown on the policy if such endorsement is permitted by law and regulations;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY; and

- Provide thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation or non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- 14.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, the DESIGN CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend the DESIGN CONSULTANT's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- 14.7 In addition to any other remedies the CITY may have upon the DESIGN CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order the DESIGN CONSULTANT to stop performing services hereunder and/or withhold any payment(s) which become due to the DESIGN CONSULTANT hereunder until the DESIGN CONSULTANT demonstrates compliance with the requirements hereof.
- 14.8 Nothing herein contained shall be construed as limiting in any way the extent to which the DESIGN CONSULTANT may be held responsible for payments of damages to persons or property resulting from the DESIGN CONSULTANT's or its sub-consultant's performance of the services covered under this Agreement.
- 14.9 It is agreed that the DESIGN CONSULTANT's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY and JOINT UTILITIES for liability arising out of operations under this Agreement.
- 14.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement as respects additional insureds.

ARTICLE XV. INDEMNIFICATION

- 15.1 **The DESIGN CONSULTANT, whose work product and services are the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS against any and all claims by third parties, lawsuits, judgments, cost, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY A NEGLIGENT ACT, ERROR, OR OMISSION OF DESIGN CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF DESIGN CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the services, rights or duties under this AGREEMENT. The INDEMNITY provided for in this paragraph shall not apply to any liability resulting from the NEGLIGENCE of CITY, its officers or employees, in instances where such NEGLIGENCE causes personal injury, death, or property damage. IN THE EVENT DESIGN CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

- 15.2 The DESIGN CONSULTANT, whose work product and services are the subject of this AGREEMENT for professional services, agrees to INDEMNIFY AND HOLD EACH JOINT UTILITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY A NEGLIGENT ACT, ERROR, OR OMISSION OF DESIGN CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF DESIGN CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this AGREEMENT. The INDEMNITY provided for in this paragraph shall not apply to any liability resulting from the NEGLIGENCE of the joint utility, its officers or employees, in instances where such NEGLIGENCE causes personal injury, death or property damage. IN THE EVENT DESIGN CONSULTANT AND JOINT UTILITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY.
- 15.3 The DESIGN CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or the DESIGN CONSULTANT, known to the Consultant, related to or arising out of the DESIGN CONSULTANT's activities under this Agreement.
- 15.4 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 15.5 Acceptance of the final plans by the CITY and/or JOINT UTILITIES shall not constitute nor be deemed a release of the responsibility and liability of the DESIGN CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents and Work; nor shall such acceptance be deemed an assumption of responsibility or liability by the CITY and/or JOINT UTILITIES for any defect in the designs, work drawings, Plans and Specifications or other documents and Work prepared by said DESIGN CONSULTANT, its employees, subconsultants, and agents.

ARTICLE XVI. CLAIMS AND DISPUTES

- 16.1 Definition. A Claim is a demand or assertion by one of the parties and/or JOINT UTILITY seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and/or JOINT UTILITY and DESIGN CONSULTANT arising out of or relating to the Agreement. Claims must be initiated by written notice. Every Claim of the DESIGN CONSULTANT, whether for additional compensation, additional time, or other relief shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the DESIGN CONSULTANT by his signature) of the DESIGN CONSULTANT, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 16.2 Time Limit on Claims. Claims by the DESIGN CONSULTANT or by the Owner must be initiated within twenty-one (21) calendar days after discovery of the event giving rise to such Claim. Claims by the DESIGN CONSULTANT must be initiated by written notice to the Owner and/or JOINT UTILITY. Claims by the Owner and/or JOINT UTILITY must be initiated by written notice to the DESIGN CONSULTANT.

- 16.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing, the DESIGN CONSULTANT shall proceed diligently with performance of the Agreement and the Owner shall continue to make payments in accordance with the Agreement.
- 16.4 Claims for Additional Time. If the DESIGN CONSULTANT wishes to make Claim for an increase in the time for performance, written notice as provided in this Article 16 shall be given. The DESIGN CONSULTANT's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.
- 16.5 Claims for Consequential Damages. Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply both to claims by the DESIGN CONSULTANT and to claims by the Owner and/or JOINT UTILITY:
- 16.5.1 No consequential damages will be allowed.
- 16.5.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible.
- 16.5.3 No profit will be allowed on any damage claim.
- 16.6 Attorney's Fees. IN ACCORDANCE WITH SECTION 271.159 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THE DESIGN CONSULTANT SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES OR CERTAIN DIRECT OR CONSEQUENTIAL DAMAGES AS A PART OF ANY CLAIM MADE UNDER THE AGREEMENT OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING, AND DESIGN CONSULTANT HEREBY EXPRESSLY WAIVES SUCH CLAIMS.
- 16.7 No Waiver of Governmental Immunity. NOTHING IN THIS ARTICLE 16 SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.
- 16.8 Alternative Dispute Resolution.
- 16.8.1 Continuation of Work Pending Dispute Resolution. Each party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement unless it would be impossible or impracticable under the circumstances.
- 16.8.2 Requirement for Senior Level Negotiations. Before invoking mediation or any other alternative dispute process set forth herein the parties agree that they shall first try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a party delivers a written notice of such dispute, then the parties shall proceed with mediation alternative dispute resolution process contained herein. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

16.8.3 Mediation.

- 16.8.3.1 In the event that the Owner, the JOINT UTILITY or the DESIGN CONSULTANT shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.
- 16.8.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both parties.
- 16.8.3.3 In the event the Owner, the JOINT UTILITY and the DESIGN CONSULTANT are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.
- 16.8.3.4 The parties and the JOINT UTILITY engaging in the mediation shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Bexar County, Texas Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of the Mediation Agreement or this Agreement shall waive any immunity or defense. No provision the Mediation Agreement or of this Agreement is a consent to suit.

ARTICLE XVII. SEVERABILITY

- 17.1 If for any reason, any one or more paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining paragraphs of this Agreement but shall be confined in its effect to the specific section, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any section, sentence, clause or parts of this Agreement in any one or more instance shall not affect or prejudice in any way the validity of this Agreement in any other instance.

ARTICLE XVIII. ESTIMATES OF COST

- 18.1 Since the DESIGN CONSULTANT has no control over the cost of labor, materials or equipment or over the CONSTRUCTION CONTRACTOR's methods of determining prices, or over competitive bidding or market conditions, DESIGN CONSULTANT's opinions of probable Project Cost or Construction Cost provided for herein are to be made on the basis of DESIGN CONSULTANT's experience and qualifications and represent DESIGN CONSULTANT'S best judgment as a design professional familiar with the construction industry but the DESIGN CONSULTANT cannot and does not guarantee that proposals, bids or the construction cost will not vary from opinions of probable Cost prepared by DESIGN CONSULTANT.

**ARTICLE XIX.
INTEREST IN CITY CONTRACTS PROHIBITED**

- 19.1 No officer or employee of the CITY shall have a financial interest, directly or indirectly, in any contract with the CITY, or shall be financially interested, directly or indirectly, in the sale to the CITY of any land, materials, supplies or service, except on behalf of the CITY as an officer or employee. This prohibition extends to the City Public Service Board, the SAWS, and other CITY boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on CITY projects.
- 19.2 The DESIGN CONSULTANT acknowledges that it is informed that the Charter of the CITY and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as the CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 19.3 The DESIGN CONSULTANT warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. The DESIGN CONSULTANT further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

**ARTICLE XX.
CONFLICTS OF INTEREST DISCLOSURE**

- 20.1 All DESIGN CONSULTANT's must disclose if they are associated in any manner with a CITY Official or employee in a business venture or business dealings. Failure to do so will constitute a violation of the City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes being in a partnership or joint venture with the officer or employee, having a contract with the officer or employee, being joint owners of a business, owning at least 10% of the stock in a corporation in which a CITY officer or employee also owns at least 10%, or having an established business relationship as client or customer.

**ARTICLE XXI.
STANDARD OF CARE IN LICENSING**

- 21.1 Services provided by DESIGN CONSULTANT under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- 21.2 The DESIGN CONSULTANT shall be represented by a registered professional Engineer licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings, pre-bid meetings, and preconstruction meetings.
- 21.3 The Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, (512) 4407723 has jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.

- 21.4 Acceptance of the final plans by CITY and the JOINT UTILITY shall not constitute nor be deemed a release of the responsibility and liability of DESIGN CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents and Work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY or JOINT UTILITY for any defect in the designs, work drawings, Plans and Specifications or other documents and Work prepared by said DESIGN CONSULTANT, its employees, subconsultants, and agents.

ARTICLE XXII. RIGHT OF REVIEW AND AUDIT

22.1 Right to Audit:

The Consultant grants the City, or its designees, the right to audit, examine or inspect, at the City's election, all of the Consultant's records relating to the performance of the Work under the Agreement during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by the City. The Consultant agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract, then, such retention period shall extend until final resolution of the dispute. "Consultant's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Consultant records include but are not limited to billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

The City agrees that it will exercise the right to audit, examine or inspect only during regular business hours. The Consultant agrees to allow the City's designee access to all of the Consultant's Records, Consultant's facilities, and current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

Consultant must include this audit clause in any subcontractor, supplier or vendor contract.

ARTICLE XXIII. ENTIRE AGREEMENT

- 23.1 This Agreement represents the entire and integrated Agreement between the CITY and the DESIGN CONSULTANT and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both the CITY and the DESIGN CONSULTANT.

ARTICLE XXIV. VENUE

- 24.1 The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

**ARTICLE XXV.
NOTICES**

- 25.1 Except as may be provided elsewhere herein, all notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective party by depositing the same in the United States Postal Service addressed to the applicable address shown below, unless and until either party is otherwise notified in writing by the other party of a change of such address. Mailed notices shall be deemed communicated as of five (5) calendar days of mailing. Notices provided via the Portal shall be deemed communicated as of the next business day after the notice is sent.

If intended for the CITY, to:	If intended for the DESIGN CONSULTANT, to:
City of San Antonio, CIMS Department	AIA ENGINEERS, LTD.
Attention: Debbie Sittre, Assistant Director	Attention: ASHRAF ISLAM, Principal
114 West Commerce, 5 th Floor	8535 Wurzbach Road, Suite 210
San Antonio, Texas 78205	San Antonio, Texas 78240

**ARTICLE XXVI.
INDEPENDENT CONTRACTOR**

- 26.1 In performing services under this Agreement, the relationship between the CITY and the DESIGN CONSULTANT is that of independent contractor. By the execution of this Agreement, the DESIGN CONSULTANT and the CITY do not change the independent contractor status of the DESIGN CONSULTANT. The DESIGN CONSULTANT shall exercise independent judgment in performing its duties and obligations under this Agreement and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the services are to be performed. No term or provision of this Agreement or act of the DESIGN CONSULTANT in the performance of this Agreement shall be construed as making the DESIGN CONSULTANT the agent, servant or employee of the CITY, or as making the DESIGN CONSULTANT or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which the CITY provides to or for its employees.

**ARTICLE XXVII.
CAPTIONS**

- 27.1 The captions for the individual provisions of this Agreement are for informational purposes only and shall not be construed to effect or modify the substance of the terms and conditions of this Agreement to which any caption relates.

IN WITNESS WHEREOF, the City of San Antonio has lawfully caused these presents, to be executed by the hand of the City Manager, or designee, acting by the hand of ASHRAF ISLAM, thereunto authorized PRINCIPAL; does now sign, execute and deliver this document.

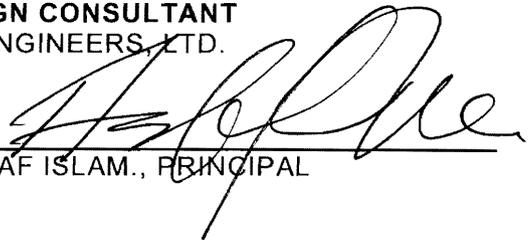
Executed on this 20 day of November, A. D. 2008.

CITY OF SAN ANTONIO



CITY MANAGER

**DESIGN CONSULTANT
AIA ENGINEERS, LTD.**



ASHRAF ISLAM., PRINCIPAL

APPROVED:



CITY ATTORNEY 19 Nov 08

ATTACHMENT 1
SCOPE OF SERVICES

Project Name:

Tesla-Culebra to Mayberry

Fee Summary and Timeline for Design Phase Services		
Activity	Pricing	Timeline in Calendar Days
Preliminary Engineering Report	\$ -	
40% Design	\$ 165,475.36	120
70% Design	\$ 82,737.68	95
95% Design	\$ 82,737.68	90
Bid Documents	\$ 20,684.42	95
Construction Phase	\$ 41,368.84	200
Project Closeout	\$ 20,684.42	66
Base Fee	\$ 413,688.39	

Additional Services	
SUE	\$ -
Plats & Field Notes (x\$)	\$ 10,530.00
Design Enhancements Support (15%x1%)	\$ 0.00
Environmental Support	\$ -
Permits Support	
CLOMR/ LOMR	\$ -
Direct Expenses	\$ -
10% Contingency of Base Fee	\$ 41,368.84
Additional Services	\$ 51,898.84
Project Total	\$ 465,587.23
SAWS	\$ 47,496.00
Overall Project Total	\$ 513,083.23

City of San Antonio Capital Improvement Project
Scope of Services
Tesla (Culebra to Mayberry)
Street Reconstruction with curbs, sidewalks and drainage

1. Design Concept Conference
 - 1.1 Complete Design Summary Report
 - 1.2 Prepare Preliminary Engineering Report
2. Right of Way Surveying and Mapping
 - 2.1 Acquire ownership information
 - 2.2 Secure Right of Entry
 - 2.3 Survey ROW (Flag existing corners, set new corners, etc)
 - 2.4 Apparent ROW
 - 2.5 Coordination
3. Base Mapping
 - 3.1 Establish Primary Project Control
 - 3.1.1 Horizontal (NAD 83(86))
 - 3.1.2 Vertical
 - 3.2 Establish Secondary Project Control
 - 3.2.1 Horizontal
 - 3.2.2 Vertical
 - 3.3 Set project baseline
 - 3.4 Survey topographic features
 - 3.4.1 Tie driveway edges and centerline at 10 feet into property
 - 3.5 Survey cross-sections/spot elevations to develop DTM/cross-sections
 - 3.5.1 Twenty five feet into adjacent property
 - 3.5.2 Street intersection 150' both ways
 - 3.6 Survey Quality Level B locates (Field tying the locates only)
 - 3.6.1 Water
 - 3.6.2 Sanitary Sewer
 - 3.6.3 Natural Gas
 - 3.6.4 Storm Drainage
 - 3.6.5 Underground Electric
 - 3.6.6 Underground Telephone
 - 3.6.7 Underground Cable Television
 - 3.7 Develop Utility Masterplan
 - 3.7.1 Secure Utilities Maps
 - 3.7.2 Mains and services
 - 3.8 Survey Trees
 - 3.8.1 All trees
 - 3.8.2 Show
 - 3.8.2.1 Species
 - 3.8.2.2 Trunk diameter
 - 3.8.2.3 Spread
 - 3.9 Develop Comprehensive Planimetric Mapping
 - 3.9.1 From ground survey
 - 3.9.2 Show improvements on adjacent property

- 3.9.3 Show addresses of adjacent business and residences
 - 3.9.4 Show legal description of adjacent properties
 - 3.10 Construction Staking
 - 3.11 Coordination
- 4 Roadway and Drainage Design
 - 4.1 Establish typical roadway cross-sections showing lane, sidewalk, and clear zone widths, etc.
 - 4.1.1 Existing typical sections
 - 4.1.2 Proposed typical sections
 - 4.2 Plan and Profile sheets; existing ground profiles at
 - 4.2.1 Centerline
 - 4.2.2 Left ROW line
 - 4.2.3 Right ROW line
 - 4.3 Establish horizontal roadway alignment showing
 - 4.3.1 Centerline geometry (bearings, PI, PC and PT stations, curve data, curb return radii, etc.)
 - 4.3.2 Curb locations and geometry
 - 4.3.3 Lane (11') and parking (7') widths
 - 4.3.4 Sidewalk (4') widths and locations
 - 4.3.5 Transitions and extent of construction of intersecting streets (coordinate with SAWS)
 - 4.3.6 Evaluate property encroachment
 - 4.4 Establish Roadway Profile
 - 4.4.1 Establish vertical profile
 - 4.4.2 Estimate storm drainage velocities
 - 4.4.3 Establish maximum flow capacity
 - 4.4.4 Coordination
 - 4.5 Establish Design Discharges
 - 4.5.1 Delineate drainage areas and establish flow patterns
 - 4.5.2 Develop runoff coefficients
 - 4.5.2.1 Existing condition
 - 4.5.2.2 Proposed condition
 - 4.5.3 Develop times of concentration and related intensities
 - 4.5.3.1 Existing condition
 - 4.5.3.2 Proposed condition
 - 4.5.4 Calculate preliminary design discharges
 - 4.5.4.1 Existing condition
 - 4.5.4.2 Proposed condition
 - 4.5.5 Gather information on existing drainage facilities
 - 4.5.6 Research/review existing plans & data, prop roadway profile
 - 4.5.7 Develop drainage design criteria
 - 4.5.8 Drainage coordination and verification
 - 4.6 Design Storm Drainage Facilities
 - 4.6.1 Roadways
 - 4.6.1.1 Establish inlet locations and design discharges
 - 4.6.1.2 Develop storm drainage facility sizes, incremental times of concentration, effective drainage area, and design discharges, friction and junction losses, etc.

- 4.6.1.3 Establish preliminary horizontal and vertical alignments of storm drainage facilities (Max. EGL is 1.3 feet below top of curb)
- 4.6.1.4 Identify potential utility conflicts and locations for Level 1 locates
- 4.6.1.5 Establish lateral sizes
- 4.6.1.6 Determine storage or detention facility to maintain existing discharge into Zarzamora Creek
- 4.6.1.7 Lateral details with or without underground utilities
- 4.6.1.8 Coordination
- 4.6.2 Channel
 - 4.6.2.1 Evaluate capacity of existing curb inlets at Inez
 - 4.6.2.2 Evaluate capacity of existing outfall culvert
 - 4.6.2.3 Coordination with SARA; Bexar Regional Watershed Management
- 4.7 Standards, special provisions, special specifications
- 5 Pavement Design
 - 5.1 Design pavement sections using COSA Pavement Design Standards (Six holes)
 - 5.1.1 Geotechnical Engineering for Soil core holes
 - 5.1.2 Pavement design and cost data
 - 5.1.2.1 Flexible base with ACP surface design
 - 5.1.2.2 Asphalt pavement design (asphalt stabilized base and ACP surface)
 - 5.1.2.3 Concrete pavement design
 - 5.1.2.4 With lime treated subgrade or geogrid base reinforcement
 - 5.1.3 Coordination
- 6 Prepare Cross-Sections
 - 6.1 Roadway cross-sections with/without underground proposed utilities and storm drainage
 - 6.1.1 Develop cross section criteria
 - 6.1.2 Develop cut and embankment quantities
 - 6.1.3 Develop driveway cross sections
 - 6.1.4 Develop cross section sheet plots
- 7 Utility Plans
 - 7.1 Design for 40% water and sanitary sewer plan and profiles
 - 7.1.1 Research and map existing water and sewer
 - 7.1.2 No identification of potholing or potholing needed within scope of work
 - 7.1.3 Schematic plan/profile view of proposed water and sewer
 - 7.1.4 Review and address SAWS comments
 - 7.1.5 Develop Opinion of Probable Construction Cost
 - 7.1.6 Develop Quantity Sheets (Relative to SAWS items)
 - 7.1.7 Separate Cover Sheet
 - 7.1.8 Attend COSA citizen meetings as representative of SAWS (attend 2 meetings and prepare exhibits)
 - 7.1.9 QA/QC Review

- 7.1.10 Overall utility layout plan (Not in Scope)
- 7.2 Design for 70% water and sanitary sewer plan and profiles
 - 7.2.1 No identification of potholing or actual potholing needed within scope of work
 - 7.2.2 Coordinate with SAWS to conduct a test shutdown of the water system
 - 7.2.3 Develop P&P
 - 7.2.4 Review and address SAWS comments
 - 7.2.5 Refine Opinion of Probable Construction Cost
 - 7.2.6 Prepare General Notes (relative to SAWS' items)
 - 7.2.7 Refine Quantity sheets (relative to SAWS' items)
 - 7.2.8 QA/QC Review
- 7.3 Design for 95% water and sewer plans
 - 7.3.1 Finalize Plan and Profile
 - 7.3.2 Prepare Change of Service forms
 - 7.3.3 Assemble Bid Proposal & Specification front end documents (special specifications not in scope of work)
 - 7.3.4 Assemble SAWS standards
 - 7.3.5 Refine Opinion of Probable Construction Cost
 - 7.3.6 Review and address SAWS comments
 - 7.3.7 QA/QC Review
- 7.4 Bid Document
 - 7.4.1 Submit one hard set and one CD of complete bid package for SAWS review
 - 7.4.2 Furnish five (5) sets contract documents for construction
 - 7.4.3 Attend pre-bid conference and provide meeting minutes
 - 7.4.4 Prepare and issue SAWS addenda to Bidders
 - 7.4.5 Attend bid opening, review and submit written analysis of SAWS work
 - 7.4.6 Furnish copies of the bid tabulation
 - 7.4.7 Provide written recommendation for award of the contract
- 7.5 Construction Engineering Services
 - 7.5.1 Attend Pre-construction meeting as representative of SAWS
 - 7.5.2 Observe construction-two times a month (7 visits)
 - 7.5.3 Meet with contractor and inspector to verify redlines and estimates-one time a month (4 visits)
 - 7.5.4 RFI/RFP/ Change orders
 - 7.5.5 Meet with contractor and inspector for field acceptance-one time for project
- 7.6 Project Close Out & Final Payment
 - 7.6.1 Submit Water and Sewer Plan of record

8 Other Plans

- 8.1 Prepare Pavement Markings and Signing Plan (1" = 40' double stack)
 - 8.1.1 Site visits
 - 8.1.2 Prepare inventory of existing signs to be removed
 - 8.1.3 Prepare signing and pavement marking layout

- 8.1.4 Include all applicable standards
- 8.1.5 Summary of small signs/S&PM quantities
- 8.1.6 S&PM general notes
- 8.1.7 Address S&PM review comments (3)
- 8.1.8 Coordination
- 8.2 Prepare Traffic Control Plan
 - 8.2.1 Develop Preliminary Phasing Layouts for PER/40%
 - 8.2.2 Develop Sequence of Work Narrative – Describe all phases of the TCP that typically appears on construction contract proposal.
 - 8.2.3 Develop Construction General Notes – Address working days and hours for school and non-school days and local access.
 - 8.2.4 Develop TCP Typical Sections
 - 8.2.5 Develop TCP Layouts (1"=40' Double Stacked)
 - 8.2.6 Develop TCP Detour Layouts
 - 8.2.7 Develop Non-Standard Details
 - 8.2.8 Develop TCP Quantities & Summary Sheets
 - 8.2.9 Project Management
 - 8.2.10 Construction sequence and TCP coordination
- 8.3 Prepare SW3P (1" = 40' Double Stack)
 - 8.3.1 Develop SW3P Narrative
 - 8.3.2 Develop SW3P Layouts per Phase
 - 8.3.3 Prepare the Environmental Permits, Issues and Commitment (EPIC) sheet
 - 8.3.4 Develop SW3P quantities and Summary of Quantity sheets
 - 8.3.5 Coordination
- 8.4 ADA details
 - 8.4.1 Include all applicable standards
 - 8.4.2 Submit plans to TDLR
- 8.5 Prepare Driveway Plans (Additional Service)
- 8.6 Title Sheet
- 8.7 Index of Sheets
- 8.8 Project Layout Sheet
- 8.9 General Notes and Specifications
- 8.10 Summary Sheets
- 8.11 Horizontal and Vertical Data Sheet
- 8.12 Intersection Grading Sheet
- 8.13 Miscellaneous Roadway Detail Sheets
- 8.14 Demolition, tree removal and mitigation, etc.
- 8.15 Develop Construction Timeline
- 8.16 COSA Standard Detail Sheets
- 9 Meetings and Coordination
 - 9.1 Public Meetings (2)
 - 9.2 Utility Coordination Meetings (3)
 - 9.3 Design Concept Conference
 - 9.4 40% Plan Review Meeting
 - 9.5 70% Plan Review Meeting
 - 9.6 95% Plan Review Meeting

- 9.7 Pre-bid Meeting
- 9.8 Pre-construction Meeting
- 9.9 Site visits during construction
- 9.10 Review shop drawings
- 9.11 Review construction pay requests
- 10 Cost Estimating
 - 10.1 Preliminary Engineering Report Cost Estimate
 - 10.2 40% Plans Cost Estimate
 - 10.3 70% Plans Cost Estimate
 - 10.4 95% Plans Cost Estimate
 - 10.5 Evaluate bids and recommend award, etc.

**ENGINEER'S FEE SCHEDULE (AIA Engineers, LTD.)
METHOD OF PAYMENT: LUMP SUM**

PRIME PROVIDER NAME: AIA Engineers, LTD.
 CONTRACT NUMBER:
 PROJECT NAME: COSA Tesla Project
 Date: September 22, 2008

SUMMARY					
	Type of Service	Labor Cost	Direct Expenses	Total	% of Overall Contract
Total Basic Services - COSA					
AIA Engineers, LTD	Prime	\$281,049.00	\$2,214.65	\$283,263.65	60%
Bain Medina Bain	Survey	\$48,196.00	\$0.00	\$48,196.00	10%
Camacho-Hernandez	S&PM	\$11,160.56	\$127.88	\$11,288.44	2%
Chiang, Patel & Yerby	TCP& SW3P	\$40,950.00	\$204.30	\$41,154.30	9%
HVJ	Geotech	\$15,460.00	\$14,326.00	\$29,786.00	6%
AIA Cost for SAWS	Utilities	\$47,496.00	\$0.00	\$47,496.00	10%
Total Basic Services		\$444,311.56	\$17,022.83	\$461,184.39	98%
Total Additional Services					
AIA	Driveway Plats	\$10,530.00	0	\$10,530.00	2%
Total Additional Services		\$10,530.00	0	\$10,530.00	2%
Total Basic and Additional Services		\$454,841.56	\$17,022.83	\$471,714.39	100%

Small Business Program Compliance				
MBE	WBE	AABE	SBE	
60			60	
	10		10	
2			2	
9				
6		6	6	
2			2	
Total (%)	79	10	6	80
Req't (%)	31	10	2	50

ENGINEER'S FEE SCHEDULE (AIA Engineers, Ltd.)
METHOD OF PAYMENT: LUMP SUM

PRIME PROVIDER NAME: AIA Engineers, LTD.
 CONTRACT NUMBER:
 PROJECT NAME: Tesla Project
 Date: September 22, 2008

TASK DESCRIPTION	Quantity	Estimating Unit	Principal	Project Manager	Senior Engineer	Project Engineer	Engineer Tech	CADD Operator	Clerical/ Admin	Total Labor Hours & Cost	No. of Dwgs	Labor Hours per Sheet
CONTRACT RATE PER HOUR			\$175.00	\$155.00	\$135.00	\$121.00	\$85.00	\$80.00	\$55.00			
1. Design Concept Conference - AIA												
1.1 Complete DSR		each		1	2	4				7		#DIV/0!
1.2 Prepare Preliminary Engineering Report		each		1	2	4		2		9		#DIV/0!
										0		
2. Right of Way Surveying and Mapping - Bain Medina Bain, Inc												
2.1 Acquire Ownership Information		parcels								0		#DIV/0!
2.2 Secure Right of Entry		parcels								0		#DIV/0!
2.3 Survey ROW		corners								0	1	0
2.4 Apparent ROW										0	1	0
2.5 Coordination - AIA				4		8			4	16		
										0	1	0
3. Base Mapping - Bain Medina Bain, Inc												
3.11 Coordination and verification - AIA				4	8	16			4	32		#DIV/0!
										0		
4. Roadway and Drainage Design												
4.1 Establish Typical Roadway Section - AIA												
4.1.1 Existing typical sections	4	sections		1	8	12				21	1	21
4.1.2 Proposed typical sections	4	sections		1	8	12				21	1	21
4.2 Develop P&P sheets for 1"=40' - Existing Ground Profile at - AIA	7	sheets								0	1	0
4.2.1 Centerline										0		
4.2.2 25' left of Centerline										0		
4.2.3 25' right of Centerline										0	1	0
4.3 Establish Horizontal Roadway Alignment - AIA	32.2	stations		16	40	80				136	7	19
4.3.1 Centerline Geometry - Bearings, Curve Data, PC, PI, PT, etc										0		
4.3.2 Curb Location and Geometry - Curb Return Radii, etc.										0		
4.3.3 Lane Widths										0		
4.3.4 Sidewalk Widths and Locations										0		
4.3.5 Transitions and extent of construction of intersecting streets										0		
4.3.6 Evaluate Property Encroachments										0		
4.4 Establish Roadway Profiles										0		
4.4.1 Establish vertical profile - AIA	32.2	stations		8	16	34	28			86		
4.4.1 Estimate storm drainage velocities				2	15			9		26		
4.4.2 Establish maximum flow capacity					15			8		23		
4.4.4 Roadway coordination with drainage - AIA				4	8	16				28		
4.5 Establish Design Discharge												
4.5.1 Delineate drainage areas and establish flow patterns				3	15			8		26		
4.5.2 Develop runoff coefficients												
4.5.2.1 Existing Conditions					14			9		23		
4.5.2.2 Proposed Conditions					15			9		24		
4.5.3 Develop times of concentration and related intensities												
4.5.3.1 Existing Conditions				1	15			10		26		
4.5.3.2 Proposed Conditions					15			8		23		
4.5.4 Calculate preliminary design discharges										0		
4.5.4.1 Existing Conditions					15			10		25		
4.5.4.2 Proposed Conditions					15			10		25		
4.5.5 Gather information on existing drainage facilities					9	9				18		
4.5.6 Research/review existing plans & data, prop rdway profile					9					9		
4.5.7 Develop drainage design criteria				2	2	2				6		
4.5.8 Drainage Coordination and verification - AIA				4	8	16			4	32		
4.6 Design Storm Drainage Facilities										0		
4.6.1 Roadways												
4.6.1.1 Establish inlet locations and design discharge				3	11	3		12		29		
4.6.1.2 Develop storm drainage facility sizes, incremental times of concentration, effective drainage areas, design discharge, friction and junction losses, etc.												
4.6.1.3 Establish preliminary storm horizontal & vertical alignment				2	16	4		17		39		

ENGINEER'S FEE SCHEDULE (AIA Engineers, Ltd.)

METHOD OF PAYMENT: LUMP SUM

PRIME PROVIDER NAME: AIA Engineers, LTD.

CONTRACT NUMBER:

PROJECT NAME: Tesla Project

Date: September 22, 2008

TASK DESCRIPTION	Quantity	Estimating Unit	Principal	Project Manager	Senior Engineer	Project Engineer	Engineer Tech	CADD Operator	Clerical/Admin	Total Labor Hours & Cost	No. of Dwgs	Labor Hours per Sheet
facilities (max. EGL is 1.3 feet below top of curb)					15	4		18		37		
4.6.1.4 Identify potential utility conflicts and locations for Level A locates					8	2		8		18		
4.6.1.5 Establish lateral sizes					6	2		8		16		
4.6.1.6 Determine storage/detention facility to maintain existing discharge into Zarzamora Creek				4	9	3		10		26		
4.6.1.7 Lateral details with underground utilities					9	4		8		21		
4.6.1.8 Roadway & drainage coordination - AIA				4	8	16			4	32		
4.6.2 Channel												
4.6.2.1 Evaluate capacity of existing curb inlets at Inez				2	10	3		10		25		
4.6.2.2 Evaluate capacity of existing outfall culvert				1	8	2		10		21		
4.6.2.3 Regulatory coordination - AIA				2	15	12		6	4	39		
4.7 Standards				1	1	5		9		16		
										0		
5. Pavement Design - HVJ										0	N/A	N/A
5.1 Design pavement sections using COSA Pavement Design Standards										0		
5.1.1 Geotechnical Engineering										0		
5.1.2 Pavement design										0		
5.1.3 Pavement coordination - AIA				2	4	8			4	18		
6. Prepare Cross Sections - AIA												
6.1 Roadway cross sections with underground prop utilities and storm drainage										0		
6.1.1 Develop cross section criteria				2	8	24				34		
6.1.2 Develop cut and embankment quantities		stations		2	4	12				18		
6.1.3 Develop driveway cross sections				2	16	32				50		
6.1.4 Develop cross section sheet plots				2	8	16				26		
										0		
7. Utility Plans - AIA (refer to SAWS Estimate)												
8. Other Plans												
8.1 Prepare Pavement Marking and Signing Plan - Camacho-Hernandez		sheets								0	2	N/A
8.1.8 Pavement marking and signing plan coordination - AIA				4	4	8			4	20		
8.2 Prepare Traffic Control Plan - CP&Y										0		
8.2.10 Construction sequence and TCP coordination - AIA				8	16	24			4	52		
8.3 Prepare SW3P - CP&Y										0	1	N/A
8.3.5 SW3P coordination - AIA				2	4	8			4	18		
8.4 ADA Details				2	8	10		12		32		
8.5 Prepare Driveway Plats (Add'l Service)		driveways										
8.6 Title Sheet				1	2	8		4		15		
8.7 Index of Sheets				1	2	4		4		11		
8.8 Project Layout Sheet				1	2	4		8		15		
8.9 General Notes and Specifications				4	16				4	24		
8.10 Summary Sheets				1	4	16		8		29		
8.11 Horizontal and Vertical Data Sheet				2	8	16				26		
8.12 Intersection Grading Sheets				4	16	16		16		52		
8.13 Miscellaneous Roadway Detail Sheets				2	8	16				26		
8.14 Demolition, tree removal and mitigation, landscaping and mailbox relocation Sht				8	16	24			4	52		
8.14.1 Coordination with COSA and Development Services Department				4	8					12		
8.15 Develop Construction Timeline				4	12	32				48		
8.16 COSA Standard Detail Sheets				1	4	8				13		
9. Meetings and Coordination												
9.1 Two public meetings		meetings		8	8	16			4	36		
9.2 Three utility coordination meeting		meetings		12	12				4	28		
9.3 Design Concept Conference		meetings										
9.3.1 AIA				6	6					12		
9.4 Preliminary Engineering Report/40% Review Meeting		meetings										

ENGINEER'S FEE SCHEDULE (AIA Engineers, Ltd.)
METHOD OF PAYMENT: LUMP SUM

PRIME PROVIDER NAME: AIA Engineers, LTD.
 CONTRACT NUMBER:
 PROJECT NAME: Tesla Project
 Date: September 22, 2008

TASK DESCRIPTION	Quantity	Estimating Unit	Principal	Project Manager	Senior Engineer	Project Engineer	Engineer Tech	CADD Operator	Clerical/ Admin	Total Labor Hours & Cost	No. of Dwgs	Labor Hours per Sheet
9.4.1 AIA				12	16	24		12	8	72		
9.5 70% Plans Review Meeting		meetings										
9.5.1 AIA				6	12	16		12	4	50		
9.6 95% Plans Review Meeting		meetings										
9.6.1 AIA				6	12	16		12	4	50		
9.7 Pre-Bid Meeting		meetings		4	4				4	12		
9.8 Pre-Construction Meeting		meetings		4	4				4	12		
9.9 Site visits during construction	20	visits		40	80				4	124		
9.10 Review shop drawings		reviews		10	40				4	54		
9.11 Review construction pay requests	11	pay apps		44	88				4	136		
										0		
10. Cost Estimating												
10.1 Preliminary Engineering Report Cost Estimate				2	8	19			4	33		
10.2 40% Plans Cost Estimate										0		
10.2.1 AIA				4	8	19			4	35		
10.3 70% Plans Cost Estimate										0		
10.2.1 AIA				4	8	21			4	37		
10.4 95% Plans Cost Estimate										0		
10.2.1 AIA				4	8	19			4	35		
10.5 Evaluate bids and recommend award, etc.				8	12				4	24		
									Total =	2302		
HOURS SUB-TOTALS				0	304	866	709	28	285	110	2302	
CONTRACT RATE PER HOUR				\$175.00	\$155.00	\$135.00	\$121.00	\$85.00	\$80.00	\$55.00		
TOTAL LABOR COSTS				\$0.00	\$47,120.00	\$116,910.00	\$85,789.00	\$2,380.00	\$22,800.00	\$6,050.00	\$281,049.00	

ENGINEER'S FEE SCHEDULE (AIA Engineers, Ltd.)

METHOD OF PAYMENT: LUMP SUM

PRIME PROVIDER NAME: AIA Engineers, LTD.

CONTRACT NUMBER:

PROJECT NAME: Tesla Project

Date: September 22, 2008

TASK DESCRIPTION	Quantity	Estimating Unit	Principal	Project Manager	Senior Engineer	Project Engineer	Engineer Tech	CADD Operator	Clerical/ Admin	Total Labor Hours & Cost	No. of Dwgs	Labor Hours per Sheet
DIRECT EXPENSES												
				# OF UNITS	COST/UNIT							
Mileage (# of miles) (0..505)				930	\$0.505							\$469.65
Courier Servies				3	\$25.00							\$75.00
Photocopies 11x17				6,300	\$0.20							\$1,260.00
Photocopies 8 1/2x11				50	\$0.10							\$5.00
Plot (Color on Bond)				0	\$3.50							\$0.00
Mylars 11x17				100	\$4.00							\$400.00
CD Archive				1	\$5.00							\$5.00
Film				0	\$7.00							\$0.00
Film Processing				0	\$10.00							\$0.00
												\$0.00
												\$0.00
SUBTOTAL DIRECT EXPENSES												\$2,214.65

SUMMARY BASIC SERVICES			
	AIA Engineers Labor Cost		\$281,049.00
	AIA Engineers Direct Expense		\$2,214.65
	GRAND TOTAL		\$283,263.65

**ENGINEER'S FEE SCHEDULE (AIA SAWS)
METHOD OF PAYMENT: LUMP SUM**

PRIME PROVIDER NAME: AIA Engineers, LTD.
CONTRACT NUMBER:
PROJECT NAME: Tesla Project
Date: September 22, 2008

TASK DESCRIPTION	Quantity	Estimating Unit	Project Manager	Senior Engineer	Project Engineer	Engineer Tech	CADD Operator	Clerical/ Admin	Total Labor Hours & Cost	No. of Dwgs	Labor Hours per Sheet
CONTRACT RATE PER HOUR			\$ 155.00	\$ 135.00	\$ 121.00	\$ 85.00	\$ 80.00	\$ 55.00			
7. San Antonio Water System											
7.1 40% Design											
7.1.1 Research and map existing water and sewer			2	8		8			18		
7.1.2 No identification of potholing needed or actual potholing within scope of work									0		
7.1.3 Schematic plan/profile view/identity proposed water and sewer line			1	4	12				17		
7.1.4 Review and address SAWS comments			1	4		16		4	25		
7.1.5 Develop Opinion of Probable Construction Cost			1	8				4	13		
7.1.6 Develop Quantity Sheets (relative to SAWS items)			2		8		16		26		
7.1.7 Separate cover sheet	1	sheets	1	2	8		4		15		
7.1.8 Attend COSA citizen meetings as representative of SAWS (2 meetings & exhibits)			4	4			8	4	20		
7.1.9 QA/QC Review				6					6		
7.1.10 Separate overall utility layout plan (not in scope)									0		
HOURS SUB-TOTALS			12	36	28	24	28	12	140		
TOTAL LABOR COSTS			\$ 1,860.00	\$ 4,860.00	\$ 3,388.00	\$ 2,040.00	\$ 2,240.00	\$ 660.00	\$15,048.00		
7.2 70% Design											
7.2.1 No identification of potholing needed or actual potholing within scope of work									0		
7.2.2 Coordinate with SAWS to conduct a test shutdown of the water system			1		4				5		
7.2.3 Develop P&P	7	sheets	4	8		20			32		
7.2.4 Review and address SAWS comments			1	4		16		4	25		
7.2.5 Refine Opinion of Probable Construction Cost			1	8				2	11		
7.2.6 Prepare General Notes (relative to SAWS items)			2	8					10		
7.2.7 Refine Quantity Sheets (relative to SAWS items)					2		4		6		
7.2.8 QA/QC Review				3					3		
HOURS SUB-TOTALS			9	31	6	36	4	6	92		
TOTAL LABOR COSTS			\$ 1,395.00	\$ 4,185.00	\$ 726.00	\$ 3,060.00	\$ 320.00	\$ 330.00	\$10,016.00		
7.3 95% Design											
7.3.1 Finalize Plan & Profile			1	8			4		13		
7.3.2 Prepare Change of Service forms			1	8				1	10		
7.3.3 Assemble bid proposal and specification front end documents (special specifications not in scope of work)			2	8				4	14		
7.3.4 Assemble SAWS standards (non-standard details not incl in scope)			1	2			2		5		
7.3.5 Refine Opinion of Probable Construction Cost			1	8				2	11		
7.3.6 Review and address SAWS comments			1	4		8		4	17		
7.3.7 QA/QC Review				3					3		
HOURS SUB-TOTALS			7	41	0	8	6	11	73		
TOTAL LABOR COSTS			\$ 1,085.00	\$ 5,535.00	\$ -	\$ 680.00	\$ 480.00	\$ 605.00	\$8,385.00		
7.4 Bid Document											
7.4.1 Submit one hard set and one CD of complete bid package for SAWS review					1			2	3		
7.4.2 Furnish five (5) sets of contract documents for construction								2	2		
7.4.3 Attend pre-bid conference and provide meeting minutes			2		2			2	6		
7.4.4 Prepare & issue SAWS addenda to Bidders			2		2			2	6		
7.4.5 Attend bid opening, review and submit written analysis of SAWS work			2		2			2	6		
7.4.6 Furnish copies of the bid tabulation			1					4	5		
7.4.7 Provide written recommendation for award of the contract			2						2		
HOURS SUB-TOTALS			9	0	7	0	0	14	30		
TOTAL LABOR COSTS			\$ 1,395.00	\$ -	\$ 847.00	\$ -	\$ -	\$ 770.00	\$3,012.00		
7.5 Construction Engineering Services											
7.5.1 Attend Pre-Construction meeting as representative of SAWS			2		2				4		
7.5.2 Observe construction - (est 3.5 months) 2 times a month (7 visits)			4		28			1	33		

**ENGINEER'S FEE SCHEDULE (AIA SAWS)
METHOD OF PAYMENT: LUMP SUM**

PRIME PROVIDER NAME: AIA Engineers, LTD.
 CONTRACT NUMBER:
 PROJECT NAME: Tesla Project
 Date: September 22, 2008

TASK DESCRIPTION	Quantity	Estimating Unit	Project Manager	Senior Engineer	Project Engineer	Engineer Tech	CADD Operator	Clerical/ Admin	Total Labor Hours & Cost	No. of Dwgs	Labor Hours per Sheet
7.5.3 Meet with contractor & inspector to verify red-lines & estimates - 1 time a month (4 visits)			2		16			1	19		
7.5.4 RFI/RFP/Change Orders			2		8			1	11		
7.5.5 Meet with contractor and inspector for field acceptance - 1 time for project					4				4		
HOURS SUB-TOTALS			10	0	58	0	0	3	71		
TOTAL LABOR COSTS			\$ 1,550.00	\$ -	\$ 7,018.00	\$ -	\$ -	\$ 165.00	\$8,733.00		
7.6 Project Close Out & Final Payment									0		
7.6.1 Submit Water & Sewer plan of record			2	4	12				18		
HOURS SUB-TOTALS			2	4	12	0	0	0	18		
TOTAL LABOR COSTS			\$ 310.00	\$ 540.00	\$ 1,452.00	\$ -	\$ -	\$ -	\$2,302.00		
HOURS SUB-TOTALS			49	112	111	68	38	46	424		
CONTRACT RATE PER HOUR			\$ 155.00	\$ 135.00	\$ 121.00	\$ 85.00	\$ 80.00	\$ 55.00			
TOTAL LABOR COSTS			\$ 7,595.00	\$ 15,120.00	\$ 13,431.00	\$ 5,780.00	\$ 3,040.00	\$ 2,530.00	\$47,496.00		

SUMMARY		
AIA Engineers Labor Cost for SAWS	•	\$47,496.00
AIA Engineers Direct Expenses for SAWS		\$0.00
GRAND TOTAL		\$47,496.00

ENGINEER'S FEE SCHEDULE (Bain Medina Bain)
METHOD OF PAYMENT: LUMP SUM

PRIME PROVIDER NAME: AIA Engineers, LTD.
 CONTRACT NUMBER:
 PROJECT NAME: Tesla Project
 Date: September 22, 2008

TASK DESCRIPTION	Qty	Estimating Unit	Project Mgr	Project Land Surveyor	Surveyor in Training	Survey Tech	CADD Operator	Abstractor	3 Man Crew	GPS Two Units	Admin Asst	Total Labor Hours & Cost	No. of Dwgs	Labor Hrs per Sheet
CONTRACT RATE PER HOUR			\$168.00	\$ 134.00	\$ 103.00	\$ 84.00	\$ 87.00	\$ 71.00	\$ 153.00	\$ 70.00	\$ 61.00			
2. Right of Way Surveying and Mapping - Bain Medina Bain, Inc												0		#DIV/0!
2.1 Acquire Ownership Information		parcels		2	6			16				24		#DIV/0!
2.2 Secure Right of Entry		parcels			4			40				44		
2.3 Survey ROW		corners		8		8			16			32	1	32
2.4 Apparent ROW				4	4							8	1	8
2.5 Coordination - AIA												0		
												0	1	0
3. Base Mapping - Bain Medina Bain, Inc												0	1	0
3.1 Establish Primary Project Control												0	1	0
3.1.1 Horizontal		points		2		6			6	6		20	8	3
3.1.2 Vertical		points		2		4			6			12		
3.2 Establish Secondary Project Control												0		
3.2.1 Horizontal		points		2		6			6	6		20		
3.2.2 Vertical		points		2		4			6			12		
3.3 Set Project Baseline		points		2		2			8			12		
3.4 Survey Topographic Features		stations		2		8	16		24			50		
3.4.1 Tie driveway edges and centerline 10' into property				2		4	12		8			26		
3.5 Survey Cross Section w/ spot elevations to develop DTM/Cross Sections				2		6	20		16			44		
3.5.1 25 feet into adjacent property				2		6	12		8			28		
3.5.2 Street intersection 150' both ways				2		6	10		8			26		
3.6 Survey Quality Level B Locates						6			10			16		
3.6.1 Water												0		
3.6.1.1 Valve Box Elevation		locations										0	1	
3.6.1.2 Valve Stem Elevations		locations										0		
3.6.2 Sanitary Sewer												0	1	0
3.6.2.1 Manhole Rings and Covers Elevations		manholes										0	6	0
3.6.2.2 Invert Elevations and Details (size, configurations, flow direction)												0		
3.6.3 Natural Gas												0		
3.6.3.1 Valve Box Elevations		valves										0		
3.6.3.2 Valve Stem Elevations		valves										0		
3.6.3.3 Test Box Elevations		tests										0		
3.6.4 Storm Drainage												0		
3.6.4.1 Manhole Rings and Cover Elevations		manholes										0		
3.6.4.2 Invert Elevations and Details		manholes										0		
3.6.4.3 Curb Inlets												0		
3.6.4.3.1 Top Elevations		inlets										0		
3.6.4.3.2 Floor and Invert Elevations		inlets										0	1	0
3.6.4.3.3 Lateral Details (size, configuration, flow direction, north arrow)												0		
3.6.4.4 Outfall Elevations		outfalls										0		
3.6.5 Underground Electric												0		
3.6.5.1 Manhole Rings and Cover Elevations		manholes										0		
3.6.5.2 Vault Elevations and Dimensions		vaults										0		
3.6.5.3 Conduit Elevations at Vaults		conduits										0		
3.6.6 Underground Telephone												0		
3.6.6.1 Manhole Rings and Covers Elevations		manholes										0	1	0
3.6.6.2 Vault Elevations and Dimensions		vaults										0		
3.6.6.3 Conduit Elevations at Vaults		conduits										0		
3.6.7 Underground Cable Television												0		
3.6.7.1 Manhole Rings and Cover Elevations		manholes										0		
3.6.7.2 Vault Elevations and Dimensions		vaults										0		
3.6.7.3 Conduit Elevations at Vaults		conduits										0		
3.7 Develop Utility Masterplan												0	1	0
3.7.1 Secure Utility Map								16				16		
3.7.2 Mains and Services		stations		6			16					22	1	22
3.8 Survey Trees												0		
3.8.1 All Trees		trees										0		
3.8.2 Show												0		

ENGINEER'S FEE SCHEDULE (Bain Medina Bain)

METHOD OF PAYMENT: LUMP SUM

PRIME PROVIDER NAME: AIA Engineers, LTD.
 CONTRACT NUMBER:
 PROJECT NAME: Tesla Project
 Date: September 22, 2008

TASK DESCRIPTION	Qty	Estimating Unit	Project Mgr	Project Land Surveyor	Surveyor in Training	Survey Tech	CADD Operator	Abstractor	3 Man Crew	GPS Two Units	Admin Asst	Total Labor Hours & Cost	No. of Dwgs	Labor Hrs per Sheet
3.8.2.1 Species		trees										0		
3.8.2.2 Trunk Diameter		trees										0		
3.8.2.3 Spread		trees										0		
3.9 Develop Comprehensive Planimetric Mapping				4			24					28		
3.9.1 From Ground Survey		stations										0		
3.9.2 Show Improvements on adjacent property within 25 feet of ROW		stations										0		
3.9.3 Show Addresses of adjacent Residences		parcels										0		
3.9.4 Show Legal Description of adjacent Properties		parcels										0		
3.10 Construction												0		
3.10.1 Stake project centerline for utility relocations				1	2		2		4			9		
3.11 Coordination and verification - AIA												0		
											Total =	449		

TASK DESCRIPTION			Project Mgr	Project Land Surveyor	Surveyor in Training	Survey Tech	CADD Operator	Abstractor	3 Man Crew	GPS Two Units	Admin Asst	Total Labor Hours & Cost	No. of Dwgs	Labor Hrs per Sheet
HOURS SUB-TOTALS			0	45	16	66	112	72	126	12	0	449		
CONTRACT RATE PER HOUR			\$168.00	\$ 134.00	\$ 103.00	\$ 84.00	\$ 87.00	\$ 71.00	\$ 153.00	\$ 70.00	\$ 61.00			
TOTAL LABOR COSTS			\$ -	\$ 6,030.00	\$ 1,648.00	\$ 5,544.00	\$ 9,744.00	\$ 5,112.00	\$ 19,278.00	\$ 840.00	\$ -	\$ 48,196.00		

DESCRIPTION	# OF UNITS	COST/ UNIT	Cost
DIRECT EXPENSES			
Mileage (# of miles)		\$0.505	\$0.00
Courier Services		\$25.00	\$0.00
Photocopies 11x17: (3 submittals)(10 sets)(15 sheets/set)		\$0.20	\$0.00
Photocopies 8 1/2x11		\$0.10	\$0.00
Direct Expense Total =			\$0.00

SUMMARY			
	Bain Medina Bain Labor Cost		\$48,196.00
	Bain Medina Bain Direct Expenses		\$0.00
	GRAND TOTAL		\$48,196.00

ENGINEER'S FEE SCHEDULE (Camacho-Hernandez)
METHOD OF PAYMENT: LUMP SUM

PRIME PROVIDER NAME: AIA Engineers, LTD.
 CONTRACT NUMBER:
 PROJECT NAME: Tesla Project
 Date: September 22, 2008

TASK DESCRIPTION	Quantity	Estimating Unit	Project Manager	Project Engineer	EIT	Engineer Tech	CADD Operator	Clerical/ Admin	Total Labor Hours & Cost	No. of Dwgs	Labor Hours per Sheet
CONTRACT RATE PER HOUR			\$ 149.76	\$ 95.41	\$ 78.06	\$ 76.62	\$ 65.34	\$ 54.93			
8. Other Plans											
8.1 Prepare Pavement Marking and Signing Plan - Camacho-Hernandez											
8.1.1 Site Visit				2	2			3	7		
8.1.2 Inventory Existing Signs				3	3				6		
8.1.3 Develop Signing and Pavement Markings Layout				8	24	24	24		80		
8.1.4 Select Signing and Pavement Marking Standards				2			4		6		
8.1.5 Summary of Small Signs/S&PM Quantities				2	6				8		
8.1.6 Develop Signing and Pavement Marking General Notes				2				1	3		
8.1.7 Addressing Signing and Pavement Marking Review Comments (3)				3	8	8	8		27		
8.1.8 Coordination with AIA			2	4					6		
								Total =	137		
HOURS SUB-TOTALS			2	26	43	32	36	4	143		
CONTRACT RATE PER HOUR			\$ 149.76	\$ 95.41	\$ 78.06	\$ 76.62	\$ 65.34	\$ 54.93			
TOTAL LABOR COSTS			\$ 299.52	\$ 2,480.66	\$ 3,356.58	\$ 2,451.84	\$ 2,352.24	\$ 219.72	\$ 11,160.56		

DESCRIPTION	# OF UNITS	COST/ UNIT	Cost
DIRECT EXPENSES			
Mileage (# of miles)	75	\$0.505	\$37.88
Photocopies 11x17: (3 submittals)(10 sets)(15 sheets/set) (B&W)	450	\$0.20	\$90.00
Photocopies 8 1/2x11		\$0.10	\$0.00
Direct Expense Total =			\$127.88

SUMMARY		
Camacho-Hernandez Labor Cost		\$11,160.56
Camacho-Hernandez Direct Expenses		\$127.88
GRAND TOTAL		\$11,288.44

**ENGINEER'S FEE SCHEDULE (HVJ)
METHOD OF PAYMENT: LUMP SUM**

PRIME PROVIDER NAME: AIA Engineers, LTD.
 CONTRACT NUMBER:
 PROJECT NAME: Tesla Project
 Date: September 22, 2008

TASK DESCRIPTION	Quantity	Estimating Unit	Senior Engineer	Project Manager	EIT/Staff Engineer	Engineer Tech		Total Labor Hours & Cost	No. of Dwgs	Labor Hours per Sheet
CD Archive	EA		\$5.00	\$0.00						
Film	EA		\$7.00	\$0.00						
Film Processing	EA		\$10.00	\$0.00						
Sub Total				\$250.00						

SUMMARY		
	HVJ Labor Cost	\$15,460.00
	HVJ Direct Expenses	\$14,326.00
	GRAND TOTAL	\$29,786.00



AIA ENGINEERS, LTD.
CONSULTANTS

8535 Wurzbach Road, Suite 210
San Antonio, Texas 78240
Telephone (210) 694-5464
Fax (210) 579-6750
www.aiainc.com

AIA 2008 RATE SCHEDULE
(based on 3.04 multiplier)

CLASSIFICATION	RATE
Principal	\$ <u>175.00</u> hour
Project Manager	\$ <u>155.00</u> hour
Senior Engineer	\$ <u>135.00</u> hour
Project Engineer	\$ <u>121.00</u> hour
Engineering Technician	\$ <u>85.00</u> hour
Cadd Operator	\$ <u>80.00</u> hour
Clerical	\$ <u>55.00</u> hour



7073 San Pedro Ave.
San Antonio, Texas

BAIN MEDINA BAIN 2008 RATE SCHEDULE
(based on 3.5 multiplier)

CLASSIFICATION	RATE
Project Manager	\$ <u>168.00</u> hour
Professional Land Surveyor	\$ <u>134.00</u> hour
S. I. T.	\$ <u>103.00</u> hour
Survey Technician	\$ <u>84.00</u> hour
CADD Operator	\$ <u>87.00</u> hour
Abstractor/ Researcher	\$ <u>71.00</u> hour
3 Man Survey Crew	\$ <u>153.00</u> hour
Admin Assitant	\$ <u>61.00</u> hour

**CAMACHO-HERNANDEZ & ASSOCIATES 2008 RATE SCHEDULE
(based on 2.891 multiplier)**

CLASSIFICATION	RATE
Project Manager	\$ <u>149.76</u> hour
Project Engineer	\$ <u>95.41</u> hour
E.I.T.	\$ <u>78.06</u> hour
Engineering Technician	\$ <u>76.62</u> hour
Cadd Operator	\$ <u>65.34</u> hour
Clerical	\$ <u>54.93</u> hour

Note: Rates based on approved audit done for the Texas Department of Transportation, San Antonio District. Multiplier based on 149.51%(Overhead) + 12.5%(profit) + 3%(inflation). See attached audit and approved rate sheets.

CP&Y, Inc. 2008
RATE SCHEDULE
(based on 3.105 multiplier)

CLASSIFICATION	RATE
Project Manager	\$ <u>190.00</u> hour
Senior Engineer	\$ <u>165.00</u> hour
Engineer	\$ <u>125.00</u> hour
Engineer- in-Training (EIT)	\$ <u>100.00</u> hour
Senior Engineering Tech	\$ <u>120.00</u> hour
Engineering Technician	\$ <u>100.00</u> hour
Cadd Operator	\$ <u>65.00</u> hour
Admin/Clerical	\$ <u>65.00</u> hour



10100 Reunion Place, Suite 850
San Antonio, TX 78216

HVJ ASSOCIATES, INC. 2008 RATE SCHEDULE
(based on 2.147 multiplier)

CLASSIFICATION	RATE
Project Manager	\$ <u>125.00</u> hour
Senior Engineer	\$ <u>150.00</u> hour
Staff Engineer	\$ <u>95.00</u> hour
Engineering Technician	\$ <u>95.00</u> hour

**Direct Expenses
For Prime and Sub-Providers**

9/22/2008

Other Direct Expenses	Unit	Rate
Mileage	mile	0.505
Parking	day	
Postage	each	Current Postal Rate*
Standard Postage	letter	Current Postal Rate*
Courier Services (Deliveries)	each	\$25.00
Photocopies B/W (8 1/2 X 11)	each	\$0.10
Photocopies B/W (11 X 17)	each	\$0.20
Photocopies Color (8 1/2 X 11)	each	\$1.00
Photocopies Color (11 X 17)	each	\$1.50
Bond Paper Plot (Blueline/Blackline)	linear foot	\$2.00
Blueline/Blackline Prints (8 1/2" X 11")	sheet	0.15
Blueline/Blackline Prints (11" X 17")	sheet	0.3
Blueline/Blackline Prints (22" X 34")	sheet	1.25
Plots (B/W on Bond)	square foot	\$0.38
Plots (Color on Bond)	square foot	\$3.50
Plots (Color on Photographic Paper)	square foot	\$4.00
Vellum Plot	linear foot	\$1.50
Mylar (11" X 17")	sheet	\$4.00
CDs	each	\$3.00
CD Archive	each	\$5.00
DVD	each	\$3.00
Scanning	square foot	\$1.00
Lamination	square foot	\$2.00
Report Binders	each	\$5.00
Film - 24 Exp Roll	roll	\$7.00
Film Processing - 24 Exp Roll	roll	\$10.00
Aerial Photographs (1" = 500' scale)	each	\$70.00
Aerial Photographs(1"=500' scale)(DVD)234 panels	each	\$350.00
Aerial Photographs (CD or DVD)	county	\$1,500.00

Other Direct Expenses (Surveying):	Unit	Rate
GPS Unit	hour	\$35.00
Traffic Control	hour	\$31.00
Robotic Total Station	day	\$25.00
Digital Level	hour	\$6.00
Official Real Property Records	sheet	\$1.50
Type II Right of Way Marker (M-92)	each	\$21.00
Map Records	sheet	\$5.00
Certified Deed Copies	sheet	\$1.60

Other Direct Expenses (Geotechnical):	Unit	Rate
Minimum Rig Charge	EA	\$560.00
Mobilization/Demobilization	EA	\$300.00
Mobilization	MI	\$2.20
Soil Drilling Minimum Charge	Boring	\$120.00
Drilling & Sampling - Soils 0' to 25'	LF	\$15.00

Other Direct Expenses	Unit	Rate
Drilling & Sampling - Rock/Soils 0' to 25'	LF	\$22.00
Standard Penetration Tests (SPT)	EA	\$20.00
Bore Casing	LF	\$8.25
TxDOT Cone Penetration Tests	EA	\$25.00
Borehole Grouting, bentonite chips	LF	\$7.00
Piezometer Completion	EA	\$260.00
Piezometer Abandonment	EA	\$260.00
Support Truck	DAY	\$82.00
Vehicle Trips	EA	\$50.00
Logging or Water Readings - Field Technician	EA	\$55.00
Staking & Utility Clearance Coordination, Sr. Technician	EA	\$55.00
Street Cut Permit, bonding & Add'l insurance	EA	\$500.00
Pavement Coring (up to 6 inch diameter)		
Asphalt	EA	\$84.00
Concrete	EA	\$182.00
Traffic Control (per MUTCD)		
Traffic Control-Devices for single lane closure		Cost +5%
Traffic Control - Off-duty Police Officer		at Cost
Site Clearance		at Cost
Nondestructive Deflection Testing (NDT)		
Mobilization/Demobilization	EA	\$210.00
Mobilization	MI	\$2.00
Testing	DAY	\$2,500.00
Traffic Control		Cost +5%
Laboratory Testing - Standard		
Natural Moisture Content (including Visual Classification)	EA	\$15.00
Moisture Content + Dry Density (ASTM D2937)	EA	\$24.00
Atterberg Limits (Liquid and Plastic Limits)(ASTM D4318)	EA	\$60.00
Percent Passing No. 200 Sieve (ASTM D1140)	EA	\$45.00
Sieve Analysis (ASTM D422)	EA	\$65.00
Hydrometer (ASTM D422)	EA	\$170.00
Unconfined Compressive Strength Tests - Soil (ASTM D2166)	EA	\$50.00
Unconfined Compressive Strength Tests - Rock (ASTM D2938)	EA	\$50.00
Laboratory Testing - Advanced		
Swell Test	EA	\$255.00
Consolidation Test	EA	\$364.00
Standard Proctor (ASTM D698)	EA	\$230.00
Direct Shear UU (3 points)	EA	\$520.00
UU Triaxial Compression (3 points)	EA	\$147.50
CU Triaxial Compression (3 points)	EA	\$660.00
Texas Triaxial	EA	\$2,000.00
pH Test	EA	\$26.00
Chloride Test	EA	\$26.00
Sulfide Test	EA	\$76.00
CBR	EA	\$468.00

ATTACHMENT 2

PROJECT DESIGN PHASES TIMELINE

Activity	Pricing	Timeline in Calendar Days
Preliminary Engineering Report (if required)	\$0.00	N/A
40% Design	\$165,475.36	120
70% Design	\$82,737.68	95
95% Design	\$82,737.68	90
Bid Documents	\$20,684.42	95
Construction Engineering DESIGN CONSULTANT will be paid 10% of the total compensation due DESIGN CONSULTANT during this Phase in proportion to the percentage of construction completed by the CONSTRUCTION CONTRACTOR. DESIGN CONSULTANT will be paid 100% of this Phase upon completion, Final Inspection and upon Project acceptance.	\$41,368.84	200
Project Closeout	\$20,684.42	66

- A. DESIGN CONSULTANT shall complete the PROJECT in accordance with the Phases as indicated above. All Phases and any additional services to be performed in connection with this AGREEMENT shall be performed under Task Orders. CONSULTANT shall complete a Task Order for each Work Task that the City requests to be performed under this AGREEMENT. Task Orders shall be numbered sequentially starting with number one and must reference this contract. The CITY will either approve or disapprove each Task Order. Once a Task Order is approved, it will become a part of this AGREEMENT. A Sample Task Order Form is included as part of this Attachment 2.
- B. A negotiated fixed price, hourly, or lump-sum amount for each Work Task may be derived based on the scope of services, and will be based substantially on contractual pre-described and not to exceed pre-priced tasks and/or hourly rates included in this Agreement and in Attachments "1," "2" and "3".
- C. Payment may also be made based solely on the tasks completed and approved by the Director, and the associated unit price for each Work Task as may be described in fee schedule and/or hourly rates included in Attachments "1," "2" and "3".
- D. **CONSULTANT** must obtain the prior written approval of the **CITY** for any additional line items not described in the Contract Documents. Additional services which are not included in the Documents (not described in Attachment 1 hereto), must be approved by the Director as being appropriately within the SCOPE OF SERVICES of this **AGREEMENT**.
- E. All Task Orders and Applications for Compensation shall be submitted using the CITY's Program Management Portal.

ATTACHMENT 3

COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

The Compensation as described in Article II and Attachment I of this Agreement establishes the compensation to the DESIGN CONSULTANT for all services to be performed by DESIGN CONSULTANT or under its direction except the services as set forth below. These additional services and the compensation to be paid by the CITY to the DESIGN CONSULTANT for their performance when authorized in writing by the Director or his representative are set forth as follows:

- A. The basis for compensation for additional services may be in one or more of the following forms:
1. \$175.00 per hour for testimony of principals.
 2. Direct salary cost times a multiplier of with a stated maximum not to be exceeded, other than testimony of principals to be negotiated if applicable.
 3. Reimbursement of non-labor expense and subcontract expense at invoice cost plus a 15% service charge.
 4. Lump sum is not applicable to this project.
 5. Lump sum per item of work to be negotiated per taskorder with a total not to exceed an amount of \$51,898.84.
- B. Examples of additional services (not all inclusive).
1. Assistance to the CITY as an expert witness in any litigation with third parties arising from the development or construction of the Project including the preparation of engineering data and reports.
 2. Preparation of plats and field notes for acquisition of property required for the construction of the project.
 3. Preparation of applications and supporting documents for Governmental grants, loans or advances in connection with the Project; Preparation or review of environmental assessment and impact statements; Review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approval of authorities having jurisdiction over the anticipated environmental impact of the Project.
 4. Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or are due to other causes not solely within the control of the DESIGN CONSULTANT.
 5. Providing detailed information of:

- a. Owning, operation, maintenance and overhead costs of material and equipment, or
 - b. Quantity surveys of material, equipment and labor, or
 - c. Inventories of material and equipment, or
 - d. Investigations, surveys, valuations, inventories or detailed appraisals of facilities, construction and/or services not required by the Base Contract.
6. Cash flow and economic evaluations, rate schedules and appraisals.
 7. Audit or inventories required in connection with construction performed by the CITY.
 8. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by CONSTRUCTION CONTRACTOR(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by CONSTRUCTION CONTRACTOR.
 9. Services during out of town travel required of DESIGN CONSULTANT.
 10. Additional services during construction made necessary by:
 - a. Work damaged by fire or other cause during construction.
 - b. A significant amount of defective or neglected work of CONSTRUCTION CONTRACTOR(s).
 - c. Failure of performance of CONSTRUCTION CONTRACTOR(s).
 - d. Acceleration of the progress schedule required by the CITY involving services beyond normal working hours.
 - e. Default by CONSTRUCTION CONTRACTOR(s).
 11. Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
 12. Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.
 13. Services after completion of the construction phase, such as inspections during any guaranteed period and reporting observed discrepancies under guarantee called for in any contract for the Project.

14. Additional copies of contract documents, review documents, bidding documents, reports, drawings and specifications over the number specified in the Base Contract.
15. Preparation of all documents dealing with 404 permits, highway permits, and railroad agreements, and any other specialized permits as required (i.e., CLOMR/LOMR).
16. Preparation of driveway plats (specialized design).
17. Providing photographs, renderings or models for CITY use.
18. Providing services of aerial mapping firm.
19. Providing services to investigate existing conditions or facilities or to make measured drawings thereof or to verify the accuracy of drawings or other information furnished by the CITY.
20. Providing services for exploration of utilities to include detailed measurements, surveys and verification of information provided by CITY and/or utility companies, to include Level A and B Subsurface Utility Exploration (SUE) work.
21. Preparing drawings, specifications and supporting data and providing other services in connection with Change Order Requests to the extent that the adjustment in the basic compensation resulting from the adjusted construction cost is not commensurate with the services required of the DESIGN CONSULTANT, provided such Change Order Requests are required by causes not solely within the control of the DESIGN CONSULTANT.
22. Providing other services not otherwise included in this Agreement which are not customarily furnished in accordance with generally accepted engineering practice to include design enhancement and utility design.

C. Fee Eligible

1. Fee eligible as it relates to Change Orders is defined as requiring significant engineering effort to compute and document the Work effort reflected by the Change Order. Determination of "Fee Eligible" shall be made by the CITY Engineer.

D. Salary Cost

1. Salary cost is defined as the cost of salaries of architects, engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc. for time directly chargeable to the Project, plus customary and statutory benefits including but not limited to social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation and holiday pay applicable thereto.

E. Principals of the Consulting Firm

1. For the purpose of this provision, the Principals of the Consulting Firm and their total hourly charge will be as follows, except as stated previously for testimony as expert witnesses:

Ashraf Islam	\$175.00	per	hour
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ATTACHMENT 4
SBEDA PLAN DOCUMENTS

FORM 6
GOOD FAITH EFFORT PLAN
 (Page 1 of 4)

NAME OF PROJECT: Bond Engineering Services, RFO-2007-ENG

BIDDER/PROPOSER INFORMATION:

Name of Bidder/Proposer: AIA Engineers, Ltd.

Address: 8535 Wurzbach Road, Suite 210

City: San Antonio

State: Texas

Zip: 78240

Phone Number: 210-694-5464

E-mail address: iquintero@aiainc.com

Is your firm certified? Yes No
 (If yes, please submit Certification Certificate.)

1. List all subcontractors/suppliers that will be used for this contract. (Indicate all MBEs-WBEs-AABEs-SBEs. Use additional sheets as needed.)

NAME AND ADDRESS OF SUBCONTRACTOR'S/SUPPLIER'S COMPANY	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE-AABE- SBE CERTIFICATION NUMBER
Bain Medina Bain, Inc.	N/A	10%	207041320
Camacho-Hernandez & Associates, LLC	N/A	5%	207026421
Chiang Patel & Yerby, Inc.	N/A	10%	207020586
HVJ Associates, Inc.	N/A	5%	201041554
Pate Engineers, Inc.	N/A	10%	

Only companies certified as an MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied toward the contracting goals. All MBE-WBE-AABE-SBE subcontractors or suppliers must submit a copy of their certification certificate through the Prime Contractor. **Proof of certification must be attached to this form.** If a business is not certified, please call the Small Business Program Office at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.

054
REQUEST FOR APPROVAL:
CHANGE TO ORIGINAL AFFIRMED LIST OF SUBCONTRACTORS/SUPPLIERS

The Contractor, AIA Engineers, Ltd., performing work on a project known as Tesla; Culebra to Mayberry, requests approval of the following addition(s) and/or deletion(s) on the Affirmed List of Subcontractors, as originally submitted as part of the BID/PROPOSAL on the above named project:

CHANGES

ADD	DELETE	NAME	MBE-WBE-AABE-SBE (Y/N)	PERCENT AND DOLLAR AMOUNT OF CONTRACT
	X	Pate Engineering	N	\$77,384.52 (16%)
		Transfer to AIA		
		AIA Engineers, Ltd.	Y	\$66,367.00

JUSTIFICATION

Had Pate Engineering as support in organization chart in RFP Submittal. Due to slow down and cancellations of other projects, AIA has the resources in-house to complete the project without Pate's support.

AFFIRMATION

THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF, I FURTHER UNDERSTAND AND AGREE THAT THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Name & Title of Authorized Official: Janice E. Kruse, Vice President

Signature: *Janice E. Kruse*

DIRECTOR OF CIVICS

Approved: *[Signature]* 11/17/08

DIRECTOR OF ECONOMIC DEVELOPMENT *[Signature]*

Approved: _____



GOOD FAITH EFFORT PLAN

(Page 2 of 4)

PROJECT NAME: Bond Engineering Services, RFO-2007-ENG

~~It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of Economic Development and Director of the appropriate contracting department (through the submittal of the Request for Approval of Change to Original Affirmed Good Faith Effort Plan).~~

NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

GOOD FAITH EFFORT PLAN

(Page 3 of 4)

PROJECT NAME: Bond Engineering Services, RFO-2007-ENG

7. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	REASON FOR REJECTION

8. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.

9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.

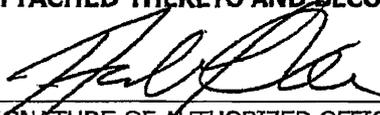
Contact Person: Ashraf Islam

Phone Number: 281-493-4140

10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

GOOD FAITH EFFORT PLAN AFFIRMATION

I HEREBY AFFIRM THAT THE INFORMATION PROVIDED IN THIS GOOD FAITH EFFORT PLAN IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.



SIGNATURE OF AUTHORIZED OFFICIAL

Principal

TITLE OF OFFICIAL

12/07/07 281-493-4140
DATE PHONE NUMBER

GOOD FAITH EFFORT PLAN

(Page 4 of 4)

PROJECT NAME: Bond Engineering Services, RFQ-2007-ENG

FOR CITY USE

Plan Reviewed By: _____

Recommendation: Approval Denial

Action Taken: Approved Denied

DIRECTOR OF ECONOMIC DEVELOPMENT

DATE

HUE JUSTIFICATION DATA

AIA Engineers, Ltd. TxDOT San Antonio Letters of Interest Submittals and Results:

Date	Project ID #	Contract #	Description	Result		
				As Prime	As Subconsultant	Fee
11/13/06	15-7RFP5003		Prelim Eng/Env/Schematics	S/L, Not Awarded		
10/16/06	15-7RFP5002	15-078P5014	PS&E - Rural/Urban Settings	Not Awarded	Wilbur Smith & Assoc	\$200,000
10/02/06	15-7RFP5001	15-748P5004	PS&E - Bridge Projects	Not Awarded	CH2M Hill	\$200,000
03/20/06	15-648P5021		Traffic Engineering	Not Awarded		
03/06/06	15-648P5005	15-648P5012	PS&E - Rural/Urban Settings	S/L, Not Awarded	CH2M Hill	\$220,000
01/30/06	15-648P5016	15-648P5016	PS&E - Various Projects	Not Awarded	CH2M Hill	\$260,000
11/07/05	15-648P5005		PS&E - Rural/Urban Settings	S/L, Not Awarded		
09/19/05	15-648P5001		Traffic Engineering	Not Awarded		
02/28/05	15-5RFP5001		PS&E - Rural/Urban Settings	S/L, Not Awarded		

Note: There were no 2007 San Antonio District RFQs that were applicable to the services AIA Engineers Ltd provides.

AIA ENGINEERS, LTD.
S/M/W/DBE POLICY

~~AIA Engineers, Ltd. (AIA) has a vital interest in utilizing local, small, MBE-WBE-AABE businesses in a percentage that equals or exceeds the Client's goals.~~

It is the policy of AIA to involve Small, Minority, Women, African-American and Locally-Owned Business Enterprises (S/M/W/AABE) to the greatest extent feasible in its prime consulting contracts. The intent and purpose of this policy is to ensure that S/M/W/AABE firms have the opportunity to participate in consulting contracts without discrimination on the basis of race, color, religion, national origin, age, gender or disability.



SCTRCA

Minority and Women Business Enterprise
(MWBE) Program

AIA Engineers, Ltd.

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified, in accordance with SCTRCA Policies and Procedures, as a:

SBE MBE

This Certification Certificate must be updated by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantage status, ownership, or control requirements and any material changes in the information provided in the submission of the business application for certification.

CERTIFICATE EXPIRES: **08/31/09**

CERTIFICATE NO. **207087188**

Certified in the following work categories:
North American Industry Classification System (NAICS) code(s):

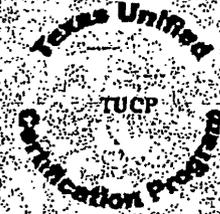
541330 Engineering Services

Sheena D Suber
EXECUTIVE DIRECTOR



SCTRCA

Small, Disadvantaged, Minority, Women
Business Enterprise (S/D/M/WBE)
Program



Bain Medina Bain, Inc.

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified in the Texas Unified Certification Program, in accordance with 49 CFR Part 26 and SCTRCA Policies and Procedures, as a:

SBE WBE DBE

This Certification Certificate must be updated by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantage status, ownership, or control requirements and any material changes in the information provided in the submission of the business application for DBE certification.

CERTIFICATE EXPIRES: 04/30/08

CERTIFICATE NO: 207041320

Certified in the following work categories:
North American Industry Classification System (NAICS) code(s)

541330 Engineering Services

541370 Surveying and Mapping (Except Geophysical) Services

A handwritten signature in cursive script, appearing to read "Sheena D. Suber".

Sheena D. Suber
EXECUTIVE DIRECTOR



SCTRCA

Small, Disadvantaged, Minority,
Women
Business Enterprise (S/D/M/WBE)
Program



Camacho- Hernandez & Associates, LLC

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified in the Texas Unified Certification Program, in accordance with 49 CFR Part 26 and SCTRCA Policies and Procedures, as a:

SBE MBE DBE

This Certification Certificate must be updated by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantage status, ownership, or control requirements and any material changes in the information provided in the submission of the business application for DBE certification.

CERTIFICATE EXPIRES: 02/28/08

CERTIFICATE NO. 207026421

Certified in the following work categories:
North American Industry Classification System (NAICS) code(s):

541330 Engineering Services

A handwritten signature in cursive script that reads "Sheena D. Suber".

Sheena D. Suber
EXECUTIVE DIRECTOR



SCTRCA

Minority and Women Business Enterprise
(MWBE) Program

Chiang, Patel & Yerby, Inc.

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified, in accordance with SCTRCA Policies and Procedures, as a:

MBE

This Certification Certificate must be updated by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantage status, ownership, or control requirements and any material changes in the information provided in the submission of the business application for certification.

CERTIFICATE EXPIRES: 02/28/09

CERTIFICATE NO. 207020586

Certified in the following work categories:
North American Industry Classification System (NAICS) code(s):

541330 Engineering Services

Sheena D. Suber
EXECUTIVE DIRECTOR



SCTRCA

Small, Disadvantaged, Minority,
Women
Business Enterprise (S/D/M/WBE)
Program



HVJ Associates, Inc.

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified in the Texas Unified Certification Program, in accordance with 49 CFR Part 26 and SCTRCA Policies and Procedures, as a:

SBE AABE MBE DBE

This Certification Certificate must be updated by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantage status, ownership, or control requirements and any material changes in the information provided in the submission of the business application for DBE certification.

CERTIFICATE EXPIRES: 12/31/07

CERTIFICATE NO. 201041554

Certified in the following work categories:

North American Industry Classification System (NAICS) code(s):

541330 Engineering Services
541620 Environmental Consulting Services
541380 Testing Laboratories

A handwritten signature in black ink, appearing to read "Bridget Negron Booth".

**Bridget Negron Booth
EXECUTIVE DIRECTOR**

(ATTACHMENT 6-A)
CITY OF SAN ANTONIO

LETTER OF INTENT FOR CONTRACTS
UTILIZING SMALL BUSINESS CONTRACTING GOALS

NAME OF PROJECT: Bond Engineering Services, ID# RFQ-2007-Eng

Name of bidder's/proposer's firm: AIA Engineers, Ltd.

Address: 15310 Park Row

City: Houston State: TX Zip: 77084

Name of Subcontractor/Supplier: Bain Medina Bain, Inc.

Address: 7073 San Pedro Ave.

City: San Antonio State: TX Zip: 78216

Telephone: 210-494-7223 Contact Person: Pamela Bain

Is the above firm Certified?: Yes No If certified, Certification No: 207041320

If firm is certified, please attach a copy of the Certification Certificate with this form.

Description of work to be performed by firm:
Civil Engineering and Surveying Services

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ 10% (AIA)

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: Pamela Bain 12/3/2007
Signature of Firm's Representative Date

Title: President

Submit this page for each Subcontractor/Supplier to be utilized on this contract/project.

(ATTACHMENT 6-A)
CITY OF SAN ANTONIO

LETTER OF INTENT FOR CONTRACTS
UTILIZING SMALL BUSINESS CONTRACTING GOALS

NAME OF PROJECT: Bond Engineering Services, ID# RFQ-2007-Eng

Name of bidder's/proposer's firm: AIA Engineers, Ltd.

Address: 8535 Wurzbach Road, Suite 210

City: San Antonio State: Texas Zip: 78240

Name of Subcontractor/Supplier: Camacho-Hernandez & Hernandez, LLC

Address:
1603 Babcock Rd, Ste 260

City: San Antonio State: Texas Zip: 78229

Telephone: 210-341-6200 Contact Person: John Hernandez

Is the above firm Certified?: Yes No If certified, Certification No: 207026421

If firm is certified, please attach a copy of the Certification Certificate with this form.

Description of work to be performed by firm:
Engineering Support Services

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ 5% (AIA).

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By:  12/04/07
Signature of Firm's Representative Date

Title: President

Submit this page for each Subcontractor/Supplier to be utilized on this contract/project.

(ATTACHMENT 6-A)
CITY OF SAN ANTONIO

LETTER OF INTENT FOR CONTRACTS
UTILIZING SMALL BUSINESS CONTRACTING GOALS

NAME OF PROJECT: City of San Antonio Bond Engineering Services

Name of bidder's/proposer's firm: AIA Engineers, AIA

Address: 8535 Wurzbach Road, Suite 210

City: San Antonio State: Texas Zip: 78240

Name of Subcontractor/Supplier: Chiang, Patel & Yerby, Inc.

Address: 300 East Sonterra Blvd, Ste. 1250

City: San Antonio State: TX Zip: 78258

Telephone: 210-494-8004 Contact Person: Jaime Aguilar, PE

Is the above firm Certified?: Yes No If certified, Certification No: 207020586

If firm is certified, please attach a copy of the Certification Certificate with this form.

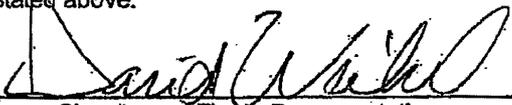
Description of work to be performed by firm:

Environmental and support on Engineering Services – Structural & Roadway

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ Unknown 10% (AIA).

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: 

Signature of Firm's Representative

December 4, 2007

Date

Title: Vice President

Submit this page for each Subcontractor/Supplier to be utilized on this contract/project.

(ATTACHMENT 6-A)
CITY OF SAN ANTONIO

LETTER OF INTENT FOR CONTRACTS
UTILIZING SMALL BUSINESS CONTRACTING GOALS

NAME OF PROJECT: Bond Engineering Services, ID# RFQ-2007-Eng

Name of bidder's/proposer's firm: AIA Engineers, Ltd.

Address: 8535 Wurzbach Road, Suite 210

City: San Antonio State: Texas Zip: 78240

Name of Subcontractor/Supplier: HVJ Associates, Inc.

Address: 10100 Reunion Place, Suite 850

City: San Antonio State: Texas Zip: 78216

Telephone: 866-447-9081 Contact Person: Jason Schwarz

Is the above firm Certified?: Yes No If certified, Certification No: SCTRCA 201041554

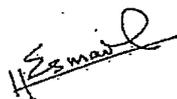
If firm is certified, please attach a copy of the Certification Certificate with this form.

Description of work to be performed by firm:
Geotechnical engineering

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The percentage of work is % not available .5% (AIA).

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: 
Signature of Firm's Representative

November 28, 2007
Date

Title: Vice President

Submit this page for each Subcontractor/Supplier to be utilized on this contract/project.

(ATTACHMENT 6-A)
CITY OF SAN ANTONIO

LETTER OF INTENT FOR CONTRACTS
UTILIZING SMALL BUSINESS CONTRACTING GOALS

NAME OF PROJECT: Bond Engineering Services, ID# RFQ-2007-Eng

Name of bidder's/proposer's firm: AIA Engineers, Ltd.

Address: 8535 Wurzbach Road, Suite 210

City: San Antonio State: Texas Zip: 78240



Name of Subcontractor/Supplier: Pate Engineers, Inc.

Address:
8200 IH-10 West, Suite 440

City: San Antonio State: TX Zip: 78230

Telephone: 210-340-8481 Contact Person: Ron Hallenberger

Is the above firm Certified?: Yes No If certified, Certification No: _____

If firm is certified, please attach a copy of the Certification Certificate with this form.

Description of work to be performed by firm:

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ 10% (AIA).

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: *Charles R. Hallenberger* 12/4/07
Signature of Firm's Representative Date

Title: Vice President

Submit this page for each Subcontractor/Supplier to be utilized on this contract/project.

ATTACHMENT 5
SAWS SCOPE OF SERVICES

**ATTACHMENT 5
SAN ANTONIO WATER SYSTEM
(SAWS)
SCOPE OF SERVICES**

The Consultant shall perform his obligations under this Agreement the following engineering design: phases 40 % Design, 70% Design, 95% Design, Bid Documents, Construction Engineering Services and Project Close Out & Final Payment.

1. 40% Design

The Consultant shall:

- (a) Meet with SAWS staff to further define the scope of the proposed water, sewer or recycle main work within the COSA project limit. SAWS shall make known to the Consultant other elements that might directly affect the project. Consultant will be given any information about ongoing SAWS projects or projects recently completed that might impact the design of the proposed project. .
- (b) Consultant to obtain written authorization from COSA concurrent with SAWS prior to commencing any additional services. Consultant will bear all expenses for any additional services done by the Consultant without having an approved proposal from COSA concurrent with SAWS in writing.
- (c) Consultant to obtain the necessary and latest rules and regulations, specifications, special specifications, ordinances, codes, TCEQ, EPA, and any other pertinent governing entity requirements for the development of design plans and supporting documents.
- (d) Consultant to obtain the latest dgn cells and drawing symbols from SAWS website http://www.saws.org/business_center/specs/cadd/CADD_Standards.pdf to prepare the SAWS design plans.
- (e) Identify and show on the plan view any existing sewer, water or recycle main easements as part of this phase of work.
- (f) Prior to submitting the 40% Phase Plans identify as early as possible any potential conflicts with proposed utilities, storm drain features, street reconstruction designs, etc., and submit a potholing plan in written form. As the project further develops additional potholing can be requesting in written form.
- (g) If SAWS work is outside the limits of the COSA project limits but the work is necessary to accommodate the COSA project the consultant will need to perform additional field surveys, within the project right-of-way or easements, required to establish existing right-of-way or easement boundaries (but not right-of-way acquisition surveys), and, where necessary, site topography required to collect information needed in the design of the water, sewer or recycle main work.
- (h) Provide SAWS the COSA (Plan View) Schematic Layouts with SAWS proposed water/sewer/recycle main alignments if SAWS facilities are to be replaced and show proposed adjustments if adequate information is available to make this determination.

40% plans shall include as a minimum but not limited to the following:

Location Map
Project Limits
SAWS Water and Sewer Job Numbers
SAWS Standard Title Block
Existing water and sewer facilities to include (material type, size of pipes and date of installation)
Recommendations for adjustment if possible using the latest rules and regulations, ordinances, codes, TCEQ, and any other pertinent governing entity requirements for the development of the 40 % design
Recommendation for additional Geotechnical required for the SAWS work not included as part of the COSA proposed work
Consultant to include any other pertinent information deemed necessary in the preparation of the 40 % Design plans into the Internet-based Project Management Systems.

- (i) SAWS will review the plans and documents and provide written comments to the Consultant. Comments will be mailed and also be provided in the COSA internet-based Project Management System. Consultant to address all comments and to provide a written narrative addressing all comments. Comments will need to be addressed prior to proceeding to the next phase of work. If the Consultant does not understand the comment and a meeting is necessary, SAWS will meet with the consultant to clarify any question. Consultant will need to address SAWS comments in a timely manner to keep in phase with the COSA schedule.
- (j) Furnish an opinion of Probable Construction Cost based on the plan and supporting documents of the proposed construction. The probable cost opinion will be based on consultant using the latest unit prices provided by SAWS for similar work and consultants experience and research to include adjustment to reflect the ease or difficulty of constructing the project.
- (k) After acceptance and approval of 40% plans, consultant to provide SAWS with two copies.

2. 70 % Design

The Consultant shall:

- (a) During the design of the 70% plans consultant can request any additional potholing required to verify if an adjustment to the existing water main is required. Consultant shall also try to minimize the adjustment of large water mains 20-inches and larger if possible by looking at modifying the proposed storm drain work if possible.
- (b) Prior to completing the 70 percent water main design plans consultant to coordinate with SAWS to conduct a test shutdown of the water system to determine if the proposed water main work can be done with minimal disruption to the customers. If the test shutdown indicates that the proposed water main design requires additional valves or a temporary water main consultant to include this design with the final 70% design plans submitted to SAWS for review.
- (c) 70% design plans shall include as a minimum but not limited to the following
 - Separate sets of plans for water and sewer
 - Cover Sheet for the water plans and the sewer plans (to include a location map and SAWS job number)
 - Overall SAWS utility layout plan
 - General Notes for water and sewer work with quantities for water and sewer on respective

plan sets

Plan and Profile Sheets with appropriate SAWS Title Block for said project. Consultant to obtain SAWS Title Blocks from the SAWS Web page

Plan and Profile sheets for all proposed sewer lines. Each sheet will have a plan and profile.

Plan and Profile sheets for water mains 20" and larger

Existing water and sanitary sewer easements

Include any SAWS or other details required for clarification on proposed work in relation to the project as necessary.

- (d) Show on the plan and profile existing topographical features, improvements, and proposed street and drainage improvements within and outside the right-of-way necessary for the design of the Project. Also show any fences, trees, shrubs or structural encroachments, and identify whether or not removal is necessary for construction and show tap numbers, service sizes, N.C.B., Block No. Lot No. and house numbers for each residence on the plans. Consultant is also to obtain addresses for platted vacant lots from the City of San Antonio and show the new addresses on the plans. SAWS will provide the Consultant with new tap numbers.
- (e) Project drawings shall be included, but not be limited to, plan and profile sheets with the plan view at a scale of 1"=40' horizontal and vertical, 1" =5' vertical scales for the profile. All 70% design drawings shall be submitted on 11" x 17".
- (f) SAWS will review the plans and documents and provide written comments to the Consultant. Comments will be mailed and also be provided in the COSA internet-based Project Management System. Consultant to address all comments and to provide a written narrative addressing all comments. Comments will need to be addressed prior to proceeding to the next phase of work. If the Consultant does not understand the comment and a meeting is necessary, SAWS will meet with the consultant to clarify any question. Consultant will need to address SAWS comments in a timely manner to keep in phase with the COSA schedule.
- (g) After acceptance and approval of 70% plans, consultant to provide SAWS with two copies
- (h) Furnish an opinion of Probable Construction Cost based on the plan and supporting documents of the proposed construction. The probable cost opinion will be based on consultant using the latest unit prices provided by SAWS for similar work and consultants experience and research to include adjustment to reflect the ease or difficulty of constructing the project.

3. 95% Design

The Consultant Shall:

- (a) SAWS is part of the COSA joint bid process, and the Consultant is to prepare drawings and documents for any SAWS' permits related to the SAWS work of the COSA project. This should include but not limited to TxDOT permits, Bexar County permits, Railroad Permits, or any other permit required.
- (b) Prepare Change of Service forms for all affected services. Existing service data and proper form shall be provided by the SAWS. Consultant to obtain change of service forms from the SAWS Web page. Consultant to submit one change of service form for review and comments. Consultant to submit three approved change of service forms to the SAWS.
- (c) Detailed specifications shall be developed using the San Antonio SAWS Standard Specifications for Construction, latest revisions and other necessary special specification.

- (d) 95% plans should be substantially complete to include specification and standard details or other details as required for the construction of the project.
- (e) SAWS will review the plans and documents and provide written comments to the Consultant. Comments will be mailed and also be provided in the COSA internet-based Project Management System. The Consultant is to address all comments and to provide a written narrative addressing all comments. Comments will need to be addressed prior to proceeding to the next phase of work. If the Consultant does not understand the comment and a meeting is necessary, SAWS will meet with the consultant to clarify any question. Consultant will need to address SAWS comments in a timely manner to keep in phase with the COSA schedule.
- (f) After acceptance and approval of 95% plans, consultant to provide SAWS with two copies.

4. Bid Document

The Consultant Shall:

- (a) Consultant to provide all necessary bid plans and all bid documents in conjunction with the COSA bid package to SAWS for review and approval.
- (b) SAWS will review the plans and documents and provide written comments to the Consultant. Comments will be mailed and also be provided in the COSA internet-based Project Management System. Consultant to address all comments and to provide a written narrative addressing all comments. Comments will need to be addressed prior to proceeding to the next phase of work. If the Consultant does not understand the comment and a meeting is necessary, SAWS will meet with the consultant to clarify any question. Consultant will need to address SAWS comments in a timely manner to keep in phase with the COSA schedule.
- (c) After acceptance and approval of bid plans, consultant to provide SAWS with two complete copies to include the COSA proposed work.
- (d) Attend the pre-bid meeting provide meeting minutes. Two (2) copies of meeting minutes shall be submitted to SAWS for review and approval.
- (e) If necessary prepare signed and sealed addendums.
- (f) Attend the bid opening, review the SAWS portion of the Bid Tabulation and submit a written analysis of SAWS work.

5. Construction Engineering Services:

The Consultant Shall:

- (a) Attend COSA citizen meetings as representative of SAWS. Prepare project specific exhibits for public meetings and workshops as required by SAWS
- (b) Attend Pre-Construction meeting as the Design Engineer representative of SAWS proposed work. Write meeting minutes and submit two (2) copies of meeting minutes to SAWS.

- (c) Since this is a joint project with COSA the contractor will provide any survey staking or cutsheets required for SAWS project.
- (d) The Consultant will provide SAWS the same services as indicated in Article IV Scope of Services with the addition of one site visit in which the contractor, SAWS inspector and the consultant will verify that field information is being transposed into the field copy plans for future development of plan of record drawings.

6. Project Close Out & Final Payment:

The Consultant Shall:

- (a) SAWS will defer to the COSA 3.1.7 for services to be provided by the consultant for SAWS work.
- (b) In addition SAWS will be requesting that the consultant provide the following:

The requirements and standards are:

All submitted engineering drawings of proposed SAWS projects and SAWS Plan of Records drawings must include a single Overall Utility Plan in an electronic 2D (two dimensional) CADD version along with the required hard copies. An electronic CADD design of the Overall Utility Plan will be submitted at the bid phase followed by an updated electronic version of the Overall Utility Plan based on the As-Built submittal of Plan of Records at the completion of the project.

Surveying required for the project and by the contract will be based on Texas State Plane, South Central NAD 83 projection. All CADD drawings must be submitted in the Texas State Plane, South Central NAD 83 projection.

The contractor is required to provide at a minimum two (2) accurate x,y coordinates that are located at the beginning and end of the project.

Measurements will be in English Standards (i.e. inches, feet, miles).

True North will be identified and depicted for map orientation.

CADD Drawings shall be submitted preferably in Bentley Microstation (DGN) version 7 or 8.

Adherence to SAWS CADD Standards for levels, weights, colors, and symbology must be followed.

SAWS CADD Standards and As-Built requirements may be found on the SAWS webpage ([url:http://www.saws.org/business_center/specs/](http://www.saws.org/business_center/specs/)).

COMPENSATION FOR PROFESSIONAL SERVICES

Section 1 - Basis for Compensation

- 1.1 The base fee for all services shall be defined by the approved proposal accepted by SAWS and in concurrence with the COSA Method of Compensation.

Section 2 - Method of Payments

- 2.1 Payment shall be made to the Consultant as defined in the City of San Antonio's Method of Payment Article III.

Section 3 - Payment for Services

- 3.1 Invoices for SAWS water/sewer/recycle work shall be submitted to the COSA, one invoice for each facility and each invoice will be reviewed and approved by SAWS prior to payment by the COSA.

Section 4 - Payment for Additional Services

- 4.1 Payment for additional services for SAWS work will need to be approved by the COSA concurrently with SAWS and invoiced per the COSA Compensation for Additional Professional Services

ATTACHMENT 6
SUPPLEMENTAL DOCUMENTS

Project Name:

Tesla-Culebra to Mayberry

SAWS Water Fee Summary and Timeline for Design Phase Services		
Activity	Pricing	Timeline in Calendar Days
Preliminary Engineering Report	\$ -	
40% Design	\$ 9,499.20	
70% Design	\$ 4,749.60	
95% Design	\$ 4,749.60	
Bid Documents	\$ 1,187.40	
Construction Phase	\$ 2,374.80	
Project Closeout	\$ 1,187.40	
SAWS Water Base Fee	\$ 23,748.00	

SAWS Sewer Fee Summary and Timeline for Design Phase Services		
Activity	Pricing	Timeline in Calendar Days
Preliminary Engineering Report	\$ -	
40% Design	\$ 9,499.20	120
70% Design	\$ 4,749.60	95
95% Design	\$ 4,749.60	90
Bid Documents	\$ 1,187.40	95
Construction Phase	\$ 2,374.80	200
Project Closeout	\$ 1,187.40	66
SAWS Sewer Base Fee	\$ 23,748.00	

SAWS Recycled Water Fee Summary and Timeline for Design Phase		
Activity	Pricing	Timeline in Calendar Days
Preliminary Engineering Report	\$ -	
40% Design	\$ -	
70% Design	\$ -	
95% Design	\$ -	
Bid Documents	\$ -	
Construction Phase	\$ -	
Project Closeout	\$ -	
SAWS Recycled Water Base Fee	\$ -	

SAWS Total	\$ 47,496.00
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September 15, 2008

Janice E. Kruse, P.E.
AIA Engineers, Ltd.
8535 Wurzbach Rd. Suite 210
San Antonio, TX 78240

RE: Tesla: Culebra to Mayberry
SAWS Water Job #: 08-5041
SAWS Sewer Job #: 08-5541
AIA Engineers Proposal - Acceptance Letter

Dear Ms. Kruse:

This is to advise you that your fee proposal in the amount not to exceed \$47,496.00 for engineering services in regard to SAWS water and sewer facilities on the above referenced project is accepted. A breakdown of the fee is shown in the table below.

Phase	% Fee	\$ Water Fee	\$ Sewer Fee	Weeks
Additional Service	-----			-----
40%	40%	\$9,499.20	\$9,499.20	8
70%	20%	\$4,749.60	\$4,749.60	5
95%	20%	\$4,749.60	\$4,749.60	5
Bid	5%	\$1,187.40	\$1,187.40	5
Construction	10%	\$2,374.80	\$2,374.80	12
Close Out	5%	\$1,187.40	\$1,187.40	5
TOTAL	-----	\$23,748.00	\$23,748.00	40

It is understood that the fee as approved provides for all engineering services outlined in the SAWS Scope of Services, Attachment 5, to the City of San Antonio engineering contract, whether individually stated in the fee proposal or not. It is our understanding that the initial survey required for the design of SAWS facilities, as defined under the Base Mapping section of the Design Guidance Manual, has been included in the City's proposal. It is further understood that the design of SAWS facilities will be done in conformance with the requirements in the Design Guidance Manual.

Following contract execution, approval from the City to proceed with design services constitutes approval to proceed with the SAWS work as well.

Should you require additional information, please contact Ismael Rosales (210) 233-3705 or contact Richard Reyes at (210) 233-3198.

Sincerely,

Ismael Rosales, P.E.
Manger
SAWS CoSA Projects Division

cc: Ruben Gurrero, P.E. - CoSA PM
Cindy Kovacic, P.E. - SAWS Director of Governmental Engineering
Richard Reyes P.E. - SAWS

September 9, 2008

Ismael Rosales, P.E.
 Manager – Governmental Division
 San Antonio Water System
 P.O. Box 2449
 San Antonio, Texas 78298

Re: **Revised Proposal for Engineering Services**
 Tesla: Culebra to Mayberry

Dear Mr. Rosales:

Please disregard the package emailed on Friday, September 5, 2008. I had the opportunity to discuss a few items with Mr. Richard Reyes, SAWS, this morning, and as a result have revised our proposal and responses.

AIA Engineers, Ltd., is pleased to submit this revised lump sum proposal for engineering services to the San Antonio Water System for the above referenced project. We understand that this work will be joint bid and joint design with COSA. We propose to perform work as described in "Attachment 5 - SAWS Scope of Service" of the COSA Professional Service Agreement.

The Basic Service Fee of \$47,496.00 is based upon Attachment "A", Engineering Service Fee Breakdown.

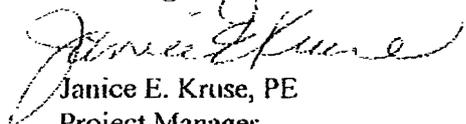
We propose a lump sum fee to be paid as shown in the table below. Payment will be made as work is completed and approved by SAWS to include 40% plans, 70% plans, 95% plans, Bidding, Construction Services and Closeout Phase.

Phase	\$ Water Fee	\$ Sewer Fee	Weeks
Additional Service	\$ 0.00	\$ 0.00	
40%	\$ 9,499.20	\$ 9,499.20	8
70%	\$ 4,749.60	\$ 4,749.60	5
95%	\$ 4,749.60	\$ 4,749.60	5
Bid	\$ 1,187.40	\$ 1,187.40	5
Construction	\$ 2,374.80	\$ 2,374.80	12
Close Out	\$ 1,187.40	\$ 1,187.40	5
TOTAL	\$ 23,748.00	\$ 23,748.00	40

SAWS schedule of completion and production will be coordinated with COSA's proposed advertising schedule, as shown in Attachment "B".

Should you have any questions please contact me.

Sincerely,
AIA Engineers, Ltd.



Janice E. Kruse, PE
Project Manager

Cc: Ruben Guerrero, COSA Project Manager

Attachments

**REQUEST FOR APPROVAL OF CHANGE
TO ORIGINAL AFFIRMED LIST OF
SUBCONTRACTORS/SUPPLIERS**

The Contractor, HDR / CLAUNCH & Miller, performing work on a project known as Skyline Area Drainage, requests approval of the following addition(s) and/or deletion(s) on the Affirmed List of Subcontractors, as originally submitted as part of the BID/PROPOSAL on the above named project:

AD	Skyline Area Drainage Phase IA	MBE-WBE-AABE- SBE (Y/N)	PERCENT AND DOLLAR AMOUNT OF CONTRACT
	<u>2007-00-15-0192</u>	<u>Y</u>	<u>2.2</u>
	<u>40-00064</u>		

Subcontractor has requested to be removed from the project Team, and All City of San Antonio projects with HDR / Claunch & Miller.

AFFIRMATION

THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF, I FURTHER UNDERSTAND AND AGREE THAT THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Name & Title of Authorized Official: James B. Andrews, Senior Vice President

Signature: [Signature]

DIRECTOR OF CMS

Approved: [Signature]

DIRECTOR OF ECONOMIC DEVELOPMENT

5/19/09

Approved: _____

Request for Approval of Change Rev. 10/12/04

Don 4/2/09

REQUEST FOR APPROVAL OF CHANGE TO ORIGINAL AFFIRMED LIST OF SUBCONTRACTORS/SUPPLIERS

The Contractor, ARCADIS U.S., Inc, performing work on a project known as Valley Forge Drainage System, requests approval of the following addition(s) and/or deletion(s) on the Affirmed List of Subcontractors, as originally submitted as part of the BID/PROPOSAL on the above named project:

CHANGES

ADD	DELETE	NAME	MBE-WBE-AABE-SBE (Y/N)	PERCENT AND DOLLAR AMOUNT OF CONTRACT
<u>X</u>	_____	<u>Camacho-Hernandez & Associates, LLC</u>	<u>Y (SBE, MBE, DBE)</u>	<u>3.5% (\$6,100.00)</u>
<u>X</u>	_____	<u>Gonzalez-De La Garza & Associates, LLC</u>	<u>Y (SBE, MBE, WBE)</u>	<u>3.5% (\$6,100.00)</u>
<u>X</u>	_____	<u>HVJ Associates, Inc.</u>	<u>Y (SBE, AABE, MBE, DBE)</u>	<u>6.0% (\$10,487.00 allowance)</u>
_____	<u>X</u>	<u>Professional Engineering Design Group (Justification: no traffic signal design)</u>	<u>Y (SBE, WBE, DBE)</u>	<u>\$0.00</u>
<u>X</u>	_____	<u>Linn-T. Ramey & Associates, Inc.</u>	<u>Y (SBE, WBE)</u>	<u>18.50% (\$32,000.00 allowance)</u>
_____	<u>X</u>	<u>Hicks and Company (Justification: City is performing environmental document)</u>	<u>N</u>	<u>\$0.00</u>
<u>X</u>	_____	<u>Unitech</u>	<u>Y (SBE, MBE, WBE)</u>	<u>12.0% (\$21,000.00)</u>

JUSTIFICATION

For the proposed deletions, the project does not include the traffic signal design and environmental document services (City to perform) for the particular firm as proposed in the general qualification statement submitted to the City. The proposed percentages and dollar amounts are based on the project size, negotiated scope of work and combined fees for the PER and Design Phases as applicable, and the available tasks to assign to our subconsultants.

AFFIRMATION

THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Name & Title of Authorized Official: Alfonso P. Garza, PE, Office Leader

Signature: [Signature] 4/16/09

DIRECTOR OF CMS

Approved: [Signature] 4-16-09

DIRECTOR OF ECONOMIC DEVELOPMENT

[Signature] 5/19/09

Approved: _____

Request for Approval of Change Rev. 10/12/04

REQUEST FOR APPROVAL OF CHANGE TO ORIGINAL AFFIRMED LIST OF SUBCONTRACTORS/SUPPLIERS

The Contractor, Unitech Consulting Engineers, Inc., performing work on a project known as City-Wide Bridge Replacement Program - Part I, requests approval of the following addition(s) and/or deletion(s) on the Affirmed List of Subcontractors, as originally submitted as part of the BID/PROPOSAL on the above named project:

CHANGES

ADD	DELETE	NAME	MBE-WBE-AABE-SBE (Y/N)	PERCENT AND DOLLAR AMOUNT OF CONTRACT
<u>X</u>		<u>Accessibility Plus, LLC</u>	<u>N</u>	<u>\$3,300.00</u> 40%
	<u>X</u>	<u>HVJ Associates, Inc.</u>	<u>Y</u>	<u>3%</u>

JUSTIFICATION

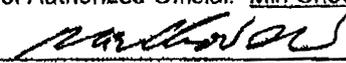
On Accessibility Plus, LLC, we do not have a team member that is qualified for TDLR review and inspection.

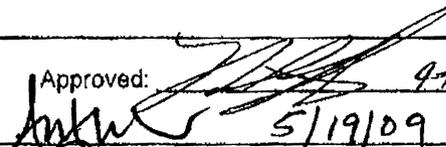
HVJ Associates, Inc. voluntary withdraw from the negotiations for this project.

AFFIRMATION

THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF, I FURTHER UNDERSTAND AND AGREE THAT THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Name & Title of Authorized Official: Min-Chow (Clifford) Hew, CEO

Signature: 

DIRECTOR OF CMS Approved:  9-16-09

DIRECTOR OF ECONOMIC DEVELOPMENT  5/19/09

Approved: _____