



**MEETING AGENDA
City Council
REGULAR SESSION CITY COUNCIL
May 25, 2021**

**HAL BALDWIN MUNICIPAL COMPLEX COUNCIL CHAMBERS
1400 SCHERTZ PARKWAY BUILDING #4
SCHERTZ, TEXAS 78154**

CITY OF SCHERTZ CORE VALUES

Do the right thing

Do the best you can

Treat others the way you want to be treated

Work cooperatively as a team

AGENDA

TUESDAY, MAY 25, 2021 at 6:00 p.m.

City Council will hold its regularly scheduled meeting at 6:00 p.m., Tuesday, May 25, 2021, at the City Council Chambers. In lieu of attending the meeting in person, residents will have the opportunity to watch the meeting via live stream on the City's YouTube Channel.

Call to Order

**Opening Prayer and Pledges of Allegiance to the Flags of the United States and State of Texas.
(Councilmember Dahle)**

City Events and Announcements

- Announcements of upcoming City Events (B. James/C. Kelm/S. Gonzalez)
- Announcements and recognitions by the City Manager (M. Browne)
- Announcements and recognitions by the Mayor (R. Gutierrez)

Hearing of Residents

Residents who choose to watch the meeting via live stream, but who would like to participate in Residents to be Heard, should email their comments to City Secretary, Brenda Dennis, at bdennis@schertz.com by 5:00 p.m. on Monday 24, 2021, SO THAT THE CITY SECRETARY MAY READ THE PUBLIC COMMENTS INTO THE RECORD UNDER THE HEARING OF RESIDENTS. In the body of the email please include your name, your address, phone number, agenda item # if applicable or subject of discussion, and your comments.

This time is set aside for any person who wishes to address the City Council. Each person should fill out the speaker's register prior to the meeting. Presentations should be limited to no more than 3 minutes.

All remarks shall be addressed to the Council as a body, and not to any individual member thereof. Any person making personal, impertinent, or slanderous remarks while addressing the Council may be requested to leave the meeting.

Discussion by the Council of any item not on the agenda shall be limited to statements of specific factual information given in response to any inquiry, a recitation of existing policy in response to an inquiry, and/or a proposal to place the item on a future agenda. The presiding officer, during the Hearing of Residents portion of the agenda, will call on those persons who have signed up to speak in the order they have registered.

Consent Agenda Items

The Consent Agenda is considered self-explanatory and will be enacted by the Council with one motion. There will be no separate discussion of these items unless they are removed from the Consent Agenda upon the request of the Mayor or a Councilmember.

- 1. Minutes** – Consideration and/or action regarding the approval of the minutes of the meeting of regular meeting May 11, 2021. (B. Dennis)
- 2. Appointments/Resignation to Boards and Commissions/Committees** - Consideration and/or action regarding appointments/resignations to various Boards and Commissions/Committees. (Council/B. Dennis)

Resignation of Matthew Wood - Building and Standards Commission
Resignation of Guy Scott - Historical Preservation Committee
Appointment of Patricia Barnes - Historical Preservation Committee
Appointment of Mateo Garcia - Transportation Safety Advisory Commission
- 3. Resolution No. 21-R-48** - Consideration and/or action approving a Resolution by the City Council of Schertz, Texas authorizing an increase to the contract with D&S Concrete Constructors, relating to the CSJ# 0915-46-050 Schertz Pedestrian Routes and Bike Lanes Project and authorizing the budget expenditures. (B. James/K. Woodlee/J. Nowak)
- 4. Resolution No. 21-R-50** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas approving a request for a Schertz Main Street Local Flavor Economic Development Grant for 537 Main. (M. Browne/B. James)
- 5. Resolution No. 21-R-51** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas approving a request for a Schertz Main Street Local Flavor Economic Development Grant for 820 Main. (M. Browne/B. James)

6. **Ordinance No. 21-T-19** – Consideration and/or action approving an Ordinance by the City Council of the City of Schertz, Texas, authorizing an adjustment to the Fiscal Year 2021 Budget to provide funding for professional services related to the Corbett Ground Storage Tank, repealing all ordinances or parts of ordinances in conflict with this ordinance; and providing an effective date. ***Final Reading*** (B. James/K. Woodlee/J. Shortess)
7. **Resolution No. 21-R-44** – Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, authorizing a Task Order Agreement with Ford Engineering, Inc. relating to the Corbett Ground Storage Tank Engineering and Design Proposal and authorizing the budget expenditures for the project. (B. James/K. Woodlee/J. Shortess)
8. **Resolution No. 21-R-45** – Consideration and/or action approving a Resolution by the City of Schertz, Texas authorizing a contract with Kimley-Horn and Associates, Inc. relating to the 16” Dedicated Transmission Main Engineering and Design Project and authorizing the budget expenditures for the project. (B. James/K. Woodlee/J. Shortess)
9. **Resolution No. 21-R-46** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing a revision of the Not To Exceed Amount of an approved contract with DAC, Inc of New Braunfels, Texas, increasing the total amount from \$175,000 to \$178,000. (B. James/M. Clauser)

Discussion and Action Items

10. **Ordinance No. 21-T-23** - Consideration and/or action approving an Ordinance by the City Council of Schertz, Texas authorizing an adjustment to the Fiscal Year 2021 Budget to provide for construction of the Elbel Storm Drain and Overlay Project, repealing all ordinances or parts of ordinances in conflict with this ordinance and providing an effective date. ***First Reading***

Roll Call Vote Confirmation

Closed Session

11. The City Council will meet in closed session pursuant to Texas Government Code Section 551.07 to consult with its attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Open Meetings Act; to wit: the discussion of the applicability of real property rights in relation to the conduct of certain city programs.

Reconvene into Regular Session

- 11a. Take any action based on discussion held in closed session under Agenda Item 11.

Discussion and Action Items

- 12. Resolution No. 21-R-35** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing the City Manager to amend the existing License and Management Agreements with the YMCA, by canceling the Management of the Wendy Swan Memorial Park Pool. (B. James/L. Shrum)

Roll Call Vote Confirmation

Information available in City Council Packets - NO DISCUSSION TO OCCUR

- 13. Pilot Program** - Introduction of a Pilot Program for Residential Irrigation Meters. (B. James/J. Walters)
- 14. COVID-19 UPDATE** - Bi-Weekly COVID-19 Update.(C. Kelm/ K.Long/S.Hall)

Requests and Announcements

- Announcements by the City Manager.
- Requests by Mayor and Councilmembers for updates or information from staff.
- Requests by Mayor and Councilmembers that items or presentations be placed on a future City Council agenda.
- Announcements by Mayor and Councilmembers
 - City and community events attended and to be attended
 - City Council Committee and Liaison Assignments (see assignments below)
 - Continuing education events attended and to be attended
 - Recognition of actions by City employees
 - Recognition of actions by community volunteers

Adjournment

CERTIFICATION

I, BRENDA DENNIS, CITY SECRETARY OF THE CITY OF SCHERTZ, TEXAS, DO HEREBY CERTIFY THAT THE ABOVE AGENDA WAS PREPARED AND POSTED ON THE OFFICIAL BULLETIN BOARDS ON THIS THE 21st DAY OF MAY 2021 AT 3:30 P.M., WHICH IS A PLACE READILY ACCESSIBLE TO THE PUBLIC AT ALL TIMES AND THAT SAID NOTICE WAS POSTED IN ACCORDANCE WITH CHAPTER 551, TEXAS GOVERNMENT CODE.

BRENDA DENNIS

I CERTIFY THAT THE ATTACHED NOTICE AND AGENDA OF ITEMS TO BE CONSIDERED BY THE CITY COUNCIL WAS REMOVED BY ME FROM THE OFFICIAL

BULLETIN BOARD ON ____ DAY OF _____, 2021. TITLE: _____

This facility is accessible in accordance with the Americans with Disabilities Act. Handicapped parking spaces are available. If you require special assistance or have a request for sign interpretative services or other services, please call 210-619-1030.

The City Council for the City of Schertz reserves the right to adjourn into closed session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Open Meetings Act.

Closed Sessions Authorized: This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Closed Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

COUNCIL COMMITTEE AND LIAISON ASSIGNMENTS

Mayor Gutierrez Audit Committee Investment Advisory Committee Main Street Committee	Councilmember Scagliola – Place 5 Cibolo Valley Local Government Corporation - Alternate Hal Baldwin Scholarship Committee Interview Committee for Boards and Commissions - Alternate Schertz-Seguin Local Government Corporation
Councilmember Davis– Place 1 Interview Committee for Boards and Commissions Main Street Committee - Chair Schertz Housing Authority Board TIRZ II Board	Councilmember Scott – Place 2 Interview Committee for Boards and Commissions Schertz Animal Services Advisory Commission
Councilmember Whittaker – Place 3 Audit Committee TIRZ II Board	Councilmember Dahle – Place 4 Cibolo Valley Local Government Corporation Interview Committee for Boards and Commissions TIRZ II Board
Councilmember Heyward – Place 6 Audit Committee Investment Advisory Committee Main Street Committee	Councilmember Brown – Place 7 Main Street Committee Schertz-Seguin Local Government Corporation - Alternate

CITY COUNCIL MEMORANDUM

City Council Meeting: May 25, 2021
Department: City Secretary
Subject: Minutes – Consideration and/or action regarding the approval of the minutes of the meeting of regular meeting May 11, 2021. (B. Dennis)

BACKGROUND

The City Council held a Regular City Council meeting on May 11, 2021.

RECOMMENDATION

Recommend Approval.

Attachments

5-11-2021 Draft Minutes

DRAFT

MINUTES REGULAR MEETING May 11, 2021

A Regular Meeting was held by the Schertz City Council of the City of Schertz, Texas, on May 11, 2021, at 6:00 p.m. in the Hal Baldwin Municipal Complex Council Chambers, 1400 Schertz Parkway, Building #4, Schertz, Texas. The following members present to-wit:

Present: Mayor Ralph Gutierrez; Mayor Pro-Tem Jill Whittaker; Councilmember Mark Davis; Councilmember Michael Dahle; Councilmember David Scagliola; Councilmember Allison Heyward; Councilmember Tim Brown

Absent: Councilmember Rosemary Scott

City City Manager Dr. Mark Browne; Assistant City Manager Brian James;
Staff: Assistant City Manager Charles Kelm; City Attorney Daniel Santee; Assistant
 to the City Manager Sarah Gonzalez; City Secretary Brenda Dennis; Deputy
 City Secretary Sheila Edmondson

Call to Order

Mayor Gutierrez called the meeting to order at 6:00 p.m.

Opening Prayer and Pledges of Allegiance to the Flags of the United States and State of Texas. (Councilmember Scott)

Mayor Gutierrez provided the opening prayer followed by the Pledges of Allegiance to the Flags of the United States and the State of Texas, as Councilmember Scott was absent.

Presentations

Mayor Gutierrez read and presented the following proclamations:

- Proclamation naming May 9-15, 2021 as Economic Development Week in the City of Schertz. (Mayor/EDC Department)

- Proclamation designating May 16-22, 2021 as Emergency Medical Services Week. (Mayor/EMS Department)
- Proclamation observing the week of May 9, 2021 through May 14, 2021 as National Police Week (Mayor/Police Department)
- Proclamation designating May 16 - 22, 2021 as National Public Works Week. (Mayor/Public Works)

Employee Recognition

- EMS: Meghan Stevens - EMS Billing Clerk; Felipe (Phillip) Garcia, Jason Lelek - EMS Paramedics (J. Mabbitt/B. Hill)
- Facility Services: Travis Hodges - Facilities Manager (S. Williams)
- Public Works: Service Worker 1 Wilfredo Marroquin, Ruben Rodriguez; Caleb West Service Worker 1 (S. Williams/D. Letbetter)
- Utility Billing: Charis Kempen - Utility Billing Clerk (J. Walters/D. HardinTrussel/R. Rosales)

City Events and Announcements

- Announcements of upcoming City Events (B. James/C. Kelm/S. Gonzalez)

Mayor Gutierrez recognized Assistant City Manager Charles Kelm who provided the following information:

- Sweetheart Court Scholarship Program 2021-22. More information and applications for the Sweetheart Court are available through the City's website at Schertz.com. Deadline to apply is Thursday, May 20th.

- Sundays, April 18th through May 23rd

Come enjoy watching the Adult Kickball League (ages 21 years and older) sponsored by the Schertz Parks & Rec Social League. Games are played Sunday evenings from 6-10 PM through May 23rd at Thulemeyer Park.

- Wednesday, May 12th

Cibolo/Schertz Fallen Texas Officers Ceremony
6:00 PM – 7:20 PM
Santikos Movie Theater
18124 IH-35 North, Cibolo

- Thursday, May 13th

Northeast Partnership meeting
11:30 AM – 1:00 PM
Olympia Hills Golf & Conference Center, Universal City
RSVP to the City Secretary

- Tuesday, May 18th

Council on the Go Meeting

Meet and Greet from 6:00-7:00 PM

Meeting from 7:00-8:30 PM

St. John Paul II Catholic High School Cafeteria

6720 FM 482, New Braunfels

- Tuesday, May 25th - Next regular scheduled Council meeting

- Announcements and recognitions by the City Manager (M. Browne)

Mayor Gutierrez recognized City Manager Dr. Browne who recognized Officer Chelsie Garcia who took the initiative to successfully take a 10-week Academic Course to become a Polygraph Examiner. It was a very broad and diverse curriculum, and she now begins a period of internship where she has complete 10 polygraphs after which she will become fully certified. Dr. Browne congratulated Officer Garcia.

- Announcements and recognitions by the Mayor (R. Gutierrez)

No announcements were provided.

Hearing of Residents

This time is set aside for any person who wishes to address the City Council. Each person should fill out the speaker's register prior to the meeting. Presentations should be limited to no more than 3 minutes.

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Mayor Pro-Tem Whittaker recognized the following who spoke:

- Mr. Robert Bellin, Jr., 3600 Augusta Glade - Carolina Crossing who spoke on concerns of the development on Wiederstein Road and had provided a petition of 25 names of other residents who also are concerned with the development. (These were submitted also by email) Mr. Bellin stated that he wanted the Council to know that the citizens are engaged in the process and how it will change the environment. He stated that according to the initial response it did meet the criteria

of 20% of the affected area - this also necessitates the need of the 75% vote approval on this zoning change.

Consent Agenda Items

The Consent Agenda is considered self-explanatory and will be enacted by the Council with one motion. There will be no separate discussion of these items unless they are removed from the Consent Agenda upon the request of the Mayor or a Councilmember.

Mayor Gutierrez read the following consent items into record:

1. **Minutes** – Consideration and/or action regarding the approval of the minutes of the regular meeting of May 5, 2021. (B. Dennis)
2. **Appointments/Resignation to Boards and Commissions/Committees** - Consideration and/or action regarding appointments/resignations to various Boards and Commissions/Committees. (Council/B. Dennis)
 - Resignation of Paul Ryson - Transportation Safety Advisory Board
 - Resignations of John Baker, Sabrina Allen and Sue Boissonneault - Historical Preservation Committee
 - Appointments of Jesse Gonzales, Jason Baltaric - Historical Preservation Committee
 - Appointment of Ronald Stevens - Transportation Safety Advisory Commission
3. **Resolution No. 21-R-39** – Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, authorizing a contract with Myers Concrete Construction, LP relating to the 2020 Silt Removal Projects and authorizing the budget expenditures for the project. (B. James/K. Woodlee/J. Shortess)
4. **Resolution 21-R-42** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz authorizing the City Manager to enter into a Design-Build Agreement with Team Mechanical of Texas, LLC for the Animal Adoption Center HVAC Replacement Project and other matters in connection therewith. (C. Kelm/S. Williams/S. McClelland)
5. **Resolution No. 21-R-40** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz Texas, amending the Schertz/Seguin Local Government Corporation (SSLGC) Fiscal Year 2021 Annual Budget (C. Kelm/S. Williams/A. Beard)

6. **Resolution No. 21-R-41** – Consideration and/or action approving a Resolution by the City Council of the City of Schertz Texas, authorizing the submission of a grant application in an amount up to \$36,950.06 to the Office of the Governor, Homeland Security Division, for the 2021 State Homeland Security Grant Urban Area Security Initiative (UASI) Program; and authorizing the acceptance of the funds, upon award. (C. Kelm/K. Long/S. Hall)
7. **Resolution No. 21-R-43** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing the City Manager to enter into an Interlocal Agreement for Fire Protection Services with Bexar County, and other matters in connection therewith. (C. Kelm/K. Long)
8. **Ordinance No. 21-T-19** – Consideration and/or action approving an Ordinance by the City Council of the City of Schertz, Texas, authorizing an adjustment to the Fiscal Year 2021 Budget to provide funding for professional services related to the Corbett Ground Storage Tank, repealing all ordinances or parts of ordinances in conflict with this ordinance; and providing an effective date. **First Reading** (B. James/K. Woodlee/J. Shortess)
9. **Ordinance 21-A-13** - Consider and/or take action on a request for voluntary annexation of approximately 35.5 acres of land generally located approximately 4,000 feet southeast of the intersection between FM 1518 and Lower Seguin Road, also known as Bexar County Property Identification Numbers 310024 and 310031, Bexar County, Texas. **Final Reading** (B. James, L. Wood, E. Delgado)
10. **Ordinance 21-S-14** Consider and/or take action on a request to rezone approximately 39.5 acres of land to Planned Development District (PDD), generally located approximately 4,000 feet southeast of the intersection between FM 1518 and Lower Seguin Road, also known as Bexar County Property Identification Numbers 310024 and 310031, Bexar County, Texas. **Final Reading** (B. James, L. Wood, E. Delgado)
11. **Ordinance 21-S-15** Consideration and/or take action on a request to rezone approximately 66 acres of land from Single-Family Residential District (R-2) and Neighborhood Services District (NS) to Planned Development District (PDD), generally located southwest of the intersection between Schertz Parkway and Wiederstein Road, City of Schertz, Guadalupe County, Texas. **Final Reading** (B. James, L. Wood, E. Delgado)

Mayor Gutierrez asked Council if there were any items they wished removed for separate action. Mayor Gutierrez recognized Councilmember Scagliola who requested that agenda items 5, 10 & 11 be removed for separate action.

Mayor Gutierrez asked for a motion to approve consent agenda items 1 through 4 and 6 through 9.

Moved by Mayor Pro-Tem Jill Whittaker, seconded by Councilmember Tim Brown to approve consent agenda items 1 through 4 and 6 through 9.

AYE: Mayor Pro-Tem Jill Whittaker, Councilmember Mark Davis,
Councilmember Michael Dahle, Councilmember David Scagliola,
Councilmember Allison Heyward, Councilmember Tim Brown

Passed

Workshop

Mayor Gutierrez moved to the workshop section of the agenda.

12. Workshop Discussion and Update (Ordinance 20-H-18) - Discussion and update regarding the COVID-19 virus and our current Ordinance No. 20-H-18 Declaration of Local Disaster. (M. Browne/K. Long/S. Hall)

Mayor Gutierrez recognized Emergency Management Coordinator Summar Hall who provided the following updated information:

- Upcoming Vaccination Clinics

Civic Center Clinics:

May 12th & 13th: 2nd Dose Moderna

May 14th: 2nd Dose Pfizer

- On-Site Clinics: May 14th – 8 am to 12 pm

- Clemens High School

- Steele High School

Vaccination Update as of 5-11-2021 300 pm

County: Guadalupe - Public Health Region: 8

Percentage of Population 16+ Vaccinated with at least one does: 44.54%

Percentage of Population 16+ Fully Vaccinated: 34.34%

Percentage of Population 65+ Vaccinated with at lease one does: 68.18%

Percentage of Population 65+ Fully Vaccinated: 57.69%

Current Case Numbers:

Guadalupe County	Comal County	Bexar County
Confirmed Cases: 11,017	Confirmed Cases: 5,619	Confirmed Cases: 181,968
Probable Cases: 3,743	Probable Cases: 4,908	Probably Cases: 37,961
Fatalities: 211	Fatalities: 319	Fatalities: 3,518

Active Cases: 143	Active Cases: 357	Active Cases: 4,002
Recovered Cases: 14,379	Recovered Cases: 9,875	Recovered Cases: 212,409

SCUCISD: Staff Cases: 0; Student Cases: as of May 11th, 31 cases have been reported.

State Disaster Declaration

- May 5, 2021

Governor Abbott extended State Disaster Declaration for additional 30 days.

City of Schertz's declaration follows State

- Evaluation and Discussion of the City of Schertz Declaration will be brought to Council early June.

Ms. Summer reviewed the testing positivity rates, Daily New Cases - State, and Hospitalization rates. Ms. Summer addressed questions from Council.

Discussion and Action Items

Mayor Gutierrez read the following items into record:

5. Resolution No. 21-R-40 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz Texas, amending the Schertz/Seguin Local Government Corporation (SSLGC) Fiscal Year 2021 Annual Budget (C. Kelm/S. Williams/A. Beard)

Mayor Gutierrez recognized Councilmember Scagliola who stated he had this item removed in order to comment publicly regarding the work that Ms. Briggs-Beard has been doing for the Schertz-Seguin Local Government Corporation as well as acknowledge SSLGC's performance and the decisions made to keep our source of water secured. Ms. Briggs-Beard thanked the Council and indicated that it was a team effort for everything that was accomplished and the decisions made during the winter storm.

Councilmember Heyward who concurred with Councilmember Scagliola, that Ms. Briggs-Beard is doing a fantastic job.

Moved by Councilmember David Scagliola, seconded by Councilmember Michael Dahle to approve Resolution No. 21-R-40.

AYE: Mayor Pro-Tem Jill Whittaker, Councilmember Mark Davis,
Councilmember Michael Dahle, Councilmember David Scagliola,
Councilmember Allison Heyward, Councilmember Tim Brown

Passed

10. Ordinance 21-S-14 Consider and/or take action on a request to rezone approximately 39.5 acres of land to Planned Development District (PDD), generally located approximately 4,000 feet southeast of the intersection between FM 1518 and Lower Seguin Road, also known as Bexar County Property Identification Numbers 310024 and 310031, Bexar County, Texas. ***Final Reading*** (B. James, L. Wood, E. Delgado)

Mayor Gutierrez recognized Councilmember Scagliola who stated he didn't need a briefing on this, he pulled this on a procedural issue, generally it shouldn't show up on a consent agenda if any member of the Council voted nay. He believes that one member of Council did vote nay the last time it came before Council, but unfortunately that individual is not here this evening. He stated he had no further comments, it was just procedural, and he made a motion to approve.

Moved by Councilmember David Scagliola, seconded by Councilmember Allison Heyward to approve Ordinance No. 21-S-14 on final reading.

AYE: Mayor Pro-Tem Jill Whittaker, Councilmember Mark Davis,
Councilmember Michael Dahle, Councilmember David Scagliola,
Councilmember Allison Heyward, Councilmember Tim Brown

Passed

11. Ordinance 21-S-15 Consideration and/or take action on a request to rezone approximately 66 acres of land from Single-Family Residential District (R-2) and Neighborhood Services District (NS) to Planned Development District (PDD), generally located southwest of the intersection between Schertz Parkway and Wiederstein Road, City of Schertz, Guadalupe County, Texas. ***Final Reading*** (B. James, L. Wood, E. Delgado)

Mayor Gutierrez recognized Councilmember Scagliola who asked to pull this item from the Consent Agenda.

Councilmember Scagliola stated when he voted for the PDD at the last council meeting, (May 4, 2021) it was because in his opinion, a far more superior plan than the current zoning. He understood a lot of residents were upset and reached out to him to express their concerns. He understands the emotional part of this decision and he too had concerns about the conceptual plan. After the Planning and Zoning meeting on April 14, 2021 and the City Council Meeting on May 4, 2021, the Developer addressed the issues brought up at both meetings.

Councilmember Scagliola thanked the Planning and Zoning Commission for bringing many of the issues to the Developer, who was able to modify before he addressed City Council. He also wanted to let the Planning and Zoning Commissioners know he

appreciated their time as they are the subject experts. The Developer made numerous modifications to the PDD that Planning, and Zoning brought up. He still had concerns about Wiederstein Rd, but the Developer did do a redesign and improved it some more. He hopes that Planning and Zoning, Staff and the Developer will work further to address those concerns.

Mayor Gutierrez spoke and expressed appreciation for the Planning and Zoning Commission and all they do. He recognized that all their comments and concerns brought up at their last meeting were taken into consideration by the Developer and he made some adjustments to his PDD.

Mayor Gutierrez recognized Councilmember Davis who thanked Councilmember Scagliola for pulling this item off the Consent Agenda. Councilmember Davis was going to do it, since at the last meeting it was not a unanimous vote to approve and felt it needed to put back on Discussion and Action. Councilmember Davis asked to get an updated briefing on the current modifications before he commented.

Mayor Gutierrez recognized Senior Planner Emily Delgado who wanted to go over two things, the Public Hearing responses and the changes that were made from the last meeting. Topics included setbacks from 7.5 ft. to 6 ft, cul-de-sacs from 100 ft. to 150 ft. and the addition to add an alley to the north portion of Wiederstein Rd. The addition of the alley would reduce the number of cars backing out onto Wiederstein from private driveways. Ms. Delgado also informed the City Council that they received a petition the night before pushing the total percentage of disapproval over with 21.15%. With the disapproval notices over the 20% mark, it now it requires a super majority (75%) for approval.

Councilmember Davis stated the vast majority of this area is zoned residential, and it will be developed. He thinks the initial plan is great product and will be unique to the area. Councilmember Davis's only concern is that with a PDD, it inserts into the process a lot a higher level of flexibility in developing this property and a lot of the flexibility is a gray area. The coving plan coming forward is a great plan, but still has concerns the generalness of a PDD concerning the traffic and safety matter in this area.

Mayor Gutierrez recognized Mayor Pro Tem Whittaker who had two questions for Staff:

With adding an alley behind the Northside of Wiederstein, are we keeping the parking on the Wiederstein? Is that correct so the width of the road?

Assistant City Manager Brian James stated the applicant has given himself the option add an alley load that, so once he makes the decision, staff will work with him on the appropriate cross section of the street. When the plat goes to the Planning and Zoning Commission, the developer will need a variance or wavier to the Subdivision Ordinance requirements for that street. Staff will wait for the proposal and will make a recommendation with the platting at the PZ Commission at that time.

Mayor Pro-Tem Whittaker asked are the circles on the map the trees that are identified and retained?

Mr. Eugenio, the developer, stated the circles on the conceptual map are the existing heritage trees.

Mayor Pro Tem Whittaker wanted the citizens and Planning and Zoning Commission to know they listened to all their concerns that were identified. The strongest opposition is what the residents are going to lose, the wildlife, trees and natural beauty. Stated she has empathy for the citizens concerns, but it is zoned to be developed and cannot deny a PDD because residents want to keep it that it is natural state. She wanted residents to know that City Council is listening, and concerns are being heard, however, how we vote does not mean we are not hearing their concerns.

Mayor Gutierrez recognized Councilmember Dahle who wanted Planning and Zoning Commission to know he appreciates the concerns they brought up at their meeting because those concerns were heard, and the developer made some significant changes to the PDD conceptual plan. He also thanked the residents and reassured them their voices have not gone unheard. Councilmember Dahle stated that as City Council they need to do what is best for entire community. He read excerpts from an article and wanted to share some thoughts about “cookie-cutter” developments and how communities and master plans are developed. He stated the City Council, Staff and consultants like the Planning and Zoning Commission, have a responsibility to redefine what we want to see in residential communities. Moving forward and having conversations on future development and find common agreed definitions. We have talked for years to do better development and this, this PDD concept is a great opportunity do so.

Mayor Gutierrez recognized Councilmember Heyward who wanted to let Planning and Zoning Commission their concerns were heard. She stated as City Council, we tend not to disagree all the time, (Planning and Zoning Commission, City Council and Staff) but when we do, it appears to be the worst thing. Topics become a mountain, instead of a molehill. Moving forward, Councilmember Heyward wants to make sure the Planning and Zoning Commission are notified ahead of time that changes were made on projects that City Council is voting on. Councilmember Heyward asked if there was a Traffic Impact Analysis (TIA) done and it was done in 2019 indicating that area of Wiederstein Rd had approx. 2000 vehicles per a day. City of Schertz designated collector road poll goes from 2,000-18,000 vehicles. Councilmember Heyward recognized the concerns of the residents about the wildlife around the proposed development.

Mayor Gutierrez recognized Councilmember Brown who wanted to thank the developer for addressing the concerns that the Planning and Zoning Commission and City Council brought up and his quick adjustments on his proposed PDD. The original conceptual plan and the updated conceptual plan had significant changes which included the topics

of straight streets, 90-degree block corners, and small lots. He also wanted Planning and Zoning Commission to know they were heard and that City Council took their input seriously. He likes the modern development of the conceptual plan using the space to its best use.

Councilmember Davis stated we are not going to be perfect, but we should not try to legislate each lot size from the dais.

Mayor Gutierrez stated the Developer presented a plan in Planning and Zoning meeting on April 14, 2021 and he made the adjustments to the concerns they brought up at that meeting. When the developer brought the updated conceptual plan to City Council at the first reading, he then took City Council's concerns and made additional adjustments with one week before tonight's meeting.

Assistant City Manager Brian James reminded the City Council with the petition brought forward with 21.5% disapproval, it does require a $\frac{3}{4}$ of City Council, and $\frac{3}{4}$ of council is 6, therefore with only 6 Councilmembers in attendance tonight, all 6 are needed to approve.

Moved by Councilmember Michael Dahle, seconded by Councilmember Allison Heyward approve Ordinance No. 21-S-15 on final reading.

AYE: Mayor Pro-Tem Jill Whittaker, Councilmember Mark Davis, Councilmember Michael Dahle, Councilmember David Scagliola, Councilmember Allison Heyward, Councilmember Tim Brown

Passed

Roll Call Vote Confirmation

Mayor Gutierrez recognized City Secretary Brenda Dennis who provided the roll call vote confirmation for agenda items 1 through 11.

Closed Session

Mayor Gutierrez recessed the regular meeting into Closed Session at 7:33 p.m. and read the following item into record:

13. City Council will meet in closed session under Section 551.087 of the Texas Government Code, Deliberation Regarding Economic Development Negotiations; Closed Meeting. The governmental body is not required to conduct an open meeting (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body

seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect.

- Project E-065
- Project E-066
- Project E-067
- Project E-068

Reconvene into Regular Session

Mayor Gutierrez reconvened back into regular session at 7:59 p.m.

- 13a.** Take any action based on discussion held in closed session under Agenda Item 13.
No action taken.

Roll Call Vote Confirmation

No additional roll call was needed as Council did not take any action based on closed session.

Information available in City Council Packets - NO DISCUSSION TO OCCUR

Mayor Gutierrez read the captions for agenda items 14 & 15 and mentioned these items were provided in the City Council packets as well as the information could be found online and for public viewing at our website schertz.com. No action necessary.

- 14. Monthly update** - on major projects in progress/CIP. (B. James/K. Woodlee)

- 15.** Quarterly Financial Reports.

Requests and Announcements

- Announcements by the City Manager.

No further announcements were provided.

- Requests by Mayor and Councilmembers for updates or information from staff.

None at this time.

- Requests by Mayor and Councilmembers that items or presentations be placed on a future City Council agenda.

No items requested.

- Announcements by Mayor and Councilmembers

- City and community events attended and to be attended
- City Council Committee and Liaison Assignments (see assignments below)
- Continuing education events attended and to be attended
- Recognition of actions by City employees
- Recognition of actions by Community volunteers

Mayor Gutierrez recognized the following:

Mayor Pro-Tem Whittaker who stated she finished her last Citizen Police Academy class, she graduated, and she is an Alumni - look out for Citizens on Patrol, when they get a vehicle, she will be patrolling. She also stated that they did a really good job representing the City of Schertz at the Chamber Golf Tournament yesterday. The City's team won the closest to the pin and she won a raffle basket.

Councilmember Davis stated that he attended the Community Hilltop Park meeting at NorthCliffe, staff did a great job of presenting the Vision of the City for a very large park on the north side. He also attended the Housing Authority meeting, the board and staff are eagerly looking forward to the joint workshop coming up.

Councilmember Dahle stated he also attended the Community Hilltop Park meeting at NorthCliffe, great turnout, and great conversations with the residents.

Councilmember Scagliola stated he attended the SSLGC Ground Breaking Ceremony in Nixon the ribbon cutting for Tiny Jazz, attended the COVID Shot Clinic and also attended the Community Hilltop Park meeting.

Councilmember Heyward stated she also attended the SSLGC Ground Breaking Ceremony in Nixon, attended the Schertz Animal Advisory Board meeting, attended the plaque presentation for Tiny Jazz, she attended the Chamber Golf Tournament (not a player) but volunteered selling tickets. She also attended the Community Hilltop Park meeting.

Adjournment

Mayor Gutierrez adjourned the meeting at 8:04 p.m.

ATTEST:

Ralph Gutierrez, Mayor

Brenda Dennis, City Secretary

CITY COUNCIL MEMORANDUM

City Council Meeting: May 25, 2021
Department: City Secretary
Subject: Appointments/Resignation to Boards and Commissions/Committees - Consideration and/or action regarding appointments/resignations to various Boards and Commissions/Committees. (Council/B. Dennis)

Resignation of Matthew Wood - Building and Standards Commission
Resignation of Guy Scott - Historical Preservation Committee
Appointment of Patricia Barnes - Historical Preservation Committee
Appointment of Mateo Garcia - Transportation Safety Advisory Commission

BACKGROUND

The City Secretary's office has received resignations from Matthew Wood, Building and Standards Commission and Guy Scott, Historical Preservation Committee.

The City Secretary's office also received new volunteer applications from Patricia Barnes who applied to serve on the Historical Preservation Committee and from Mateo Garcia who applied to serve on the Transportation Safety Advisory Commission.

All applicants were vetted through the Interview Committee, and it was the consensus of the Committee to recommend to Council for appointment.

Staff recommends the appointments of Patricia Barnes to the Historical Preservation Committee and the appointment of Mateo Garcia to Transportation Safety Advisory Commission.

CITY COUNCIL MEMORANDUM

City Council Meeting: May 25, 2021
Department: Engineering
Subject: Resolution No. 21-R-48 - Consideration and/or action approving a Resolution by the City Council of Schertz, Texas authorizing an increase to the contract with D&S Concrete Constructors, relating to the CSJ# 0915-46-050 Schertz Pedestrian Routes and Bike Lanes Project and authorizing the budget expenditures. (B. James/K. Woodlee/J. Nowak)

BACKGROUND

During the December 1, 2020 City Council meeting, Council approved Resolution 20-R-118 authorizing a construction contract with D&S Concrete Constructors for the CSJ# 0915-46-050 Schertz Pedestrian Routes and Bike Lanes Project. The resolution provided authorization of the bid amount for the project, \$1,256,960.95.

The resolution did not include a not to exceed amount which would provide for some construction contingency for the project. Normally, a contingency of an appropriate amount (generally 5% - 20%, based on the size, complexity of project, and potential for unforeseen circumstances) is included in the not to exceed amount to allow for deviations that arise during construction.

As construction began, some quantity discrepancies were discovered. Additional erosion control measures were needed to prevent silt intrusion into Dietz Creek along the Live Oak portion of the construction project. This resulted in an increased project cost of \$9,000. Additionally, it was discovered that the originally established traffic control plan did not provide enough room for construction equipment and two-way traffic on Live Oak for part of the construction process. This results in a change in the traffic control plan for the project. The traffic control plan change requires some changeable message boards for the project. This will increase the project cost by an estimated \$10,000.

Because the project is a federal fund reimbursement project, Staff feels it is more prudent to process construction increases for the project as they occur, versus the typical not to exceed amount method used on other projects. Therefore, Staff is requesting a modest increase to cover the currently known cost increases on the project, plus a slight amount more to handle any other minor, increases that may occur as construction progresses. The request to increase the construction cost by establishing a not to exceed amount of \$1,286,000 provides for a total construction contingency of \$29,039.05 (approx. 2.3% of the bid amount).

If construction costs are expected to increase beyond this amount, then Staff will come back to Council and request additional funding.

GOAL

To obtain authorization from City Council to establish an not to exceed amount for the Schertz Pedestrian Routes and Bike Lanes project to provide for some construction contingency to cover any increased construction costs in the project.

COMMUNITY BENEFIT

The proposed increase in construction costs will allow for the proper construction of the project and accommodate some increased costs identified in the project. The increase will also provide a minor amount of contingency to provide for some additional increased cost that may be discovered as construction progresses. The project will construct curb and gutter and sidewalks along both sides of Live Oak from FM 3009 and Schertz Parkway; construct a new decomposed granite trail through the electrical easement from Schertz Parkway to Wiederstein Rd; and provide bikes lanes on both sides of Woodland Oaks and Savannah Drive. These elements will provide some additional bike and pedestrian connections to the multi-use path along Schertz Parkway and to some community parks and to two elementary schools. The project will also widen Live Oak at the FM 3009 intersection to add an additional traffic lane, improving operational efficiency of the

intersection.

SUMMARY OF RECOMMENDED ACTION

Approval of Resolution 21-R-48 authorizing a not to exceed amount of \$1,286,000 for the construction contract with D&S Concrete Constructors for CSJ# 0915-46-050 Schertz Pedestrian Routes and Bike Lanes Project.

FISCAL IMPACT

Funding for the proposed increase for the construction contract is available from excess General Fund Reserves earmarked for streets.

RECOMMENDATION

Staff recommends approval of Resolution 21-R-48, a not to exceed amount of \$1,286,000 for the CSJ# 0915-46-050 Schertz Pedestrian Routes and Bike Lanes project.

Attachments

Resolution 21-R-48

D & S Concrete contract

RESOLUTION NO. 21-R-48

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AN INCREASE TO THE CONTRACT WITH D&S CONCRETE CONSTRUCTORS. RELATING TO THE CSJ# 0915-46-050 SCHERTZ PEDESTRIAN ROUTES AND BIKE LANES PROJECT AND AUTHORIZING THE BUDGET EXPENDITURES FOR THE PROJECT

WHEREAS, The City staff of the City of Schertz (the "City") previously adopted Resolution 20-R-118, authorizing a construction contract with D&S Concrete Constructors in the amount of \$1,256,960.95 for the CSJ# 0915-46-050 Schertz Pedestrian Routes and Bike Lanes Project; and

WHEREAS, after construction started, City staff has identified some additional, necessary construction items that increase the construction cost of the project; and

WHEREAS, the City Council wishes to provide a not to exceed amount for the construction project to cover the identified additional costs and to cover future minor construction cost increases that may discovered as construction progresses,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes and establishes a not to exceed amount of \$1,286,000 for the contract with D&S Concrete Constructors for CSJ# 0915-46-050 Schertz Pedestrian Routes and Bike Lanes Project and authorizes the City Manager to execute Change Orders to the project up to the not to exceed amount.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 25th day of May, 2021.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Schertz ("Owner") and
D&S Concrete Contractors ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Pedestrian Routes and Bike Lanes

ARTICLE 3 – ENGINEER

- 3.01 The part of the Project that pertains to the Work has been designed by Ford Engineering Inc.
- 3.02 The Owner has retained AG|CM Inc ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Time of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract. Contract Times: Days
- B. The Work is expected to be substantially completed within 240 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 30 calendar days after the date of substantial completion.
- 4.02 *Liquidated Damages*
- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed work following expiration of the Contract Time. The Contractor further acknowledges and agrees that, if the Contractor fails to substantially, or cause the Substantial Completion of any portion of the Work within the Contract time, the Owner will sustain

actual damages as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Owner and Contractor agree that, if the Contractor shall neglect, fail, or refuse to achieve substantial completion of the Work by the Substantial Completion date, subject to proper extension granted by the Owner, then the Contractor agrees to pay the Owner the sum of:

1. **Six hundred dollars (\$600.00) per day** for each day in which such Work is not completed, not as penalty, but as liquidated damages, for the damages ("Liquidated Damages") that would be suffered by Owner as a result of delay for each and every calendar day that the Contractor shall have failed to have completed the Work as required herein. The Liquidated Damages shall be in lieu of any and all other damages which may be incurred by Owner as a result of the failure of Contractor to complete within the Contract Time.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item) and according to the price list attached as "Exhibit A"

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

- a. 95 percent of Work completed (with the balance being retainage); and

- b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to the full amount of the contract, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less such amounts as the Engineer shall determine for incomplete Work, retainage applicable to such work and unsettled claims.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the maximum rate allowed by law, not to exceed 1% per month.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies,

or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages A-1 to A-7, inclusive).
 - 2. Performance bond (pages PB-1 to PB-3, inclusive).
 - 3. Payment bond (pages PYB-1 to PYB-3, inclusive).
 - 4. General Conditions consisting of 73 pages of a modified version of EJCDC C-700, having a title page with the general title: STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT.
 - 5. Supplementary Conditions (pages SC-1 to SC-16, inclusive).
 - 6. Specifications as listed in the table of contents of the Project Manual.
 - 7. Drawings (not attached but incorporated by reference) consisting of 141 sheets with each sheet bearing the following general title: Pedestrian Routes and Bike Lanes.
 - 8. Addenda (numbers to , inclusive).
 - 9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages BF-1 to BF-7, inclusive).
 - 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.

- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

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

10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

_____ D&S Concrete Contractors

By: _____

By: _____ [Signature]

Title: _____

Title: _____ Owner

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____ [Signature]

Title: _____

Title: _____ Assistant

Address for giving notices:

Address for giving notices:

_____ 909 Muehl Rd, Seguin TX 78155

License No.: _____
(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CITY COUNCIL MEMORANDUM

City Council Meeting: May 25, 2021
Department: Executive Team
Subject: Resolution No. 21-R-50 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas approving a request for a Schertz Main Street Local Flavor Economic Development Grant for 537 Main. (M. Browne/B. James)

BACKGROUND

The owner of the property at 537 Main Street is applying for a Local Flavor Grant. The owner is in the process of converting the structure from a residence into a business - the Purple Pig Restaurant. The grant is for up to \$20,000 of matching funds for a range of eligible expenses in the different categories. This includes a roof, and air conditioning system, plumbing, electrical, landscaping, concrete and potentially signage.

On November 10, 2020 City Council approved resolution 20-R-132 approving a local Flavor Grant for this property and owner for up to \$20,000 for a variety of categories of work. The applicant recently submitted a request for payment for this grant for facade and site improvements which is in process of being paid. The applicant is submitting for another grant for additional work he is about to begin on an addition and demolition of the interior, etc. Per the approved guidelines, the applicant is allowed to apply for this additional grant. However, the wording of the grant states that "no more than \$20,000 in grant may be received per property per year". So while more than one grant has been approved for properties in the past, those grants have generally been applied for and paid in different years. In this case, the applicant is wanting to be paid for both in the same year. Staff is comfortable doing that in this case, as the intent was more about applying for grants than being paid.

Staff is going to propose to the Main Street Committee that they recommend to City Council amending the guidelines to clarify this and cap a property at no more than 2 grants for up to a total of \$40,000 over a 5-year period.

GOAL

Promote and enhance commercial activity along Main Street to promote the economic, cultural and general welfare of the public. The area around Main Street in Schertz once served as the commercial and social hub of the community. The City seeks to improve the image of the area around Main Street through the inducement of public money to promote local economic development and stimulate business and commercial activities in the City.

COMMUNITY BENEFIT

Encourage the attraction of small businesses that will create local charm and help develop a sense of place in and around Main Street. Promote commercial development. Stabilize and improve property values. Foster civic pride. Strengthen the economy of the City by protecting and enhancing the attractiveness of the Main Street area to residents and visitors, as well as provide support of local businesses.

SUMMARY OF RECOMMENDED ACTION

Staff recommends approval of Resolution 21-R-50 approving a Schertz Main Street Local Flavor Economic Development Grant for up to \$20,000 for 537 Main. Staff is proposing to pay the applicant during 2021 if the work is completed during 2021, but has made clear the applicant would not be eligible for a grant in 2022.

FISCAL IMPACT

Up to \$20,000 for the grant.

RECOMMENDATION

Approval of Resolution 21-R-50

Attachments

Resolution 20-R-50
537 Main Agreement

RESOLUTION NO. 21-R-50

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS APPROVING A REQUEST FOR A SCHERTZ MAIN STREET LOCAL FLAVOR ECONOMIC DEVELOPMENT GRANT FOR 537 MAIN STREET IN THE CITY OF SCHERTZ, TEXAS, AND RELATED MATTERS IN CONNECTION THEREWITH

WHEREAS, The City of Schertz desires to protect, enhance, and preserve the historic resources and landmarks which represent distinctive elements of Schertz' historic, architectural, economic, cultural, and social heritage by providing property owners and incentive for protecting their property; and

WHEREAS, the City of Schertz desires to encourage the attraction of small businesses that will create local charm and help develop a sense of place in and around Main Street;

WHEREAS, the City of Schertz desires to stabilize and improve property values; and

WHEREAS, Foster civic pride in the beauty and accomplishments of the past, and to promote the use of the historic structures for the culture, education, and general welfare of residents; and

WHEREAS, Strengthen the economy of the city by protecting and enhancing the attractiveness of the Main Street area to residents and visitors, as well as provide support and stimulus to businesses.

WHEREAS, the City Council approved the Schertz Main Street Local Flavor Economic Development Grant;

WHEREAS, staff is in support of this program and recommended approval of the grant request for 603 Main Street for up to \$20,000;

NOW THEREFORE, BE IT RESOLVED, THAT THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby approves the Schertz Main Street Local Flavor Economic Development Grant request for 537 Main Street subject to the approved criteria of the program and execution of a funding agreement generally as outlined in Exhibit "A".

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 25th day of May, 2021.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

Exhibit A

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

SCHERTZ MAIN STREET LOCAL FLAVOR ECONOMIC DEVELOPMENT PROGRAM
FUNDING AGREEMENT BETWEEN THE CITY OF SCHERTZ, TEXAS AND PKM
Ventures LLC, FOR EXPENDITURE OF LOCAL FLAVOR GRANT FUNDS

This Local Flavor Development Program Funding Agreement (AGREEMENT) is made and entered into by and between the City of Schertz, Texas (CITY) and PKM Ventures LLC, (ENTITY).

WHEREAS, the ENTITY has developed a proposal to Make improvements and repairs, including shell/exterior renovations including new roof, demolition, an addition, AC, plumbing, concrete, electrical, landscaping and signage work to 537 Main (the “Project”); and

WHEREAS, Section 380.001 of the Texas Local Government Code, as amended, allows the governing body of a municipality to establish and provide for the administration of one or more programs to promote state and local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, the Schertz Main Street Local Flavor Economic Development Program is intended to encourage and expansion and attract small businesses that create local charm and help develop a sense of place in and around Main Street, promote commercial development, stabilize and improve property values, foster civic pride, and protect and enhance the attractiveness of the Main Street area to residents and visitors; and

WHEREAS, funding for the Schertz Main Street Local Flavor Economic Development Program will be provided annually through the City’s General Fund; and

WHEREAS, the Schertz Main Street Local Flavor Economic Development Program will enhance other city efforts to improve, beautify, and promote economic development in the Main Street area.

WHEREAS, the area around Main Street in Schertz once served as commercial and social hub of the community; and

WHEREAS, the City seeks to improve the image of the area around Main Street through restoration and rehabilitation of structures in the Main Street area to serve as a commercial, social, cultural and tourism hub of the City; and

WHEREAS, the City Council of the City of Schertz desires to provide funds to PKM Ventures LLC (ENTITY).

NOW, THEREFORE, it is mutually agreed by and between the CITY and ENTITY as follows:

GENERAL PROVISIONS

Section 1. Purpose. The purpose of this Agreement is to provide funding to the ENTITY for the project identified in the attached Exhibit "A" (the "Project"), the intent of which is to promote state and local economic development and to stimulate business and commercial activity in the municipality to encourage and expansion and attract small businesses that create local charm and help develop a sense of place in and around Main Street, promote commercial development, stabilize and improve property values, foster civic pride, and protect and enhance the attractiveness of the Main Street area to residents and visitors.

Section 2. Obligation of the ENTITY. The ENTITY shall use all of the awarded funds provided by the CITY in accordance with Chapter 351 of the Texas Tax Code, the ENTITY'S funding application, and the attached Exhibit "A".

Section 3. Reporting Requirements of the ENTITY. The ENTITY shall deliver a detailed accounting of the expenditures for the Project within thirty (30) days after completion of the Project (the "Post Event Report"). The Post Event Report shall include copies of receipts and other documents establishing the expenditures for the project. The CITY shall not make reimbursements for expenditures where no receipt or invoice is provided. Partial or incomplete reports will not be accepted.

Section 4. Authorization of Payment. Subject to the ENTITY'S satisfactory performance and compliance with the terms of this AGREEMENT, the CITY agrees to pay the ENTITY up to fifty percent (50%) of the Project. The Project is estimated to be over \$40,000.00 and fifty percent of which, is capped at 20,000.00 for work falling within the criteria for façade, site, signage and systems grants. Payment will be made within forty-five (45) days of acceptance of the complete Post Event Report. Partial or incomplete reports will not be accepted. Only expenditures that meet Chapter 351 of the Tax Code and this AGREEMENT shall be reimbursed.

Section 5. Appeal Process. Any ENTITY wishing to appeal the decision of the CITY must present their appeal in writing within ten (10) business days of funding denial.

Section 6. Rights. The City of Schertz has the right, at any time, to inspect the books or records of the ENTITY that may relate to performance of this AGREEMENT. The CITY, at its sole expenses, has the right to conduct an audit of the ENTITY or Project.

Section 7. Term. The AGREEMENT shall become effective as of the date entered below. The AGREEMENT shall terminate one year from its effective date or once the terms have been met, whichever occurs first.

Section 8. Indemnification. The ENTITY agrees to defend, indemnify and hold harmless the CITY, its officers, agents and employees, against any and all claims, lawsuits, judgments, cause of action, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the ENTITY's breach of any of the terms or provisions of this AGREEMENT, or by any negligent act or

omission of the ENTITY, its officers, agents, servants, employees, contractors, or subcontractors, in the performance of this AGREEMENT; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of the CITY, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both the ENTITY and the CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph 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. Both parties expressly agree that this AGREEMENT does not assign any responsibility for civil liability to the City of Schertz that may arise by virtue of this AGREEMENT.

Section 9. Termination. A party may terminate this AGREEMENT in whole or in part if the other party fails to comply with a term of the AGREEMENT, including the inability of the ENTITY to conform to any change required by federal, state or local laws or regulations; or for the convenience of either party. The terminating party shall provide written notification to the other party of the decision to terminate this AGREEMENT within thirty (30) days before the effective date of termination. A party may terminate the AGREEMENT for breach of any provision of this AGREEMENT, upon written notice of the breach and the breaching party shall have ten (10) days after receipt of the written notice in which to cure the breach to the satisfaction of the non-breaching party.

Section 10. Notice. All notices required or permitted under this AGREEMENT shall be in writing and shall be delivered in person or mailed as follows:

to the CITY at:

City of Schertz
Attention: City Manager
1400 Schertz Parkway
Schertz, TX 78154
(210) 619-1000

To PKM Ventures LLC:
Attention: Nicholas Marquez
PO Box 284
Cibolo, Texas 78108

MISCELLANEOUS

Section 11. Entire Agreement. This AGREEMENT constitutes the entire agreement of the parties regarding the subject matter contained herein. The parties may not modify or amend this AGREEMENT, except by written agreement approved by the governing bodies of each party and duly executed by both parties.

Section 12. Approval. This AGREEMENT has been duly and properly approved by each party's governing body and constitutes a binding obligation on each party.

Section 13. Assignment. Except as otherwise provided in this AGREEMENT, a party may not assign this AGREEMENT or subcontract the performance of services without first obtaining the written consent of the other party.

Section 14. Non-Waiver. A party's failure or delay to exercise right or remedy does not constitute a waiver of the right or remedy. An exercise of a right or remedy under this AGREEMENT does not preclude the exercise of another right or remedy. Rights and remedies under this AGREEMENT are cumulative and are not exclusive of other rights or remedies provided by law.

Section 15. Paragraph Headings. The various paragraph headings are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this AGREEMENT or any section thereof.

Section 16. Attorney fees. In any lawsuit concerning this AGREEMENT, the prevailing party shall be entitled to recover reasonable attorney's fees from the nonprevailing party, plus all out-of-pocket expense such as deposition costs, telephone, calls, travel expenses, expert witness fees, court costs, and their reasonable expenses, unless otherwise prohibited by law.

Section 17. Severability. The parties agree that in the event any provision of this AGREEMENT is declared invalid by a court of competent jurisdiction that part of the AGREEMENT is severable and the decree shall not affect the remainder of the AGREEMENT. The remainder of the AGREEMENT shall be in full force and effect.

Section 18. Venue. The parties agree that all disputes that arise of this AGREEMENT are governed by the laws of the State of Texas and venue for all purposes herewith shall be in Milam County, Texas.

Section 19. Certificate of Insurance. The ENTITY agrees to provide a certificate of insurance for liability and worker's compensation insurance or letter of self-insurance on its letterhead indicating its self-insured status before any event awarded funding under this AGREEMENT. The cost of the insurance herein mentioned to be secured and maintained by the ENTITY shall be borne solely by the ENTITY.

IN WITNESS HEREOF, the CITY and ENTITY make and execute this AGREEMENT to be effective this _____ day of _____, 2021.

CITY OF SCHERTZ, TEXAS

ENTITY

City Manager

(Title)

ATTEST:

City Secretary

(Title)

EXHIBIT A

New Metal Roof - 7000
Electrical Upgrade - 15k
Plumbing Upgrade -10k
AC Upgrade - 13k
Addition and demolition - 15k

CITY COUNCIL MEMORANDUM

City Council Meeting: May 25, 2021
Department: Executive Team
Subject: Resolution No. 21-R-51 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas approving a request for a Schertz Main Street Local Flavor Economic Development Grant for 820 Main. (M. Browne/B. James)

BACKGROUND

The owner of the property at 820 Main Street is applying for a Local Flavor Grant. The owner is in the process of converting the structure from a residence into a business. The grant is for up to \$20,000 of matching funds for a range of eligible expenses in the different categories. This includes a roof, and air conditioning system, plumbing, electrical, landscaping, concrete and potentially signage.

GOAL

Promote and enhance commercial activity along Main Street to promote the economic, cultural and general welfare of the public. The area around Main Street in Schertz once served as the commercial and social hub of the community. The City seeks to improve the image of the area around Main Street through the inducement of public money to promote local economic development and stimulate business and commercial activities in the City.

COMMUNITY BENEFIT

Encourage the attraction of small businesses that will create local charm and help develop a sense of place in and around Main Street. Promote commercial development. Stabilize and improve property values. Foster civic pride. Strengthen the economy of the City by protecting and enhancing the attractiveness of the Main Street area to residents and visitors, as well as provide support of local businesses.

SUMMARY OF RECOMMENDED ACTION

Staff recommends approval of Resolution 21-R-51 approving a Schertz Main Street Local Flavor Economic Development Grant for up to \$11,000 for 820 Main.

FISCAL IMPACT

Up to \$11,000.

RECOMMENDATION

Approval of Resolution 21-R-51.

Attachments

Resolution 20-R-51
820 Main Agreement

RESOLUTION NO. 21-R-50

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS APPROVING A REQUEST FOR A SCHERTZ MAIN STREET LOCAL FLAVOR ECONOMIC DEVELOPMENT GRANT FOR 820 MAIN STREET IN THE CITY OF SCHERTZ, TEXAS, AND RELATED MATTERS IN CONNECTION THEREWITH

WHEREAS, The City of Schertz desires to protect, enhance, and preserve the historic resources and landmarks which represent distinctive elements of Schertz' historic, architectural, economic, cultural, and social heritage by providing property owners and incentive for protecting their property; and

WHEREAS, the City of Schertz desires to encourage the attraction of small businesses that will create local charm and help develop a sense of place in and around Main Street;

WHEREAS, the City of Schertz desires to stabilize and improve property values; and

WHEREAS, Foster civic pride in the beauty and accomplishments of the past, and to promote the use of the historic structures for the culture, education, and general welfare of residents; and

WHEREAS, Strengthen the economy of the city by protecting and enhancing the attractiveness of the Main Street area to residents and visitors, as well as provide support and stimulus to businesses.

WHEREAS, the City Council approved the Schertz Main Street Local Flavor Economic Development Grant;

WHEREAS, staff is in support of this program and recommended approval of the grant request for 820 Main Street for up to \$11,000;

NOW THEREFORE, BE IT RESOLVED, THAT THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby approves the Schertz Main Street Local Flavor Economic Development Grant request for 820 Main Street subject to the approved criteria of the program and execution of a funding agreement generally as outlined in Exhibit "A".

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 25th day of May, 2021.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

Exhibit A

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

SCHERTZ MAIN STREET LOCAL FLAVOR ECONOMIC DEVELOPMENT PROGRAM
FUNDING AGREEMENT BETWEEN THE CITY OF SCHERTZ, TEXAS AND 1017
Holdings, LLC, FOR EXPENDITURE OF LOCAL FLAVOR GRANT FUNDS

This Local Flavor Development Program Funding Agreement (AGREEMENT) is made and entered into by and between the City of Schertz, Texas (CITY) and 1017 Holdings, LLC, (ENTITY).

WHEREAS, the ENTITY has developed a proposal to Make plumbing, AC and electrical improvements to 820 Main (the “Project”); and

WHEREAS, Section 380.001 of the Texas Local Government Code, as amended, allows the governing body of a municipality to establish and provide for the administration of one or more programs to promote state and local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, the Schertz Main Street Local Flavor Economic Development Program is intended to encourage and expansion and attract small businesses that create local charm and help develop a sense of place in and around Main Street, promote commercial development, stabilize and improve property values, foster civic pride, and protect and enhance the attractiveness of the Main Street area to residents and visitors; and

WHEREAS, funding for the Schertz Main Street Local Flavor Economic Development Program will be provided annually through the City’s General Fund; and

WHEREAS, the Schertz Main Street Local Flavor Economic Development Program will enhance other city efforts to improve, beautify, and promote economic development in the Main Street area.

WHEREAS, the area around Main Street in Schertz once served as commercial and social hub of the community; and

WHEREAS, the City seeks to improve the image of the area around Main Street through restoration and rehabilitation of structures in the Main Street area to serve as a commercial, social, cultural and tourism hub of the City; and

WHEREAS, the City Council of the City of Schertz desires to provide funds to 1017 Holdings, LLC (ENTITY).

NOW, THEREFORE, it is mutually agreed by and between the CITY and ENTITY as follows:

GENERAL PROVISIONS

Section 1. Purpose. The purpose of this Agreement is to provide funding to the ENTITY for the project identified in the attached Exhibit "A" (the "Project"), the intent of which is to promote state and local economic development and to stimulate business and commercial activity in the municipality to encourage and expansion and attract small businesses that create local charm and help develop a sense of place in and around Main Street, promote commercial development, stabilize and improve property values, foster civic pride, and protect and enhance the attractiveness of the Main Street area to residents and visitors.

Section 2. Obligation of the ENTITY. The ENTITY shall use all of the awarded funds provided by the CITY in accordance with Chapter 351 of the Texas Tax Code, the ENTITY'S funding application, and the attached Exhibit "A".

Section 3. Reporting Requirements of the ENTITY. The ENTITY shall deliver a detailed accounting of the expenditures for the Project within thirty (30) days after completion of the Project (the "Post Event Report"). The Post Event Report shall include copies of receipts and other documents establishing the expenditures for the project. The CITY shall not make reimbursements for expenditures where no receipt or invoice is provided. Partial or incomplete reports will not be accepted.

Section 4. Authorization of Payment. Subject to the ENTITY'S satisfactory performance and compliance with the terms of this AGREEMENT, the CITY agrees to pay the ENTITY up to fifty percent (50%) of the Project. The Project is estimated to be \$22,000.00 and fifty percent of which is \$11,000.00, and is capped at 11,000.00 for work falling within the criteria for façade improvements as the applicant has already received approval for a grant of up to \$9,000. Payment will be made within forty-five (45) days of acceptance of the complete Post Event Report. Partial or incomplete reports will not be accepted. Only expenditures that meet Chapter 351 of the Tax Code and this AGREEMENT shall be reimbursed.

Section 5. Appeal Process. Any ENTITY wishing to appeal the decision of the CITY must present their appeal in writing within ten (10) business days of funding denial.

Section 6. Rights. The City of Schertz has the right, at any time, to inspect the books or records of the ENTITY that may relate to performance of this AGREEMENT. The CITY, at its sole expenses, has the right to conduct an audit of the ENTITY or Project.

Section 7. Term. The AGREEMENT shall become effective as of the date entered below. The AGREEMENT shall terminate one year from its effective date or once the terms have been met, whichever occurs first.

Section 8. Indemnification. The ENTITY agrees to defend, indemnify and hold harmless the CITY, its officers, agents and employees, against any and all claims, lawsuits, judgments, cause of action, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the ENTITY'S breach of any of the terms or provisions of this AGREEMENT, or by any negligent act or omission of the ENTITY, its officers, agents, servants, employees, contractors, or subcontractors, in the performance of this AGREEMENT; except that the indemnity provided for in this paragraph shall not apply

to any liability resulting from the sole negligence of the CITY, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both the ENTITY and the CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph 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. Both parties expressly agree that this AGREEMENT does not assign any responsibility for civil liability to the City of Schertz that may arise by virtue of this AGREEMENT.

Section 9. Termination. A party may terminate this AGREEMENT in whole or in part if the other party fails to comply with a term of the AGREEMENT, including the inability of the ENTITY to conform to any change required by federal, state or local laws or regulations; or for the convenience of either party. The terminating party shall provide written notification to the other party of the decision to terminate this AGREEMENT within thirty (30) days before the effective date of termination. A party may terminate the AGREEMENT for breach of any provision of this AGREEMENT, upon written notice of the breach and the breaching party shall have ten (10) days after receipt of the written notice in which to cure the breach to the satisfaction of the non-breaching party.

Section 10. Notice. All notices required or permitted under this AGREEMENT shall be in writing and shall be delivered in person or mailed as follows:

to the CITY at:

City of Schertz
Attention: City Manager
1400 Schertz Parkway
Schertz, TX 78154
(210) 619-1000

To 1017 Holdings, LLC:
Attention: Nicholas Marquez
PO Box 284
Cibolo, Texas 78108

MISCELLANEOUS

Section 11. Entire Agreement. This AGREEMENT constitutes the entire agreement of the parties regarding the subject matter contained herein. The parties may not modify or amend this AGREEMENT, except by written agreement approved by the governing bodies of each party and duly executed by both parties.

Section 12. Approval. This AGREEMENT has been duly and properly approved by each party's governing body and constitutes a binding obligation on each party.

Section 13. Assignment. Except as otherwise provided in this AGREEMENT, a party may not assign this AGREEMENT or subcontract the performance of services without first obtaining the written

consent of the other party.

Section 14. Non-Waiver. A party's failure or delay to exercise right or remedy does not constitute a waiver of the right or remedy. An exercise of a right or remedy under this AGREEMENT does not preclude the exercise of another right or remedy. Rights and remedies under this AGREEMENT are cumulative and are not exclusive of other rights or remedies provided by law.

Section 15. Paragraph Headings. The various paragraph headings are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this AGREEMENT or any section thereof.

Section 16. Attorney fees. In any lawsuit concerning this AGREEMENT, the prevailing party shall be entitled to recover reasonable attorney's fees from the nonprevailing party, plus all out-of-pocket expense such as deposition costs, telephone, calls, travel expenses, expert witness fees, court costs, and their reasonable expenses, unless otherwise prohibited by law.

Section 17. Severability. The parties agree that in the event any provision of this AGREEMENT is declared invalid by a court of competent jurisdiction that part of the AGREEMENT is severable and the decree shall not affect the remainder of the AGREEMENT. The remainder of the AGREEMENT shall be in full force and effect.

Section 18. Venue. The parties agree that all disputes that arise of this AGREEMENT are governed by the laws of the State of Texas and venue for all purposes herewith shall be in Milam County, Texas.

Section 19. Certificate of Insurance. The ENTITY agrees to provide a certificate of insurance for liability and worker's compensation insurance or letter of self-insurance on its letterhead indicating its self-insured status before any event awarded funding under this AGREEMENT. The cost of the insurance herein mentioned to be secured and maintained by the ENTITY shall be borne solely by the ENTITY.

IN WITNESS HEREOF, the CITY and ENTITY make and execute this AGREEMENT to be effective this _____ day of _____, 2021.

CITY OF SCHERTZ, TEXAS

ENTITY – 1017 Holdings, LLC

City Manager

(Title)

ATTEST:

City Secretary

(Title)

EXHIBIT A

Plumbing, Electrical and AC work totaling \$22,000

CITY COUNCIL MEMORANDUM

City Council Meeting: May 25, 2021

Department: City Secretary

Subject: Ordinance No. 21-T-19 – Consideration and/or action approving an Ordinance by the City Council of the City of Schertz, Texas, authorizing an adjustment to the Fiscal Year 2021 Budget to provide funding for professional services related to the Corbett Ground Storage Tank, repealing all ordinances or parts of ordinances in conflict with this ordinance; and providing an effective date. *Final Reading* (B. James/K. Woodlee/J. Shortess)

BACKGROUND

The Corbett Elevated Storage Tank serves approximately 2,300 water connections (a population of approximately 5,800). The addition of the proposed 3.0 million gallon Corbett Ground Storage Tank will provide critical storage and redundancy at the Corbett Tank Site in order to provide water to customers on a daily basis and to a larger portion of the City in an emergency situation.

The Corbett Tank Site is one of two SSLGC connection points which provide continual water flow to the southern water zone. In addition to the design of a new ground storage tank, a pump station will be designed to feed the southern water zone through the existing elevated tank on site and to pump water to the Live Oak Tank Site. Generator design is proposed to run all of the pumps during an electrical outage as experienced during the severe Winter Storm in Texas during February 12-19, 2021. A Professional Engineering firm will provide services related to the design and construction phases of the Corbett Ground Storage Tank. City staff has worked with Ford Engineering, Inc. to develop a scope for these services and a budget adjustment is needed to fund this portion of the project. Proposed Ordinance 21-T-19 allocates \$512,000 for the professional services needed to assist the City with the design of the Corbett Ground Storage Tank. That amount includes the consultant's fee and a contingency amount of approximately ten percent.

Construction of the Corbett Ground Storage Tank, pump station, and generator will be funded separately after final design is complete. The estimated construction cost of this project is \$4.5 million.

City Council approved this on first reading at the meeting of May 11, 2021.

GOAL

The goal of this ordinance is to amend the fiscal year 2020-2021 budget to provide funding for the design of the Corbett Ground Storage Tank.

COMMUNITY BENEFIT

The proposed 3.0 million gallon Corbett Ground Storage Tank will provide critical storage and redundancy at the Corbett Tank Site in order to provide water to customers on a daily basis and to a larger portion of the City in an emergency situation.

SUMMARY OF RECOMMENDED ACTION

Approval of Ordinance 21-T-19 on final reading authorizing the budget adjustment.

FISCAL IMPACT

This ordinance will allocate \$512,000.00 from the Water Capital Recovery Fees to engineering and professional services related to the Corbett Ground Storage Tank project. As of March 31, 2021, the Water Capital Recovery Fund had \$8.4 million available for this project.

RECOMMENDATION

Staff recommends approval of Ordinance 21-T-19 on final reading.

Attachments

Ordinance 21-T-19

ORDINANCE NO. 21-T-19

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS, AUTHORIZING AN ADJUSTMENT TO THE FISCAL YEAR 2021 BUDGET TO PROVIDE FUNDING FOR PROFESSIONAL SERVICES RELATED TO THE CORBETT GROUND STORAGE TANK, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, pursuant to Ordinance 20-T-31, the City of Schertz (the “City”) adopted the budget for the City for the fiscal year 2020-2021 (the “Budget”), which provides funding for the City’s operations throughout the 2020-2021 fiscal year; and

WHEREAS, the City needs to authorize a budget amount of \$512,000 for the purpose of contracting professional services and other associated expenses related to the Corbett Ground Storage Tank from the Water Capital Recovery Fund; and

WHEREAS, City staff recommends that the City Council of the City adjust the Budget and approve the ordinance; and

WHEREAS, the City Council of the City has determined that it is in the best interest of the City to adjust the Budget and approve the budget transfer for the Corbett Ground Storage Tank, as more fully set forth in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS:

Section 1. The City shall set a budget of \$512,000 from the Water Capital Recovery Fund for the contracting of professional services and other associated expenses related to the Corbett Ground Storage Tank.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 3. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 4. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of

such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 7. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

PASSED ON FIRST READING, the 11TH day of May, 2021.

PASSED ON FINAL READING, the 25th day of May, 2021.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

CITY COUNCIL MEMORANDUM

City Council Meeting: May 25, 2021

Department: Engineering

Subject: Resolution No. 21-R-44 – Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, authorizing a Task Order Agreement with Ford Engineering, Inc. relating to the Corbett Ground Storage Tank Engineering and Design Proposal and authorizing the budget expenditures for the project. (B. James/K. Woodlee/J. Shortness)

BACKGROUND

The Corbett Elevated Storage Tank serves approximately 2,300 water connections (a population of approximately 5,800). The addition of the proposed 3.0 million gallon Corbett Ground Storage Tank will provide critical storage and resiliency at the Corbett Tank Site to provide water to customers on a daily basis and in emergency situations.

The Corbett Tank Site is one of two SSLGC connection points which provide continual water flow to the southern water zone. In addition to the design of a new ground storage tank, a pump station will be designed to feed the southern water zone through the existing elevated tank on site and to pump water to the Live Oak Tank Site. Generator design is proposed to run all the pumps during an electrical outage as experienced during the severe Winter Storm in Texas during February 12-19, 2021.

Construction of the Ground Storage Tank, pump station, and generator will be funded separately after final design is complete. The estimated construction cost of this project is \$4.5 million.

GOAL

To obtain authorization from Council to execute a Task Order Agreement with Ford Engineering, Inc. for \$466,265.00, and a not to exceed amount of \$512,000.00, for the Corbett Ground Storage Tank Engineering and Design proposal.

COMMUNITY BENEFIT

The proposed 3.0 million gallon Corbett Ground Storage Tank will provide critical storage and resiliency at the Corbett Tank Site in order to provide water to customers on a daily basis and in an emergency situation.

SUMMARY OF RECOMMENDED ACTION

Authorize execution of the professional services Task Order Agreement for the Corbett Ground Storage Tank with Ford Engineers, Inc., for \$466,265.00, and a not to exceed amount of \$512,000.00.

FISCAL IMPACT

The cost of the project shall not exceed \$512,000.00 and funding is available from Water Capital Recovery Fees.

RECOMMENDATION

Staff recommends Council approve Resolution 21-R-44 and execute the Task Order Agreement for the Corbett Ground Storage Tank Engineering and Design to Ford Engineering, Inc. for \$466,265.00 and a not to exceed amount of \$512,000.00.

Attachments

Resolution 21-R-44

Exhibit A

Exhibit B Ford Engineering Task Order

Ford Engineering Proposal

RESOLUTION NO. 21-R-44

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ,
TEXAS AUTHORIZING A CONTRACT WITH FORD ENGINEERING,
INC. RELATING TO THE CORBETT GROUND STORAGE TANK
ENGINEERING AND DESIGN PROJECT AND AUTHORIZING THE
BUDGET EXPENDITURES FOR THE PROJECT**

WHEREAS, The City staff of the City of Schertz (the "City") has recommended that the City accept the proposal from Ford Engineering, Inc. relating to the Corbett Ground Storage Tank Engineering and Design and approve the project expenditures; and

WHEREAS, City staff has received qualifications indicating that Ford Engineering, Inc. is qualified to provide such services for the City; and

WHEREAS, Ford Engineering, Inc. is an approved On-Call Engineering Firm for the City of Schertz; and

WHEREAS, pursuant to Section 252.022(a)(4) of the Texas Local Government Code, the City is not required to seek bids or proposals with respect to procurement for personal, professional, or planning purposes; and

WHEREAS, the project is a planned project and will be funded from Water Capital Recovery Fees,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to execute and deliver the Task Order Agreement with Ford Engineering, Inc. in accordance with their approved Master Agreement in substantially the form set forth in Exhibit A in the amount not to exceed \$512,000.00 for the Corbett Ground Storage Tank Engineering and Design Project.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application

of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 25th day of May, 2021.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor


ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

CITY MANAGEMENT

Coordination Sheet

<u>FROM:</u>	Purchasing			
<u>DATE:</u> Oct 04, 2019		NAME	INITIALS	DATE
	X	Mr. Brian James Assistant City Manager		10-7-19
	X	Mr. Charles Kelm Assistant City Manager	CK	Oct 4
	X	Ms. Sarah Gonzalez Assistant to the City Manager	SG	10/7/19
	X	Mr. Mark Browne City Manager	B	10/7/19
<u>COMMENTS:</u>	<p>On-Call Engineering Master Services Agreement with Ford Engineering. Approved on 19-R-134, 9/24/2019. No CAF requested as no financials involved in MSA.</p>			
<u>RETURN TO:</u>	<p>Julie Gohlke</p>			

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated project and the controlling laws and regulations.

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

TASK ORDER EDITION

Note: The City of Schertz, Texas has modified this document. The modified language is indicated by ~~strikeout~~ and/or underlining

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

TASK ORDER EDITION

THIS IS AN AGREEMENT effective as of October 1, 2015 ("Effective Date of the Agreement") between

The City of Schertz "Owner" ("Owner") and

Ford Engineering Inc. ("Engineer").

Other terms used in this Agreement are defined in Article 7.

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.1 Scope

- A. Engineer's services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided.
- B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.

1.2 Task Order Procedure

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. With respect to the scope of Engineer's services, each specific Task Order shall either (1) be accompanied by and incorporate a customized Exhibit A, "Engineer's Services for Task Order," prepared for the Specific Project, (2) state the scope of services in the Task Order document itself, or (3) incorporate by reference all or portions of Exhibit A, "Engineer's Services for Task Order," as attached to this Agreement. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order.
- C. Engineer shall provide, or cause to be provided, the services set forth in the Task Order.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth in this Agreement; in Exhibit B, "Owner's Responsibilities"; and in each Task Order.
- B. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement; such responsibility extends to requirements, instructions, programs, reports, data, and other information furnished by Owner pursuant to any Task Order. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of: (1) any development that affects the scope or time of performance of Engineer's services; (2) the presence at the Site of any Constituent of Concern; or (3) any relevant, material defect or nonconformance in Engineer's services, the Work, the performance of any Constructor, or in Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.1 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for [3] years from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term for up two additional terms of 1 year each.

3.2 *Times for Rendering Services*

- A. The Effective Date of the Task Order and the times for completing services or providing deliverables will be stated in each Task Order. Engineer is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
- F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), then the Task Order will state the schedule for performance of Engineer's services in order to sequence and properly coordinate such services as are applicable to the Work under the Construction Contracts. If the Task Order does not address such sequencing and coordination, then Owner and Engineer shall jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

ARTICLE 4 – INVOICES AND PAYMENTS

4.1 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.2 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under the Task Order, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement

shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

ARTICLE 5 – OPINIONS OF COST

5.1 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, recent bid results for similar work, and general familiarity with the construction industry. The same standards of performance in Section 6.01.A shall apply to the preparation of Engineer's opinions of probable Construction Cost. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.2 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit for a Specific Project is established between Owner and Engineer in a Task Order, then such Construction Cost limit and Engineer's rights and responsibilities with respect thereto will be governed by Exhibit F, "Construction Cost Limit," which shall be attached to and incorporated in the Task Order. If no Construction Cost limit is established in a Task Order, then Exhibit F does not apply.

5.3 *Opinions of Total Project Costs*

- A. ~~The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.~~

ARTICLE 6 – GENERAL CONSIDERATIONS

6.1 *Standards of Performance*

- A. The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. Engineer warrants and represents that it has the capability, experience, available personnel, and means required to perform the services contemplated by this Agreement. Services will be performed using personnel and equipment qualified and/or suitable to perform the work requested by the Owner. Owner retains the right to report to Engineer any unsatisfactory performance of Engineer personnel for appropriate corrective action. Engineer shall comply with applicable federal, state, and local laws in connection with any work performed hereunder. No other warranty, express or implied, is included in this Agreement or in any Task Order, drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the Services.~~Standard of Care: The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.~~

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures*
1. Engineer and Owner shall comply with applicable Laws and Regulations.
 2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of the Task Order. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date of the Task Order to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of the Task Order of Owner-provided written policies and procedures;
 - c. changes after the Effective Date of the Task Order to Owner-provided policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee and as modified by the City of Schertz, unless expressly indicated otherwise in Exhibit J or in the specific Task Order.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws

and Regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at a Site, Engineer, its Consultant, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.2 *Design Without Construction Phase Services*

- A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been expressly required of Engineer in the authorizing Task Order. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against Engineer that may be in any way connected to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

6.3 *Use of Documents*

- ~~A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed.~~

B.A. If Engineer is required to prepare or furnish Drawings or Specifications under the specific Task Order, then Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.

C. 8. Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by the City shall be delivered to and become the property of the City. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT LIABILITY TO THE
PROFESSIONAL. Where applicable, Professional shall retain all pre-existing proprietary rights in the materials provided to the City but shall grant to the City a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at Professional's expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Specific Project. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and its Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

D.C. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.4 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Specific Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Specific Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement or a Task Order does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the

recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.5 Insurance

- A. Commencing with the Effective Date of the Agreement, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer that is applicable to a Specific Project.
- ~~B. Commencing with the Effective Date of the Agreement, Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability insurance policies carried by Owner, which are applicable to the Specific Project.~~
- C.B. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Specific Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor.
- ~~D.C. Owner and Engineer shall each deliver to the other Owner~~ certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished promptly after the Effective Date of the Agreement and at renewals thereafter during the life of this Agreement.
- E.D. All policies of property insurance relating to a Specific Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F.E. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G.F. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.6 *Suspension and Termination*

A. *Suspension*

1. By Owner: Owner may suspend a Task Order for up to 90 days upon seven days written notice to Engineer.
2. By Engineer: Engineer may suspend services under a Task Order (a) if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or (b) in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.A.4.
3. A suspension on a specific Task Order, whether by Owner or Engineer, shall not affect the duty of the two parties to proceed with their obligations under other Task Orders.

B. *Termination for Cause—Task Order:* The obligation to provide further services under a specific Task Order may be terminated for cause:

1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the specific Task Order or this Agreement, whose terms govern the specific Task Order, through no fault of the terminating party.
2. By Engineer:
 - a. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - b. upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.A.5.
 - c. Engineer shall have no liability to Owner on account of such termination.
 - d. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.06.B.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

C. *Termination for Cause—Agreement:* In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon seven days notice Engineer may terminate this Agreement, including Engineer's services under all Task Orders.

- D. *Termination for Convenience by Owner:* Owner may terminate a Task Order or this Agreement for Owner's convenience, effective upon Engineer's receipt of notice from Owner.
- E. *Effective Date of Termination:* The terminating party under Paragraphs 6.06.B, C, and D may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.
- F. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with the specific Task Order and this Agreement, and for all expenses incurred through the effective date of termination, to the extent that the specific Task Order (or Task Orders) allows reimbursement for such expenses. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.F.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using the basis of compensation for Additional Services, as indicated in the specific Task Order.

6.7 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the ~~state~~ State of Texas ~~in which the Specific Project is located.~~

6.8 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. The Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in any Construction Contract Documents prepared for any Specific Project under this Agreement.

6.9 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. With respect to each specific Task Order, Specific Project, and Site (unless indicated otherwise in a specific Task Order):
 1. Owner represents to Engineer that as of the Effective Date of the Task Order, to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
 2. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
 3. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
 4. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, immediately suspend performance of services on the portion of the Specific Project affected thereby until such portion of the Specific Project is no longer affected.
 5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under the specific Task Order, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating the specific Task Order for cause on seven days notice.

6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under a specific Task Order or this Agreement.

6.11 Indemnification and Mutual Waiver

A. Professional agrees to indemnify and hold the City of Schertz, Texas and all of its present, future and former agents, employees, officials and representatives harmless in their official, individual and representative capacities from any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, for injuries to persons (including death) or to property (both real and personal) created by, arising from or in any manner relating to the services or goods performed or provided by Professional – expressly including those arising through strict liability or under the constitutions of the United States or Texas – BUT ONLY TO THE EXTENT ALLOWABLE BY SEC. 271.904(a) OF THE TEXAS LOCAL GOVERNMENT CODE AS APPLICABLE.~~Indemnification by Engineer: To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third party claims or actions relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."~~

~~B. Indemnification by Owner: Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.~~

~~C. Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys' fees) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.~~

~~D. No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.~~

~~E. Percentage Share of Negligence: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or~~

~~damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.~~

~~F.A. **Mutual Waiver:** To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, any Task Order, or a Specific Project, from any cause or causes.~~

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services under each Task Order, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under the Task Order. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. **Notices:** Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. **Survival:** All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. **Severability:** Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. **Waiver:** A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. **Accrual of Claims:** To the fullest extent permitted by Laws and Regulations, all causes of action arising under a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of such Specific Project.
- F. **Applicability to Task Orders:** The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. **Non-Exclusive Agreement:** Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

ARTICLE 7 – DEFINITIONS

7.1 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order, but which are not included in Basic Services for that Task Order.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Article 8.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with a specific Task Order, as specified in the Task Order (but not including Additional Services performed or furnished pursuant to an amendment to the specific Task Order).
 6. *Change Order*—A document which is signed by a Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by a Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
 8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 9. *Construction Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The numbers of days or the dates by which a Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion, and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of an entire Specific Project designed or specified by or for Engineer under this Agreement and the specific Task Order, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damage to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Contractor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Specific Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and their employees, agents, and representatives.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by a Contractor.
19. *Effective Date of the Agreement*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. *Effective Date of the Task Order*—The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
21. *Engineer*—The individual or entity named as such in this Agreement.

22. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Owner*—The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.
25. *Record Drawings*—Drawings depicting the completed Specific Project, or a specific portion of the completed Specific Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Resident Project Representative*—The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR. The duties and responsibilities of the RPR will be as set forth in each Task Order.
27. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
28. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
29. *Site*—Lands or areas indicated in the Construction Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of a Contractor.
30. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
31. *Specific Project*—The total specific undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under a specific Task Order are a part.
32. *Subcontractor*—An individual or entity having a direct contract with a Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently

complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

- 34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with a Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
- 35. *Task Order*—A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
- 36. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost and all other Specific Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to Owner.
- 37. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning; all as required by such Construction Contract Documents.
- 38. *Work Change Directive*—A written directive to a Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.1 *Suggested Form of Task Order*

- A. The Suggested Form of Task Order is attached as Attachment 1, and shall be used as the basis for preparing a specific Task Order for each Specific Project under this Agreement.

8.2 *Exhibits Included:*

- A. Exhibit A, Engineer's Services for Task Order. Services, tasks, and terms in Exhibit A as included with this Agreement are for reference in preparing the scope of services for specific Task Orders, and are contractually binding only to the extent expressly incorporated in a specific Task Order
- B. Exhibit B, Owner's Responsibilities. This Exhibit applies to all Task Orders.

- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. The terms of Exhibit C that will be applicable to and govern compensation under a specific Task Order will be determined by the selection of compensation methods made in Paragraph 6, "Payments to Engineer," of the specific Task Order.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. This Exhibit is not contractually binding except when expressly incorporated in a specific Task Order.
- E. Exhibit E, Notice of Acceptability of Work. Engineer shall use this Notice of Acceptability of Work form at the conclusion of construction on a Specific Project if (1) the form is expressly incorporated by reference in a specific Task Order, and Engineer's scope of services in the specific Task Order includes providing such a notice to Owner and Contractor, and (2) the Work is in fact acceptable pursuant to applicable requirements, subject to the terms of the notice.
- F. Exhibit F, Construction Cost Limit. This Exhibit is contractually binding only with respect to those specific Task Orders that (1) expressly incorporate Exhibit F by reference in the Task Order, Paragraph 2, "Services of Engineer," and (2) expressly state a specific Construction Cost Limit and contingency for the Specific Project in Paragraph 2, "Services of Engineer," of the specific Task Order.
- G. Exhibit G, Insurance. This Exhibit is applicable to all Task Orders.
- ~~H. Exhibit H, Dispute Resolution. This Exhibit is applicable to all Task Orders.~~
- ~~I. Exhibit I, Limitations of Liability. This Exhibit is applicable to all Task Orders.~~
- J-H. Exhibit J, Special Provisions. This Exhibit is applicable to all Task Orders.
- ~~K-I.~~ Exhibit K, Amendment to Task Order. Owner and Engineer may use this form during a Specific Project to modify the specific Task Order.

8.3 *Total Agreement*

- A. This Agreement (together with the Exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.
- B. An executed Task Order under this Agreement (including any incorporated exhibits or attachments) constitutes the entire agreement between Owner and Engineer with respect to the Specific Project, and supersedes all prior written or oral understandings. Such a Task Order may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments to such a Task Order should be based whenever possible on the format of Exhibit K to this Agreement.

8.4 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party that the individual represents. Each Task Order shall likewise designate representatives of the two parties with respect to that Task Order.

8.5 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER:

By:

Print Name: Dr. Mark Browne

Title: City Manager

Date Signed:

Date Signed:

Address for Owner's receipt of notices:

1400 Schertz Parkway

Schertz, Texas 78154

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

Kathryn Woodlee

Title: City Engineer

Phone Number: 210-619-1823

E-Mail Address: kwoodlee@schertz.com

ENGINEER:

By:

Print Name:

Title: President

Date Signed: 10/4/2019

Engineer License or Firm's Certificate No. (if required):

State of : Texas PE #94904 TBPE# F-1162

Date Signed: 10/4/2019

Address for Engineer's receipt of notices:

10927 Wye Dr. Suite 104

San Antonio, Texas 78217

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

Mark B. Hill

Title: President

Phone Number:

E-Mail Address: mark@fordengineering.com

**SUGGESTED FORM OF
TASK ORDER**

This is Task Order No. _____, consisting of _____ pages.
--

Task Order

[NOTE TO USER: Modify as to scope, compensation, schedule, and other key items.]

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated [] ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project (title):
- e. Specific Project (description):

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:

[Select one of the following three options and delete the other two.]

- ☐ set forth in Part 1—Basic Services of Exhibit A, "Engineer's Services for Task Order," modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

[or]

- ☐ as follows: [] ***[Note: Insert scope of services here, or incorporate by reference a scope of services set out in a separate document such as a letter or proposal.]***

[or]

- ☐ the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference: ***[Note: If this option is selected, include only those sections below that are part of Basic Services for the specific Task Order, and delete those sections below that do not apply.]***

- Study and Report Services (Exhibit A, Paragraph A1.01)
- Preliminary Design Phase (Exhibit A, Paragraph A1.02)

- Final Design Phase (Exhibit A, Paragraph A1.03)
- Bidding or Negotiating Services (Exhibit A, Paragraph A1.04)
- Construction Phase Services (Exhibit A, Paragraph A1.05)
 - including Resident Project Representative (RPR) services (A1.05.A.2)
 - **[or]** [not including Resident Project Representative (RPR) services (A1.05.A.2)]
- Post-Construction Phase Services (Exhibit A, Paragraph A1.06)
- Commissioning Services (Exhibit A, Paragraph A1.07)

B. Resident Project Representative (RPR) Services

If the scope of services established in Paragraph 2.A above includes RPR services, then Exhibit D of the Agreement is expressly incorporated in this Task Order by reference.

[1. If RPR services are not in the scope of this Task Order, do not include any references to RPR services in Exhibit A (Paragraph A1.05.A.2) for this Task Order (or state "Does not apply" or similar), or in any other scope of services text or document.

2. If appropriate, modify Exhibit D for this specific Task Order, and attach it, rather than incorporating the Exhibit D that is included with the Agreement.]

C. Designing to a Construction Cost Limit

[If the design under this Task Order will be governed by a Construction Cost limit, then include the following clause, with blanks filled in, and thereby incorporate Exhibit F; if not, then delete the clause or indicate "Does not apply" or similar]]

Under this Task Order Engineer will design to a Construction Cost Limit, subject to the terms of Paragraph 5.02 of the Agreement and of Exhibit F to the Agreement. Exhibit F is expressly incorporated by reference. The Construction Cost Limit is \$ _____. The bidding or negotiating contingency to be added to the Construction Cost Limit is _____ percent.

D. Other Services

Engineer shall also provide the following services: ***[Summarize or provide a brief description of other services (if any) that are to be provided by Engineer as Basic Services, but have not been addressed in Paragraphs 2.A through 2.C. If applicable, categorize such other services by phases, such as other Study and Report Phase Services, other Preliminary Design Phase Services, and so on. If all Basic Services have been covered in Paragraphs 2.A through 2.C, then indicate "None" here in 2.D, or delete 2.D in its entirety.]***

Task Order Form

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and American Society of Civil Engineers. All rights reserved.

- E. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Additional Services

- A. Additional Services that may be authorized or necessary under this Task Order are:

[Select one of the following three options and delete the other two.]

- ☐ set forth as Additional Services in Part 2—Additional Services, of Exhibit A, "Engineer's Services for Task Order," modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

[or]

- ☐ as follows: [] ***[Note: Insert list of Additional Services here, or incorporate by reference a list of Additional Services set out in a separate document. Indicate whether advance authorization is needed, and include other governing terms and conditions.]***

[or]

- ☐ those services (and related terms and conditions) set forth in Paragraph A2.01 of Exhibit A, as attached to the Agreement referred to above, such paragraph being hereby incorporated by reference.

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following: ***[State any additions or modifications to Exhibit B for this Specific Project here.]***

5. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule: ***[Revise and amend for each specific Task Order.]***

<u>Party</u>	<u>Action</u>	<u>Schedule</u>
Engineer	Furnish [] review copies of the Report and other Study and Report Phase deliverables to Owner.	Within [] days of the Effective Date of the Task Order.
Owner	Submit comments regarding Report and other Study and Report Phase deliverables to Engineer.	Within [] days of the receipt of Report and other Study and Report Phase deliverables from Engineer.
Engineer	Furnish [] copies of the revised Report and other Study and Report Phase deliverables to Owner.	Within [] days of the receipt of Owner's comments regarding the Report and other Study and Report Phase deliverables.
Engineer	Furnish [] review copies of the Preliminary Design Phase documents,	Within [] days of Owner's authorization to proceed with Preliminary Design Phase

Task Order Form

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	opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	services.
Owner	Submit comments regarding Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.	Within [] days of the receipt of Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables from Engineer.
Engineer	Furnish [] copies of the revised Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	Within [] days of the receipt of Owner's comments regarding the Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Furnish [] copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within [] days of Owner's authorization to proceed with Final Design Phase services.
Owner	Submit comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Engineer.	Within [] days of the receipt of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables from Engineer.
Engineer	Furnish [] copies of the revised final Drawings and Specifications, assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within [] days of the receipt of Owner's comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables

6. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

[Notes: 1. Delete line items that do not apply to this Task Order. 2. For each line item indicate either "Lump Sum," "Direct Labor," or "Hourly Rates" as the Basis of Compensation. 3. Cross-references are to Exhibit A. Revise if necessary, or

delete cross-references if Exhibit A is not used to establish the scope of services under this Task Order.

Description of Service		Amount	Basis of Compensation
1.	Basic Services (Part 1 of Exhibit A)	\$[]	[]
	a. Study and Report Phase (A1.01)	\$[]	[]
	b. Preliminary and Final Design Phase (A1.02, A1.03)	\$[]	[]
	c. Bidding or Negotiating Phase (A1.04)	\$[]	[]
	d. Construction Phase (A1.05)*	\$[]	[]
	e. Resident Project Representative Services* (A1.05.A.2).	\$[]	[]
	f. Post-Construction Phase (A1.06)	\$[]	[]
	g. Commissioning Phase (A1.07)	\$[]	[]
	h. Other Services (see A1.08, and 2.D above)	\$[]	[]
TOTAL COMPENSATION (lines 1.a-h)		\$[]	
2.	Additional Services (Part 2 of Exhibit A)	(N/A)	[]

[Many of the line items under Line 1, Basic Services, will frequently be governed by a single Basis of Compensation; however, it is not unusual to have some variation among the services so the table allows the user to establish different bases of compensation for the various Basic Compensation phases (1.a-1.h).]

*Based on a [] -month continuous construction period.

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

7. Consultants retained as of the Effective Date of the Task Order:

8. Other Modifications to Agreement and Exhibits:

[Supplement or modify Agreement and Exhibits, if appropriate.]

9. Attachments:

10. Other Documents Incorporated by Reference:

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is [].

OWNER:

ENGINEER:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Engineer License or Firm's
Certificate No. (if required): _____
State of: _____

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

E-Mail
Address: _____

E-Mail
Address: _____

Phone: _____

Phone: _____

This is **EXHIBIT A**, consisting of [] pages, referred to in and part of the **Task Order** dated [].

Engineer's Services for Task Order

[Introductory Note to User:

The following text as published describes a variety of services that may be included, in whole or in part, in a specific Task Order issued under the Agreement. Until this exhibit is customized for inclusion in a specific Task Order, or some or all of the exhibit is incorporated in a specific Task Order by reference, it has no legal or contractual effect.

Not all possible services are included in this exhibit. The user should revise and supplement the descriptions of services provided here for purposes of drafting the scope of Engineer's Services for each specific Task Order. The scope of services will typically include a list of potential Additional Services (see Paragraph A2.01) that may be needed as the Specific Project progresses. The user may choose to categorize some items shown here as Additional Services as Basic Services, or move some tasks listed in the Basic Services categories (Paragraphs A1.01 through A1.08) into Additional Services. Note that for the Additional Services in A2.01.A, Engineer is not authorized to perform and receive compensation for an Additional Service unless authorized by Owner to do so under a written amendment.]

PART 1—BASIC SERVICES

A1.01 Study and Report Phase Services

A. As Basic Services, Engineer shall:

- 1. Consult with Owner to define and clarify Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.**
 - a. If Owner has already identified one or more potential solutions to meet its Specific Project requirements, then proceed with the study and evaluation of such potential solutions: *[List the specific potential solutions here.]***
 - b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.**
 - c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify three alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.**

2. Identify potential solution(s) to meet Owner's Specific Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Specific Project requirements.
4. Visit the Site, or potential Specific Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Specific Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Specific Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Specific Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Specific Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Specific Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Specific Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Specific Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.

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13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
 14. Pursuant to the Task Order schedule, furnish the required number of review copies of the Report and any other Study and Report Phase deliverables to Owner, and review it with Owner. Owner shall submit to Engineer any comments regarding the furnished items within the time established in the Task Order schedule.
 15. Pursuant to the Task Order schedule, revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish the required number of copies of the revised Report and any other Study and Report Phase deliverables to the Owner.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Preliminary Design Phase*

A. As Basic Services, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Specific Project.
2. In preparing the Preliminary Design Phase documents, use any specific applicable Specific Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Specific Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.

8. Obtain ~~and review~~ Owner's instructions regarding Owner's procurement of construction services (including ~~instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable~~), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain ~~and review~~ copies of Owner's design and construction standards, Owner's standard forms, ~~general conditions (if other than modified EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition)~~, supplementary conditions, text, and related documents or content for Engineer to include in the ~~draft~~ bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
 9. Pursuant to the Task Order schedule, furnish the required number of review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner, and review them with Owner. Within the time established in the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items.
 10. Pursuant to the Task Order schedule, revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner the required number of copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. As Basic Services, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.

5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
 6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Pursuant to the Task Order schedule, furnish for review by Owner, its legal counsel, and other advisors, the required number of copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the ~~draft~~ bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, and review them with Owner. Within the time required by the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 10. Pursuant to the Task Order schedule, revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit the required number of final copies of such documents to Owner after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Task Order is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Task Order.

A1.04 *Bidding or Negotiating Phase*

- A. As Basic Services, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of Subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Task Order).

A1.05 Construction Phase

A. As Basic Services, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in the Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform

services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR)*: Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selection of Independent Testing Laboratory*: Assist Owner in the selection of an independent testing laboratory to perform the testing services identified in Exhibit B, Paragraph B2.01.A.
4. *Pre-Construction Conference*: Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols*: If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents*: If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks*: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction*: In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement, this Task Order, and the Construction Contract Documents, but rather are to be limited to spot checking, selective

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sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.

14. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
15. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews, obtain information, and prepare findings, conclusions, and recommendations for Owner's use, subject to the limitations and responsibilities under the Agreement and the Construction Contract.
16. *Non-reviewable matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
19. *Inspections and Tests:*
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's

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supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement or this Task Order. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection,

tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
 24. *Final Notice of Acceptability of the Work:* Conduct a final visit to the specific Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") (also available as a construction form, EJCDC® C-626 (2013)) that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under the Agreement and this Task Order.
 25. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the specific Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the final Construction Contract under the Task Order.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, as Basic Services, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair

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of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

A1.07 Commissioning Phase

A. As Basic Services, Engineer shall:

1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.
2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
3. Prepare operation and maintenance manuals.
4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.
5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

A1.08 Other Services: Each specific Task Order may include Basic Services that do not fit into the categories above. Such services should be expressly stated in the specific Task Order itself.

PART 2—ADDITIONAL SERVICES

A2.01 Additional Services Requiring an Amendment to Task Order

- A. Advance Written Authorization Required:** During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Specific Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Specific Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Specific Project.

2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Specific Project designed or specified by Engineer, or the Specific Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of the Task Order or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
5. Services required as a result of Owner's providing incomplete or incorrect Specific Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. based on the engineering and technical aspects of the Project, the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:

- a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.C or the specific Task Order.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services.
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.

Exhibit A – Engineer's Services

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23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
 24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding involving the Project.
 25. Overtime work requiring higher than regular rates.
 26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
 27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
 28. Excessive services during any correction period, or with respect to guarantees called for in the Construction Contract (except as agreed to under Basic Services).
 29. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.
 30. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.
- B. *Advance Written Authorization Not Required:* Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

Exhibit A – Engineer's Services

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This is **EXHIBIT B**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

B2.01 Specific Responsibilities

A. Owner shall:

1. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
2. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, ~~general conditions (if other than modified version of EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition),~~ supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
3. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
4. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - a. Property descriptions.

Exhibit B— Owner's Responsibilities

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- b. Zoning, deed, and other land use restrictions.
 - c. Utility and topographic mapping and surveys.
 - d. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - e. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 - f. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Specific Project, the Site, and adjacent areas.
 - g. Data or consultations as required for the Project but not otherwise identified in this Agreement.
5. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
6. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
- a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 - b. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - c. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
7. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
8. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

Exhibit B— Owner's Responsibilities

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9. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
10. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
11. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, other work is to be performed at or adjacent to the Site by others or by employees of Owner, or if Owner arranges to have work performed at the Site by utility owners, then Owner shall coordinate such work unless Owner designates an individual or entity to have authority and responsibility for coordinating the activities among the various prime Contractors and others performing work. In such case Owner shall define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
12. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
13. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
14. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
15. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
16. Place and pay for advertisement for Bids in appropriate publications.
17. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
18. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
19. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

Exhibit B— Owner's Responsibilities

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20. Perform or provide the following: *[Here list any additional Owner responsibilities]*.

This is **EXHIBIT C**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 Basis of Compensation

- A. The bases of compensation (compensation methods) for Basic Services (including if applicable the bases of compensation for individual phases of Basic Services) and for Additional Services shall be identified in each specific Task Order (see Suggested Form of Task Order, Paragraph 6). Owner shall pay Engineer for services in accordance with the applicable basis of compensation.
- B. The three following bases of compensation are used for services under the Task Orders, as identified in each specific Task Order:
 - 1. Lump Sum (plus any expenses expressly eligible for reimbursement)
 - 2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)
 - 3. Direct Labor Costs Times a Factor (plus any expenses expressly eligible for reimbursement)

C2.02 Explanation of Compensation Methods

A. Lump Sum

- 1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
- 2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. The Lump Sum constitutes full and complete compensation for Engineer's services in the specified category, including labor costs, overhead, profit, expenses (other than those expenses expressly eligible for reimbursement, if any), and Consultant charges.
- 3. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of the services in the specified category (see Appendix 1 for rates or charges): [] ***[List any such reimbursable expenses here, or indicate "None." If "None" then the reference to Appendix 1 may be deleted.]***
- 4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph C2.03 below, and Appendix 1.
2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.
4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, and reimbursable expenses (including Consultants' charges, if any).
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus reimbursable expenses (including Consultant's charges, if any).
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of []) to reflect equitable changes in the compensation payable to Engineer.

C. Direct Labor Costs Times a Factor

1. For the specified category of services, the Owner shall pay Engineer an amount equal to Engineer's Direct Labor Costs times a factor of [] for the services of Engineer's employees engaged on the Specific Project. Direct Labor Costs means salaries and wages paid to employees but does not include payroll-related costs or benefits. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph C2.03 below, and Appendix 1.
2. Engineer's Reimbursable Expenses Schedule is attached to this Exhibit as Appendix 1.
3. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation incorporates all labor, overhead, profit, and reimbursable expenses (including Consultant's charges, if any).
4. The amounts billed will be based on the applicable Direct Labor Costs for the cumulative hours charged to the specified category of services on the Specific Project during the billing period times the above-designated Factor, plus reimbursable expenses (including Consultant's charges, if any).
5. The Direct Labor Costs and the factor applied to Direct Labor Costs will be adjusted annually (as of []) to reflect equitable changes in the compensation payable to Engineer.

C2.03 Reimbursable Expenses

- A. Under the Lump Sum method basis of compensation to Engineer, unless expressly indicated otherwise the Lump Sum amount includes the following categories of expenses: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; and Consultant charges. These expenses are not reimbursable under the Lump Sum method, unless expressly indicated otherwise in C2.02.A.3 above.
- B. Expenses eligible for reimbursement under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods of compensation include the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Task Order: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier services; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; Consultant charges; and any other expenses identified in Appendix 1.
- C. Reimbursable expenses reasonably and necessarily incurred in connection with services provided under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods shall be paid at the rates set forth in Appendix 1, Reimbursable Expenses Schedule, subject to the factors set forth below.
- D. The amounts payable to Engineer for reimbursable expenses will be the Project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external reimbursable expenses allocable to the Specific Project, the latter multiplied by a factor of [].
- E. Whenever Engineer is entitled to compensation for the charges of its Consultants, those charges shall be the amount billed by such Consultants to Engineer times a factor of [].
- F. The external reimbursable expenses and Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C2.04 Serving as a Witness

- A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.A.20, at a rate of [] times the witness's standard hourly rate. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

C2.05 Other Provisions Concerning Payment

- A. *Extended Contract Times:* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*

1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition**, dated [].

Reimbursable Expenses Schedule

Expenses eligible for reimbursement are subject to review and adjustment per Exhibit C. Rates and charges for reimbursable expenses as of the date of the Agreement are:

8"x11" Copies/Impressions	_____/page
Copies of Drawings	_____/sq. ft.
Mileage (auto)	_____/mile
Air Transportation	at cost
CAD Charge	_____/hour
Laboratory Testing	at cost
Health and Safety Level D	_____/day
Health and Safety Level C	_____/day
Meals and Lodging	at cost

[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this Specific Project]

This is **Appendix 2 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

Standard Hourly Rates Schedule

The following standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services as of the Effective Date of the Task Order are:

Billing Class VIII	\$ /hour
Billing Class VII	\$ /hour
Billing Class VI	\$ /hour
Billing Class V	\$ /hour
Billing Class IV	\$ /hour
Billing Class III	\$ /hour
Billing Class II	\$ /hour
Billing Class I	\$ /hour

[Note to User: The categories above (Billing Classes VIII through I) are traditional hourly rate classes for engineering services, but the classes themselves do not currently have widely accepted or understood meanings or definitions. Many approaches are possible for establishing the hourly rates that will be charged. These include defining the categories (for example, "Billing Class VI—Assistant Project Manager"), or using the engineering firm's own professional classifications. If hourly rates are ascribed to specific individuals, the user should ensure that changes in professional personnel and rates are allowable over the Project's course.]

This is **EXHIBIT D**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

The following duties, responsibilities, and limitations of authority may be incorporated in the Task Order for a Specific Project:

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions.
- B. Through RPR’s observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, as incorporated in this Task Order, are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor’s safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work*
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not

compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and

- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Specific Project documentation.

- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion, submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of, Owner, and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Specific Project in whole or in part.

This is **EXHIBIT E**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

[Notes to User

- 1. Exhibit A, Paragraph A1.05.A.24 of this Agreement indicates that in connection with recommending final payment of the Construction Contractor with respect to a specific Construction Contract, the Engineer will also provide a notice to Owner and Contractor of the acceptability of the Work, subject to stated limitations. The form for that purpose, "Notice of Acceptability of Work," is attached on the following pages of this Exhibit E. The same form is also available as a construction form, EJCDC® C-626 (2013).**
- 2. The Notice of Acceptability of Work should be served in compliance with the requirements for service of notice under the Construction Contract. See Paragraph 18.01, Giving Notice, of EJCDC® C-700 (2013), Standard General Conditions of the Construction Contract.]**



**ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE**

NOTICE OF ACCEPTABILITY OF WORK

SPECIFIC PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To:

OWNER

And To:

CONTRACTOR

From:

ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated , , and the following terms and conditions of this Notice.

Exhibit E – Notice of Acceptability of Work

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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and American Society of Civil Engineers. All rights reserved.

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT F**, consisting of [] pages,
referred to in and part of the **Agreement between
Owner and Engineer for Professional Services –
Task Order Edition** dated [].

Construction Cost Limit

Paragraph 5.02 of the Agreement is amended and supplemented to include the following when incorporated in the Task Order for a Specific Project:

F5.02 *Designing to Construction Cost Limit*

- A. A Construction Cost limit may be set forth in the Task Order.
- B. If a Construction Cost limit is set forth in a Task Order, then the Task Order will also specify bidding or negotiating contingency to be added to such Construction Cost limit.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types of materials, equipment and component systems, and the types and quality thereof are to be included in the Drawings and Specifications and to make reasonable adjustments in the scope, extent, and character of a Specific Project to the extent consistent with the project requirements and sound engineering practices to bring the project within the Construction Cost limit.
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer, and Owner shall consent to an adjustment in such Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Specific Project within a reasonable time, or (3) cooperate in revising the Specific Project's scope, extent, or character to the extent consistent with the Specific Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of its responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

Exhibit F – Construction Cost Limit

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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and American Society of Civil Engineers. All rights reserved.

CITY OF SCHERTZ
REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Schertz accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

1. The City of Schertz shall be named as an additional insured with respect to General Liability and Automobile Liability on a separate endorsement.
2. A waiver of subrogation in favor of The City of Schertz shall be contained in the Workers Compensation and all liability policies and must be provided on a separate endorsement.
3. All insurance policies shall be endorsed to the effect that The City of Schertz will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Schertz as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Schertz of any material change in the insurance coverage.
7. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Schertz.
10. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
13. Upon request, Contractor shall furnish The City of Schertz with certified copies of all insurance policies.
14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Schertz within ten (10) business days after contract award and prior to starting any work by the successful Contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Schertz, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Schertz. The certificate of insurance and endorsements shall be sent to:

City of Schertz
Purchasing Department
1400 Schertz Parkway
Schertz, TX 78154

Emailed to:
jgohlke@schertz.com
Faxed to: 210-619-1169



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/01/1000

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in favor of such endorsement(s).

PRODUCER

ABC Insurance Agency
555 Main Street
Tampa, FL 33333-0000

INSURED

XYZ Company
123 Apple Street
Tampa, FL 22222-0000

INSURER'S AFFILIATING COVERAGE		NAIC #
GENERAL LIABILITY	000000	E
PRODUCT LIABILITY	000000	
COMMERICAL LIABILITY	000000	
PERSONAL AUTO	000000	
UMBRELLA	000000	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIODS INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	START DATE	EXPIRATION DATE	LIMITS
<input checked="" type="checkbox"/> GENERAL LIABILITY	X123456	01/01/1000	01/01/1000	EACH OCCURRENCE \$1,000,000
<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				AGGREGATE \$1,000,000
<input checked="" type="checkbox"/> CLAIMS MADE				AGGREGATE \$1,000,000
<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY	123456789	01/01/1000	01/01/1000	EACH OCCURRENCE \$1,000,000
<input checked="" type="checkbox"/> AUTO				AGGREGATE \$1,000,000
<input checked="" type="checkbox"/> UMBRELLA	01234	01/01/1000	01/01/1000	EACH OCCURRENCE \$1,000,000
<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS LIABILITY				AGGREGATE \$1,000,000
<input checked="" type="checkbox"/> BUILDERS RISK	123456	01/01/1000	01/01/1000	EACH OCCURRENCE \$1,000,000
<input checked="" type="checkbox"/> PROFESSIONAL SERVICES				AGGREGATE \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Information Schedule, if more space is required)

Effective January 1, 2012 must be compliant with Chapter 1011, Tax. Ins. Code (SB 425 enacted by Texas Legislature 82(70 session in 2011).

CERTIFICATE HOLDER

City of Schertz
1400 Schertz Parkway
Schertz, Tx 78154
Attn: Purchasing Dept.

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

AUTHORIZED SIGNATURE REQUIRED HERE

ACORD 20 (2010/01)

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(Instructions for completing and submitting a certificate to the City of Schertz)

Complete the certificate of insurance with the information listed below:

- A) Certificate of Insurance date
- B) Producer (Insurance Agency) Information – complete name, address, telephone information, & email address.
- C) Insured's (Insurance Policy Holder) Information – complete name & address information
- D) Insurer (name/names of insurance company) ****(Remember the city requires all insurance companies to be Authorized to do business in the State of Texas be rated by A.M. Best with a rating of B+ (or better) Class VI (or higher) or otherwise be acceptable to the City if not rated by A.M. Best)**
- E) NAIC # (National Association of Insurance Commissioners, a # that is assigned by the State to all insurance companies)
- F) Insurer letter represents which insurance company provides which type of coverage from D
- G) General Liability Insurance Policy – must have an (x) in box. Also, "Occurrence" type policy – must have an (x) in the box (occurrence policy preferred but claims made policy can be accepted with special approval)
- H) This section shall be filled in with "Y" for yes under Additional Insured for all coverages, except for Contractor Liability and Workers' Compensation. There shall also be a "Y" for yes under all coverages for subrogation waived.
- I) Automobile Liability Insurance – must be checked for Any Auto, All Owned Autos, Hired Autos
- J) Umbrella Coverage – must be checked in this section and by occurrence whenever it is required by written contract and in accordance with the contract value.
- K) Worker's Compensation and Employers Liability Insurance – information must be completed in this section of the certificate of insurance form (if applicable).
- L) Builder's Risk Policy – for construction projects as designated by the City of Schertz.
Professional Liability Coverage – for professional services if required by the City of Schertz.
- M) Insurance Policy #'s
- N) Insurance policy effective dates (always check for current dates)
- O) Insurance Policy limits (See Insurance Requirements Checklist)
- P) This section is to list projects, dates of projects, or location of project. Endorsements to the insurance policy(ies) must be provided separately and not in this section. The following endorsements are required by the City of Schertz.
 - (1) Adding the City of Schertz as an additional insured. The "additional insured" endorsement is not required for professional liability and workers compensation insurance; and
 - (2) Waiver of Subrogation
 - (3) Primary and Non-Contributory
 - (4) Cancellation Notice
- Q) City of Schertz's name and address information must be listed in this section
- R) Notice of cancellation, non-renewal, or material change to the insurance policy(ies) must be provided to the City of Schertz in accordance with a cancellation notice endorsement to the policy and/or per the policy provisions based on the endorsement adding the city as an additional insured. (Sec. 1811.155, Tex. Ins. Code)
- S) The certificate must be signed by the Authorized Agent in this section of the certificate form.

This is **EXHIBIT J**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Special Provisions

Paragraph(s)____of the Agreement is/are amended to include the following agreement(s) of the parties:

This is **EXHIBIT K**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

Amendment To Task Order No. _____

1. Background Data:

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project:

2. Description of Modifications

[Include the following paragraphs that are applicable and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform the following Additional Services: []
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous amendments, if any, is modified as follows: []
- c. The responsibilities of Owner with respect to the Task Order are modified as follows: []
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: []
- e. The schedule for rendering services under this Task Order is modified as follows: []
- f. Other portions of the Task Order (including previous amendments, if any) are modified as follows: []

[List other Attachments, if any]

3. Task Order Summary (Reference only)

- | | | |
|----|----------------------------------|---------|
| a. | Original Task Order amount: | \$[] |
| b. | Net change for prior amendments: | \$[] |
| c. | This amendment amount: | \$[] |
| d. | Adjusted Task Order amount: | \$[] |

The foregoing Task Order Summary is for reference only and does not alter the terms of the Task Order, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and Task Order not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

By: _____

Title: _____

Date
Signed: _____

ENGINEER:

By: _____

Title: _____

Date
Signed: _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/29/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh Wortham, a division of Marsh USA, Inc.
131 Interpark Blvd.
San Antonio, TX 78216

CONTACT NAME: Cindy Rains
PHONE (A/C No., Ex): 210 593 3634 **FAX (A/C No.):** 210 920-2007
E-MAIL ADDRESS: cindy.rains@worthaminsurance.com

INSURER(S) AFFORDING COVERAGE**NAIC #****INSURER A:** Sentinel Insurance Company Ltd

11000

INSURER B: Hartford Insurance Company of MidW

37478

INSURER C:**INSURER D:****INSURER E:****INSURER F:**

www.worthaminsurance.com

INSURED
Ford Engineering Inc
10927 Wye Dr #104
San Antonio TX 78217

COVERAGES**CERTIFICATE NUMBER:** 50869453**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L SUBR INSD WVD	POLICY NUMBER	POLICY EFF MM/DD/YYYY	POLICY EXP MM/DD/YYYY	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		65SBARO4020SC	3/15/2019	3/15/2020	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		65UECHF6714SC	3/15/2019	3/15/2020	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10,000		65SBARO4020SC	3/15/2019	3/15/2020	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input checked="" type="checkbox"/> N/A		65WBCZI9782	3/15/2019	3/15/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: 2019-016 On Call Engineering Services - Work Orders / Task Orders issued under this contract

CERTIFICATE HOLDER

City of Schertz Texas
10 commercial Place
Schertz TX 78154-1634

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Marsh Wortham, a division of Marsh USA, Inc.

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ACORD 25 (2016/03)

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/29/2019

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PRODUCER Marsh Wortham, a division of Marsh USA, Inc.
131 Interpark Blvd.
San Antonio, TX 78216

CONTACT NAME: Cindy Rains
PHONE (A/C, No, Ext): 210 593 3634 FAX (A/C, No): 210 920-2007
E-MAIL: cindy.rains@worthaminsurance.com
ADDRESS:

www.worthaminsurance.com

INSURED
Ford Engineering Inc
10927 Wye Dr #104
San Antonio TX 78217

INSURER(S) AFFORDING COVERAGE NAIC #
INSURER A: Aspen American Insurance Company 43460
INSURER B:
INSURER C:
INSURER D:
INSURER E:
INSURER F:

COVERAGES

CERTIFICATE NUMBER: 50869388

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INBR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$
						MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					PRODUCTS - COMP/OP AGG \$
	OTHER:					\$
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$
	ANY AUTO					BODILY INJURY (Per person) \$
	OWNED AUTOS ONLY	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	HIRED AUTOS ONLY	<input type="checkbox"/> NON-OWNED AUTOS ONLY				PROPERTY DAMAGE (Per accident) \$
						\$
	UMBRELLA LIAB	<input type="checkbox"/> OCCUR				EACH OCCURRENCE \$
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$
	DED	RETENTION \$				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N <input type="checkbox"/> N/A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability Claims Made Policy Form Retroactive Date: 10/1/1978		AAAE10010200	10/1/2018	10/1/2019	\$1,000,000 Each Claim \$1,000,000 Aggregate \$10,000 Deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: 2019-016 On Call Engineering Services - Work orders / task orders issued under this contract

CERTIFICATE HOLDER

CANCELLATION

City of Schertz
Attn: Purchasing Dept
1400 Schertz Parkway
Schertz TX 78154

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Marsh Wortham, a division of Marsh USA, Inc.

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ACORD 25 (2016/03)

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CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Ford Engineering, Inc.
San Antonio, TX United States

Certificate Number:
2019-534686

Date Filed:
08/29/2019

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Schertz, Texas

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

2019-016 On-Call Engineering
Civil Engineering

4	Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 UNSWORN DECLARATION

My name is Mark B. Hill, P.E., and my date of birth is 02/10/1975.

My address is 10927 Wye Dr., Suite 104, San Antonio, TX, 78217, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Bexar County, State of Texas, on the 29th day of August, 20 19.
(month) (year)


Signature of authorized agent of contracting business entity
(Declarant)

FORD ENGINEERING, INC.
SCHEDULE OF FEES
2019

FORD ENGINEERING, INC.

<u>DISCIPLINE</u>	<u>HOURLY RATE</u>
Principal	\$200.00
Sr. Civil Engineer (PE)	\$175.00
Sr. Project Manager (PE)	\$165.00
Project Manager (PE)	\$150.00
Project Coordinator (EIT)	\$100.00
Design Tech	\$ 90.00
CADD Technicians	\$ 85.00
Clerical/Administrative	\$ 65.00
Expert Witness Testimony (RPLS)	\$175.00
Registered Professional Land Surveyor (RPLS)	\$165.00
Survey Technician/CADD	\$ 85.00
One-Person Survey Crew	\$125.00
Two-Person Survey Crew	\$145.00
Three-Person Survey Crew	\$170.00
Four-Person Survey Crew	\$195.00
Property Research & Doc. Service	\$ 75.00
Mobilization	\$200.00
Mileage (per mile rate)	\$.58

RESOLUTION NO. 19-R-134

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AND APPROVING PROFESSIONAL SERVICES AGREEMENTS WITH FORD ENGINEERING, INC., HALFF ASSOCIATES, INC., KIMLEY-HORN AND ASSOCIATES, INC., AND UTILITY ENGINEERING GROUP, PLLC. FOR ON-CALL ENGINEERING SERVICES AND ALL MATTERS IN CONNECTION THEREWITH

WHEREAS, the City staff of the City of Schertz (the "City") has determined that the City requires a professional services agreement with Ford Engineering, Inc., Halff Associates, Inc., Kimley-Horn and Associates, Inc., and Utility Engineering Group, PLLC, relating to on-call engineering services for the City; and

WHEREAS, City staff has determined that Ford Engineering, Inc., Halff Associates, Inc., Kimley-Horn and Associates, Inc., and Utility Engineering Group, PLLC, are qualified to provide such services for the City; and

WHEREAS, the City Council has determined that it is in the best interest of the City to contract with Ford Engineering, Inc., Halff Associates, Inc., Kimley-Horn and Associates, Inc., and Utility Engineering Group, PLLC, pursuant to the Professional Services Agreement for Engineering Services attached hereto as Exhibit A (the "Agreement"); and

WHEREAS, the agreements for On-Call Engineering Services will remain in force for three years: October 1, 2019 through September 30, 2022 with the option to renew the contract up to two terms of one year each.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to execute and deliver the Professional Services Agreement with Ford Engineering, Inc., Halff Associates, Inc., Kimley-Horn and Associates, Inc., and Utility Engineering Group, PLLC, in substantially the form set forth on Exhibit A.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 24st day of September, 2019.

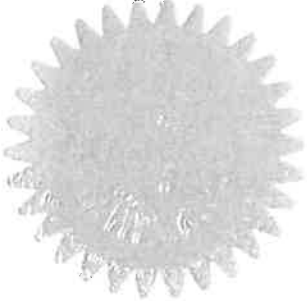
CITY OF SCHERTZ, TEXAS



Michael Carpenter, Mayor

ATTEST:



Brenda Dennis, City Secretary

This is Task Order
No. _____, consisting of
5 pages.

Task Order

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated 10-9-2019 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order:
- b. Owner: City of Schertz
- c. Engineer: Ford Engineering
- d. Specific Project (title): Corbett Ground Storage Tank
- e. Specific Project (description): New 3.0 Million Gallon GST and pump station.

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:
as follows:

Scope of services as set out in the attached letter of proposal.

- B. Resident Project Representative (RPR) Services

Does not apply.

- C. Designing to a Construction Cost Limit

Does not apply

- D. Other Services

Engineer shall also provide the following services:

None

- E. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Additional Services

A. Additional Services that may be authorized or necessary under this Task Order are:

those services (and related terms and conditions) set forth in Paragraph A2.01 of Exhibit A, as attached to the Agreement referred to above, such paragraph being hereby incorporated by reference.

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following:

N/A.

5. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule:

<u>Party</u>	<u>Action</u>	<u>Schedule</u>
Engineer	Furnish 1 digital review copy of the Study and Report documents to Owner.	Within 10 work weeks of Owner's authorization to proceed with Study and Report Phase services.
Owner	Submit comments regarding S to Engineer.	Within 14 days of the receipt of Study and Report from Engineer.
Engineer	Furnish 1 digital review copy of the Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	Within 10 work weeks of Owner's authorization to proceed with Preliminary Design Phase services.
Owner	Submit comments regarding Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.	Within 14 days of the receipt of Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables from Engineer.
Engineer	Furnish 1 digital copy of the revised Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	Within 2 work weeks of the receipt of Owner's comments regarding the Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Furnish 1 digital copy of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for	Within 12 work weeks of Owner's authorization to proceed with Final Design Phase services.

	proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	
Owner	Submit comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Engineer.	Within 14 days of the receipt of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables from Engineer.
Engineer	Furnish 1 digital copy of the revised final Drawings and Specifications, assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within 30 days of the receipt of Owner's comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables

6. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services (Part 1 of Exhibit A)		
a. Preliminary – (A1.02, A1.03)	\$114,251.00	Lump Sum
a. Preliminary – (A1.02, A1.03)	\$141,877.00	Lump Sum
b. Final Design – (A1.02, A1.03)	\$114,587.00	Lump Sum
c. Bidding or Negotiating - (A1.04)	\$22,516.00	Lump Sum
d. Construction Phase 5 (A1.05)*	\$73,034.00	Lump Sum
TOTAL COMPENSATION (lines 1.a-c)	\$466,265.00	
2. Additional Services (Part 2 of Exhibit A)	(N/A)	Hourly rates

*Based on a 24-month continuous construction period.

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

7. Consultants retained as of the Effective Date of the Task Order:

8. Other Modifications to Agreement and Exhibits:

9. Attachments:

a. Letter of Proposal date 4-15-2021

10. Other Documents Incorporated by Reference:

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is [].

OWNER:

By: _____

Print Name: _____

Title: _____

ENGINEER:

By: Mark B Hill

Print Name: Mark B. Hill, PE

Title: President

Engineer License or Firm's
Certificate No. (if required): 94904
State of: Texas

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Title: _____

Address: _____

E-Mail
Address: _____

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Mark B Hill, PE

Title: President

Address: 10927 Wye Dr, Suite 104, San Antonio, Texas

E-Mail
Address: mark@fordengineering.com

Task Order Form

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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Page 4

Phone: _____

Phone: _____

Task Order Form

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and American Society of Civil Engineers. All rights reserved.**



FORD ENGINEERING, INC

April 15, 2020

City of Schertz
Engineering
10 Commercial Place, Bld 2
Schertz, TX 78154

Attn: Ms. Kathryn J. Woodlee, PE

Re: City of Schertz – On-Call Civil Engineering Services Agreement
Proposal – Corbett Ground Storage Tank

Ford Engineering, Inc. is pleased to provide this proposal for professional engineering services to the City of Schertz for the design of the ground storage tank and associated pump station at the Corbett Booster Station site located at 12191 Ray Corbett Dr, Schertz, Texas.

FEI's understanding of the scope of work is generally as follows:

The City desires to construct a 3.0 million gallon ground storage tank (GST) with a pump station.

The GST is anticipated to be a prestressed wire wound ground storage with TCEQ mandated accessories: roof vents, manways; drains; sample connections; access ladders; overflows; and liquid level indicators. The GST design will follow American Water Works Association (AWWA) standard D110, "Wire- and Strand-Wound, Circular, Prestressed Concrete Water Tanks". The GST is anticipated to be filled by the SSLGC water transmission line terminating onsite.

The pump station will be designed to fill the onsite elevated storage tank as well as have the capacity to fill the East Live Oak water plant as a redundant source of water. The pump station is anticipated to include two (2) new variable speed drive (VSD) pumps, valves, piping, and flow meters. A water analysis of the project will include the analysis of the removal of Ware Seguin pumpstation from the system, and the removal of the Deer Haven Tank from the system.

Electrical improvements include a backup generator, switchgear, MCC's, low and medium voltage wiring and SCADA controls to be located in a new building, and lighting are also part of the scope of work. Pumps designed per the Hydraulic Institute and AWWA standards.

Structural improvements for the switchgear of the VSD pumps may include an equipment building, a canopy structure, or the equipment may be housed in the pillar of the composite elevated storage tank.



FORD ENGINEERING, INC

Additionally, the City would like to install hot box covers for pump valves at this site and others. The location and quantity is to be included in the construction documents as additive alternates.

Services to include:

- Survey (topographical and tree survey)
- Geotechnical study.
- Hydraulic Analysis of the system and Sizing of pumps to meet system curve and demand.
- Design of the layout for pumps, valves, meters, pressure gauges, fittings, and piping for new pump station.
- Design of electrical supply for new pumps, SCADA instrumentation and controls, and lighting for new pump station, switchgear, and controls building
- Sizing of switchgear facilities, conduit and instrumentation for pumps, valves, and meters. Providing an electrical load analysis. Providing heat pump sizing for controls building.
- Structural design of pump station foundation, switchgear foundation and controls building, controls building or canopy over new switchgear.
- Verification of site plan submittal requirements for Schertz Planning Dept.
- No new fencing, no cameras, no parking or gate improvements will be required.
- No chlorine or fluoridation treatment is currently provided at this site. Chemical treatment is not to be include with this project.

Report & Study Phase, Preliminary Design, Final Design, Bid, and Construction Phase Services as described below and as required by the Professional Services Agreement, will be provided with accompanying cost estimates and specifications preparation.

Project Scope

Study and Report Phase:

Survey of the project area will be required to identify improvements made in the recent elevated tank construction and the addition of the SSLGC transmission main and building. FEI will establish horizontal and vertical control for the project.

As geotechnical subconsultant, SCI Engineering, Inc. will provide seven (7) geotechnical samplings. Five samplings, per ACI 372r , with at perimeter borings up to 30-feet deep, and one at the center of the proposed tank location at 60-feet deep. Additionally, one bore at the pump pad and one bore at the equipment structure. Geotechnical engineering report will provide the recommended parameters for the foundation design of the tank and the other structures, identify groundwater, potential soil settlement, PVR, and applicable engineering characteristics for the design of the GST and structures.

The Ford Engineering, Inc. design team will provide the system head curves to pump to the E. Live Oak elevated storage tank and the on-site elevated storage tank. A water analysis of the project will include the analysis of the removal of Ware Seguin



FORD ENGINEERING, INC

pumpstation from the system. A water network analysis of the project will include the analysis of the removal of Deer Haven tank from the system.

The Ford Engineering, Inc. design team will provide the preliminary design and layout of the new GST and pump station, and size the pumps, valves, meters, and piping to meet the system curve as determined above and meet Schertz production standards. Options of pump curves and configurations will be provided that will meet the determined system curve.

With VSD as a design criteria, the design team will provide options and recommendation for the electrical improvements, including incoming 480V electrical service, options for VFDs, switchboard, generator sizing, SCADA, and building/cooling for the VFDs and other major electrical equipment; Coordinate with local Utility for incoming 480V power to the Pump Station; Run heat load on equipment building with new VFDs; Preliminary equipment selection (assume using packaged air-cooled DX units, wall packs or ground mounted RTU).

The design team will provide options for equipment structures (canopy or enclosed building).

The Ford Engineering Inc. design team will develop a project program including schematic layouts and drawings in sufficient detail to determine the project's feasibility and opinion of probable cost of the various project components

The project site will be reviewed for compliance with current City standards. The drainage report provided with the elevated storage tank construction project will be updated to the City's current drainage criteria of Atlas 14 data.

Preliminary Design Phase

Ford Engineering, Inc. design team will perform additional spot field survey as determined necessary during the Report Phase.

Project Program

Ford Engineering, Inc. design team will prepare plans and supporting documents in sufficient detail for review and comment to identify potential design or construction or operational problems and provide appropriate resolutions, following the project program set forth in the Report Phase. Plans included will be according to the scope of work set forth in the contract and as outlined in the report.

Ford Engineering, Inc. design team will provide an opinion of probable construction cost based on the plan and supporting documents. The OPCC will include the construction items found in the plans and documents prepared as part of this phase.

Hard copy and digital copies of the plans and supporting documents for review and comments will be submitted to the City. All drawings shall be submitted on standard 22x34 unless otherwise requested by Schertz. All comments from review will be addressed and resubmitted to Schertz for approval in a narrative form.



FORD ENGINEERING, INC

Upon approval, a full copy of the Preliminary plans and supporting documents will be submitted to the necessary public utility companies with a request for review and comment; comments received will be added to the Final Design Phase package.

Final Design:

Project Program

Ford Engineering, Inc. design team will prepare detailed Construction Plans and specifications, instruction to bidders, general provisions, proposal and other documents necessary for the City to advertise for bid. A control narrative for the new pump station will be provided in the specifications.

Ford Engineering, Inc. design team will provide an opinion of probable construction cost based on the plan and supporting documents. The OPCC will include the construction items found in the plans and documents prepared as part of Final Design.

Ford Engineering, Inc. design team will furnish hard copy and digital sets of Final Design plans, specifications, and supporting bid documents for review and comment. All Final Design Phase Drawings will be submitted on standard 22x34 unless otherwise requested by the City.

Ford Engineering, Inc. design team will resubmit and address all comments and respond to said comments in a narrative form.

Permitting

Ford Engineering will prepare and submit for permitting with the City and TCEQ, as needed.

Bid Phase

FEI will provide the City with bid documents, addenda, and responses to the bidders questions. FEI will attend a pre-submittal meeting, review submitted bids, and provide a bid tabulation and recommendation for award.

Construction Phase

Our design team will attend a pre-construction conference with the City and selected contractor.

During construction, Ford Engineering, Inc. will provide limited RPR services, per Exhibit D of the engineering services contract, with the exception of work described under 11.b. It is anticipated that a representative of Ford Engineering, Inc. will be onsite twice a month to observe for general conformance to the plans. FEI anticipates the following services:

- Review schedules, shop drawings, sample submittals, and schedule of values
- Attend monthly progress meeting
- Review pay applications and schedules and provide recommendations to the City.



FORD ENGINEERING, INC

- Response to RFIs from contractor and provide clarification as needed. Should any field alteration or change orders arise, FEI will draft change orders, directives, provide appropriate estimates and obtain back up documentation from the contractor
- Participate in the start-up of the pumps, review O&M manuals
- Provide Determination of Required Special Inspections Section 1704
- Upon completion of the project, FEI will assist in the preparation of punch-list items and the review of the final construction.

It is understood that the City will provide 3rd party special inspections and material testing, and those services are not included in this proposal.

Design Phases

It is anticipated that complete design of the project from the notice to proceed to the preparation of bid documents will require approximately 32 work weeks.

Study and Report – 10 weeks

Preliminary Design Phase – 12 weeks

Final Design Phase – 10 work weeks

Bid Phase – 4 work weeks

Construction Phase – 24 calendar months

Engineering Fee

Compensation for these services will be in the amount of **\$466,265.00** which will cover all costs associated with the scope described above, as further detailed in the attached Project Work Plan and Fee Proposal Breakdowns.

Additional services and significant changes will be compensated for as provided by Schedule of Fees in the agreement for Engineering Services between the City of Schertz and Ford Engineering, Inc. dated October 9, 2019.

Fees payable to permitting agencies will be the responsibility of the City.

Should there be any questions or if further information is needed, please do not hesitate to call us at 210-590-4777.

Sincerely,

FORD ENGINEERING INC.

Mark B Hill, P.E.

Encl: Project Work Plan and Fee Proposal Breakdown– Ford Engineering, Inc.

PROJECT WORK PLAN AND FEE PROPOSAL BREAKDOWN

Project: Corbett Ground Storage Tank
Prime Consultant: Ford Engineering, Inc.
Proposal Date: 4/15/2021
Prepared By: Mark B Hill

TASK CODE AND DESCRIPTION	Principal		Sr. Project Manager		Project Engineer		EIT		Admin/Clerical		RPLS		Survey Tech		Survey Crew - 2 man		TASK HOURS	TASK / PHASE FEE
	HOURS	\$200.00	HOURS	\$165.00	HOURS	\$150.00	HOURS	\$100.00	HOURS	\$65.00	HOURS	\$165.00	HOURS	\$85.00	HOURS	\$145.00		
Study and Report Phase	2		27		163		122		2		2		6		24		348	\$45,955.00
01. Project Management and General Items																		
01.010. Project Mgmt	2								2								4	\$530.00
																	-	
																	-	
03. Topographic Surveying / Base Mapping																	-	
03.010. Establish Primary Project Control											1		2		4		7	\$915.00
03.040. Survey Topographic Features											0		2		16		18	\$2,490.00
03.070. Survey Quality Level C Locates											1		2		4		7	\$915.00
03.120. Develop Existing Conditions Model			1		4		16										21	\$2,365.00
																	-	
05. Drainage Design																	-	
05.010. Update Drainage Discharge to Current Standards																	-	
05.010.030. Calculate Design Discharges					1		2										3	\$350.00
05.030. Prepare Storm Water Report			1		2		8										11	\$1,265.00
																	-	
06. Geotech Engineering Sample and Study																	-	
06.010. See attached																	-	
																	-	
07. Pump Design																	-	
07.010. Hydraulic Analysis (system curve preparation)			4		32												36	\$5,460.00
07.020. Pump and Motor Sizing (provide 3 options)			4		40												44	\$6,660.00
07.030. Mechanical layout for pump station (3 options)			4		16		32										52	\$6,260.00
																	-	
09. Civil Site Design																	-	
09.010. Project Site Plans (with 3 options)			2		16		40										58	\$6,730.00
																	-	
10. Environmental and Regulatory Coordination																	-	
10.020. SWPPP			1				8										9	\$965.00
																	-	
11. Cost Estimating			2		24		8										34	\$4,730.00

TASK CODE AND DESCRIPTION	Principal		Sr. Project Manager		Project Engineer		EIT		Admin/Clerical		RPLS		Survey Tech		Survey Crew - 2 man		TASK HOURS	TASK / PHASE FEE
	HOURS	\$200.00	HOURS	\$165.00	HOURS	\$150.00	HOURS	\$100.00	HOURS	\$65.00	HOURS	\$165.00	HOURS	\$85.00	HOURS	\$145.00		
11.010. Prepare Cost Estimate																	-	-
15. Communications																	-	-
15.010. Report Preparation			4		24		8										36	\$5,060.00
15.020. Report Review with City Staff			4		4												8	\$1,260.00
Preliminary Design	4		46		260		256		2		0		0		0		568	\$73,120.00
01. Project Management and General Items																		
01.010. Project Mgmt	2		2						2								6	\$860.00
01.040. Design Review Meeting					4		4										8	\$1,000.00
01.050. Prepare Meeting Minutes					4		4										8	\$1,000.00
01.060. Project Schedule (Includes Construction)					4												4	\$600.00
01.070.0 Specifications Preparation			8		24												32	\$4,920.00
01.070. QA/QC Review of Plan Set	2		8														10	\$1,720.00
07. Pump Station Design																		
07.010. Hydraulic Analysis (system curve preparation)			2		16												18	\$2,730.00
07.020. Pump and Motor Sizing			2		8												10	\$1,530.00
07.030. Mechanical layout for pump station			2		24		40										66	\$7,930.00
07.040. Pump Details			2		24		40										66	\$7,930.00
09. Other Plans																		
09.010. Project Site Plans			4		16		24										44	\$5,460.00
09.020. Grading Plan			1		16		24										41	\$4,965.00
09.030. Civil Details			2		24		40										66	\$7,930.00
09.040. Tank Plan			2		24		40										66	\$7,930.00
09.050. Tank Details			1		16		24										41	\$4,965.00
10. Environmental and Regulatory Coordination																	-	-
10.010. General Environmental Coordination					4												4	\$600.00
11. Cost Estimating																	-	-
11.010. Prepare Cost Estimate			2		24		8										34	\$4,730.00
15. Communications																	-	-
15.010. Plans Submittal			4		24		8										36	\$5,060.00
15.020. Plan Review with City Staff			4		4												8	\$1,260.00
Final Design	4		40		154		152		2		0		0		0		352	\$45,830.00
01. Project Management and General Items																		
01.010. Project Mgmt	2		2						2								6	\$860.00

TASK CODE AND DESCRIPTION	Sr.										Survey Crew -			
	Principal	Project Manager	Project Engineer	EIT	Admin/Clerical	RPLS	Survey Tech	Survey	2 man		HOURS	HOURS	HOURS	TASK / PHASE FEE
	\$200.00	\$165.00	\$150.00	\$100.00	\$65.00	\$165.00	\$85.00	\$145.00						
Construction Phase	0	0	74	160	0	1	1	4			240			\$27,930.00
13. Construction Management														
13.010. Reestablish Project Control						1	1	4			6			\$830.00
13.020. Pre Construction Meeting			2								2			\$300.00
13.030. Review Contractor Pay Estimates			12	32							44			\$5,000.00
13.050. Review Shop Drawings			4	24							28			\$3,000.00
13.060. Respond to RFI's			8								8			\$1,200.00
13.070. Project Site Visits & Reports (1 visits per month - 18 months)			12	48							60			\$6,600.00
13.080. Participate in Construction Progress Meetings and Prepare Meeting Minutes (Coincide With			24	48							72			\$8,400.00
13.090. Project Startup			8	8							16			\$2,000.00
13.100. Final Walkthrough and Punchlist Review			4								4			\$600.00
Project Closeout	0	0		8	1	0	0	0			11			\$1,165.00
14. Project Closeout											-			-
14.010. Prepare Record Drawings			2	8	1						11			\$1,165.00
Subconsultants														
Subconsultant - Freese and Nichols - Electrical/Structural/Instrumentation														\$255,725.00
Subconsultant - SCI Engineering Inc., Geotechnical														\$8,000.00
TOTAL BASE FEE WITH HOUR BREAKDOWN	10	127	651	714	9	3	7	28			661			\$466,265.00



SCI ENGINEERING, INC.

EARTH • SCIENCE • SOLUTIONS

GEOTECHNICAL
ENVIRONMENTAL
NATURAL RESOURCES
CULTURAL RESOURCES
CONSTRUCTION SERVICES

March 24, 2021

Mr. Mark B. Hill, P.E.
Ford Engineering, Inc.
10927 Wye Drive, Ste. 104
San Antonio, Texas 78217

RE: Revised Geotechnical Exploration Proposal
Corbett Elevated Tank Project
Schertz, Texas
SCI No. 2021-0327.10, Task 100

Dear Mr. Hill:

At your request, SCI Engineering, Inc. (SCI) is providing this revised Geotechnical Exploration proposal for the above-referenced project. The purpose of our geotechnical services will be to explore the subsurface conditions and develop design and construction recommendations for the foundations and earth-related phases of the project.

PROJECT DESCRIPTION

SCI understands that a new ground storage tank and pump station are currently being planned for a site located at 12191 Ray Corbett Drive in Schertz, Texas. The site is currently undeveloped, relatively level, agricultural land.

Based on the information provided, the pre-stressed, wire-wound, concrete, ground storage tank will be 100 feet in diameter, with a capacity of 3.0 million gallons. We anticipate the tank's slab foundation will be supported on deep foundations, such as drilled piers. The pump station is proposed northwest of the proposed tank, with an approximate 900-square-foot footprint. Additionally, a structure is planned to house the switch gear. Grading plans were not available at the time of this proposal; however, we anticipate that minor grading will be required under the storage tank and pump station footprints.

Structural loads were not available at the time of this proposal; however, we anticipate that the tank will be heavily loaded, on the order of 20 to 25 kips per linear foot, around its perimeter.

SCOPE OF SERVICES

As requested, a total of seven boring will be performed for this field investigation, which will be located in the field using a handheld global positioning system. The ground surface elevation at the boring location will be interpolated using the most recent topographic plan made available to us, if more accurate data is required, we recommend that a surveyor be retained to acquire the ground surface elevation.

We will then explore the subsurface conditions by drilling one boring at the center of the tank's footprint to a depth of 60 feet and four borings around the tank's perimeter to a depth of 30 feet. If auger refusal is encountered within the tank borings prior to achieving the target depths, the borings will be advanced using rock core methods. We will also drill one boring at the pump station and one at switch gear house to a

depth of 20 feet, unless auger refusal terminates drilling at a shallower depth. The boring will be sampled with either undisturbed Shelby Tube or Standard Penetration Test (SPT) samples at 2-foot intervals in the upper 10 feet and at 5-foot intervals thereafter. **A geotechnical engineer or geologist will log the boring and provide direction for sampling.** The borehole will be backfilled with soil cuttings.

Upon completion of the field exploration, the samples will be transported to our laboratory for classification and characterization. We will measure the moisture content of each cohesive sample. Hand penetrometer values, which provide an indication of strength, will be obtained for each apparently intact cohesive sample. Atterberg limits tests will be performed on selected samples to aid in classification and assess the volume change characteristics of the subgrade soils. Natural density tests, and/or unconfined compression tests to provide additional strength information, will be performed on selected Shelby tube samples. Unconfined compression tests will be performed on select rock core samples as well.

The results of the field exploration and laboratory testing will be analyzed by our Geotechnical Engineer. Our findings and recommendations, along with supporting data, will be presented in a formal report, which will address each of the following:

- Foundation design parameters, including allowable end-bearing, skin friction, and uplift resistance;
- Allowable bearing pressures and depths for shallow, slab-on-grade and spread footing, foundation support;
- Recommended parameters for the lateral analysis of the piers (SCI can also provide LPILE analysis once the pier configurations are selected; however, this service is outside of our currently proposed scope);
- Seismic coefficients for building design according to the appropriate International Building Code;
- Allowable bearing pressures and depths for shallow, slab-on-grade and spread footing, foundation support;
- Anticipated settlement based on general soil characteristics;
- Shrink/swell potential of subgrade soils;
- Slab design criteria;
- General location, description, and disposition of existing fill materials, if encountered;
- Influence of groundwater and/or bedrock, if encountered, on design and construction;
- Structural fill considerations, including the suitability of on-site soils for use and engineering criteria for placement, and;
- Site development and geotechnical construction recommendations.

COST AND SCHEDULE

We will provide the above-mentioned services for a lump-sum fee of **\$7,800.00**. **If bedrock is encountered within the tank borings, an additional fee of \$75.00 per foot of rock core will be applied to achieve their target depths.** We will schedule the fieldwork following your verbal authorization of this proposal, and should be able to start drilling the site, weather permitting, about a week thereafter. We anticipate that the exploration will be completed in one day; however, we cannot mobilize the drill rig unless formal authorization has been received. Laboratory testing and report preparation will require approximately two to three weeks following the field exploration; however, verbal findings should be available within a few days after completion of the drilling.

Our estimated schedule assumes SCI personnel will be allowed access to the site within five working days from formal authorization. While SCI feels this estimated timeframe is sufficient to complete our proposed scope, factors beyond our control related to current events (i.e. quarantines, government restrictions to movement, large scale impact to SCI or subcontractor workforce) may impact this schedule. If such an issue arises, SCI will notify you as soon as possible.

Conditions and Considerations

- The above fee is based on a maximum of 220 feet of soil drilling. If the encountered subsurface conditions indicate that more than the planned total of soil drilling would be beneficial, and you authorize additional exploration, it would be provided for \$25.00 per foot for soil drilling and \$75.00 per foot for rock coring. No costs associated with permits are included in this proposal.
- Our fee, which is valid for up to 90 days from the date of this proposal, does not include out-of-scope services that might be added during the course of our work; nor does it include additional services that might be requested following completion of our report, such as attendance at project meetings; subsequent consultation; or review, signing, and sealing of project plans. Such services will be provided in accordance with the enclosed *Acceptance of Proposal for Professional Services*, and billed at our then-current hourly rates, or as otherwise agreed.
- This proposal assumes that you will provide site access authorization, including access to the proposed boring locations for a conventional, rubber-tired, truck mounted drill rig. No clearing, grading, or other removal of site obstacles, has been included in this proposal.
- We will contact the Texas 811 One-Call system to have the locations of public utilities marked; however, privately owned, below-grade, utility lines within the project area are the responsibility of the owner. We shall only be responsible for utilities brought to our attention prior to drilling. **SCI can provide a private utility locate for an addition fee of \$1,000.00, if necessary.**

CLIENT RESPONSIBILITIES AND AUTHORIZATION

If the work order outlined herein is acceptable, please provide formal authorization to proceed by completing, signing, and returning the enclosed *Acceptance of Proposal for Professional Services* sheet. This sheet provides important information regarding report distribution and invoicing. Formal authorization is necessary prior to initiation of the activities outlined herein. SCI services will be performed for the signatory of the enclosed form. Written consent must be provided by SCI should anyone other than the client (signatory) wish to excerpt, or rely on, the results of our activities. The enclosed *General Terms and Conditions* will also apply to any future services you authorize for this project.


Mr. Mark B. Hill, P.E.
For Engineering, Inc.

4

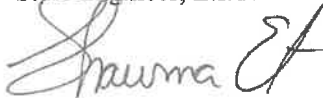
March 24, 2021
SCI No. 2021-0327.10

We appreciate the opportunity to be of service to you on this project. Please call if you have any questions; if you would like to discuss the above scope or schedule in any way; or if you would like us to address environmental services, archaeological or wetlands issues, or construction testing and observation.

Respectfully,



Sandeep K. Malla
Staff Engineer, E.I.T.



Shawna L. Erter, P.E., D. GE, F, ASCE
Vice President

SKM/CJC/SKE/hmm

Enclosures

Acceptance of Proposal for Professional Services
General Terms and Conditions

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SCI ENGINEERING, INC.
9330 Corporate Drive, Suite 610
Selma, Texas 78154
210-660-SCIE (7243)
www.sciengineering.com

ACCEPTANCE OF PROPOSAL FOR PROFESSIONAL SERVICES

Project Name: Corbett Elevated Tank Project – Geotechnical Exploration

Project Number: 2021-0327.10, Task 100 / SKM

Date: March 24, 2021

Fee: Please indicate your selection by placing a check mark in the appropriate box below:

Geotechnical Exploration & Report Preparation	\$7,800.00 <input type="checkbox"/>
Rock Coring to Achieve Target Depths in Tank Borings	\$75.00 per foot <input type="checkbox"/>
Private Utility Locate	\$1,000.00 <input type="checkbox"/>

Please provide formal authorization to proceed by completing, signing, and returning this form. The attached terms and conditions will apply to the services outlined in the accompanying proposal.

Accepted By:

Name and Title: _____ Address: _____

Signature: _____ City, State, Zip: _____

Company Name: _____ Telephone: _____

Date: _____ Email: _____

Party responsible for payment: (if different than Accepted By)

Name and Title: _____ Address: _____

Signature: _____ City, State, Zip: _____

Company Name: _____ Telephone: _____

Date: _____ Email: _____

Report Distribution (Note: Additional printed report copies after final submittal will be billed at \$25.00 each)

Company and Contact Name:	Address (Printed) or Email (Electronic):	No. Printed Reports
_____	_____	_____
_____	_____	_____

NOTICE TO OWNER: (FOR SITES IN MISSOURI ONLY)

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429.RSMo. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOU PAYING FOR LABOR AND MATERIAL TWICE.



SCI ENGINEERING, INC.
9330 Corporate Drive, Suite 610
Selma, Texas 78154
210-660-SCIE (7243)
www.sciengineering.com

GENERAL TERMS AND CONDITIONS

1. **ACCEPTANCE OF AGREEMENT** The terms and conditions of the agreement between the client and SCI ENGINEERING, INC. (hereinafter called SCI) are detailed below and have been established to allocate risks between both. For the purposes of convenience, the client may choose to orally authorize our service, in which case the client agrees that the verbal agreement constitutes formal acceptance of the terms and conditions detailed below. Subsequent to an agreement by both parties to perform the services, modifications to the terms and conditions are prohibited.

2. **SITE ENTRY** You, the Client, will provide for right of entry of SCI or employees of firms working under the direction of SCI, and all necessary equipment, in order to perform the work. Although SCI will exercise reasonable care in performing its services, the Client understands that use of testing or other equipment may unavoidably cause some damage, the correction of which is not part of this agreement. The client agrees, to the fullest extent permitted by law, to indemnify and hold harmless SCI and its subconsultants against any damages, liabilities, or costs, arising or allegedly arising from procedures associated with testing or investigative activities to the fullest extent permitted by law. If you desire or require us to restore the site to its former condition, upon written request, we will perform such additional work as is necessary and you agree to pay all costs incurred.

3. **SUBSURFACE STRUCTURES OR UTILITIES** The Client will furnish to SCI information identifying the type and location of utility lines and other man-made objects beneath the site's surface. SCI will take reasonable precautions to avoid damaging these man-made objects. You agree to waive any claim against SCI, and to defend, indemnify and hold SCI harmless from any claim or liability for injury or loss allegedly arising from SCI's damaging underground utilities or other man-made objects that were not called to SCI's attention, or which were not properly located on plans furnished to SCI.

4. **SAMPLES** Soil, rock, water, or other samples obtained from the project site are your property. SCI shall preserve such samples for no longer than thirty (30) calendar days after the issuance of any document that includes the data obtained from them, unless other mutually agreed arrangements are documented.

Concrete test specimens will be discarded after testing. If project specification strengths are met, "hold" cylinders will be discarded at that time.

If in SCI's opinion any of the samples collected may be affected by regulated contaminants, SCI shall package such samples in accordance with applicable law and client shall arrange for lawful disposal procedures. SCI shall not, under this agreement, arrange for or be responsible for the disposal of substances affected by regulated contaminants. Furthermore, unless detailed in a specific work scope, SCI is not responsible for any soil cuttings or produced groundwater generated for the purpose of sample collection that may be affected by regulated contaminants that are left at a job site and were generated for the collection of soil and groundwater samples. SCI will, at the client's request, help the client identify appropriate alternatives for the off-site treatment, storage, or disposal of these materials, for additional fees.

5. **GENERAL LIABILITY AND LIMITATION** SCI agrees to hold you harmless and to indemnify you on account of any liability due to bodily injury or property damage to the extent directly caused by our negligent operational acts, but such hold harmless and indemnity will be limited to that covered by our comprehensive general liability insurance. At your request, SCI will

provide certificates evidencing such coverage and will purchase additional limits of liability that you may require as a separate cost item to be borne by you.

You shall not be liable to SCI and SCI shall not be liable to you for any consequential damages incurred by either due to the fault of the other, regardless of the nature of this fault, or whether it was committed by you or SCI, their employees, agents, or subcontractors. Consequential damages include, but are not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damage that any party may have incurred from any cause of action, including, but not limited to negligence, strict liability, breach of contract, or breach of warranty.

6. **SHARED RISK ALLOCATION** The Client and SCI agree to allocate certain of the risks so that, to the fullest extent permitted by law, SCI's total aggregate liability to the Client is limited to \$50,000.00 for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's and expert witness' fees) arising out of this AGREEMENT from any cause or causes. Such causes include, but are not limited to, SCI's negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or other acts giving rise to liability based upon contract, tort, or statute. Higher limits may be available upon request and additional negotiated fee.

Limitations on liability, waivers and indemnities in this Agreement are business understandings between the parties and shall apply to all legal theories of recovery, including breach of contract or warranty, breach of fiduciary duty, tort (including negligence), strict or statutory liability, or any other cause of action. You agree that you will not seek damages in excess of the contractually agreed-upon limitation directly or indirectly through suits against other parties who may join the Consultant as third-party defendant. None of the insurance or indemnity obligations under this agreement shall be deemed to be with a waiver of this limitation of liability provision.

7. **INVOICES** You will make all payments in accordance with SCI's invoices, and payment is due upon receipt of invoice. A fee of 1½ percent per month will be payable on any amounts not paid within thirty (30) days, payment thereafter to be applied first to accrued interest and then to your unpaid amount. You agree to pay invoices under these terms and to bear collection fees, court costs, or any other reasonable expense involved in the collection of amounts not paid.

8. **HAZARDOUS MATERIALS; NOTIFICATION OF AND DISCOVERY OF** When hazardous materials are known, assumed, or suspected to exist at a site, SCI is required to take appropriate precautions to protect the health and safety of its personnel, to comply with applicable laws and regulations, and to follow procedures that SCI deems prudent to help minimize physical risks to employees and the public. You warrant that you have provided to SCI all available information about type and location of known and suspected hazardous materials on, under, or adjacent to the project site.

The discovery of unanticipated hazardous or suspected hazardous materials will constitute a changed condition mandating termination of services if SCI and you are unable to renegotiate the scope of service in a timely manner. SCI will notify you as soon as practically possible should SCI encounter unanticipated hazardous or suspected hazardous materials.

The discovery of unanticipated hazardous or suspected hazardous materials may make it necessary for SCI to take measures that in SCI's professional opinion are needed to help preserve and protect the health and safety of SCI's personnel and of the public, and/or to preserve and protect the environment. As a condition precedent to the provision of service for this project, you agree to compensate SCI for the additional fees and costs associated with any such measures and further agree to defend, indemnify, and hold harmless from any claim or liability for injury or loss arising from SCI's encountering unanticipated hazardous or suspected hazardous materials.

9. CONTAMINATION OF AN AQUIFER

Unavoidable contamination of soil or groundwater may occur during subsurface exploration, as when drilling or sampling tools penetrate a contaminated area, linking it to an aquifer, underground stream, or other hydrous body not previously contaminated and capable of spreading contaminants. Because subsurface exploration is an essential aspect of the services that SCI will provide on your behalf, you shall indemnify, defend, and hold SCI harmless from any claim or liability for injury or loss which may arise as a result of contamination allegedly caused by subsurface exploration to the fullest extent permitted by law.

10. SITE SAFETY With respect to project site safety, SCI shall be responsible only for the on-site activities of its employees and subcontractors, and this responsibility shall not be construed to relieve you or the general contractor from your obligation to maintain a safe project site. Neither the professional activities of SCI, nor the presence of SCI's employees or subcontractors shall be construed to imply that SCI has any responsibility for any methods of work performance, procedures, superintendence, sequencing of operations, or safety in, on, or about the project site other than SCI's and SCI's subconsultants. You agree that the general contractor is responsible for project site safety, and warrant that this intent shall be made evident in your agreement with the general contractor.

11. CONSTRUCTION COST ESTIMATES An opinion of construction cost prepared by SCI represents our judgment as a design professional and is supplied for your general guidance only. Since we have no control over the cost of labor and material, nor over competitive bidding or market conditions, we do not guarantee the accuracy of our opinion as compared to other sources, such as, contractor bids of actual cost to the owner.

12. DEFECTS IN SERVICE You and your personnel, contractors, and subcontractors shall promptly report to SCI any defects or suspected defects in SCI's work, in order that SCI may take prompt effective measures which in SCI's opinion will minimize the consequences of any such defect.

13. TERMINATION Any or all services being provided for you by SCI under these General Terms and Conditions or under separate contract may be terminated by either party upon seven (7) days prior written notice. In the event of termination, SCI shall be compensated by you for all services performed up to and including the termination date, including reimbursable expenses.

14. FORCE MAJEURE Any delays or failure of performance by SCI shall not constitute a default under this Agreement, if such delays or failures of performance are caused by occurrences beyond the reasonable control of SCI. Performance under this Agreement shall resume promptly once the cause or delay or failure ceases and SCI's schedule for performance shall be extended to the extent of such delay. Each party shall take reasonable steps to mitigate the impact of any such delay or failure.

15. ENVIRONMENTAL SITE ASSESSMENT An Environmental Site Assessment is conducted to render an opinion about the possibility of regulated contaminants being present on, in, or beneath the site specifically at the time services were conducted. Client understands that no matter how thorough an Environmental Site Assessment is, SCI cannot know or state factually that a site is unaffected by reportable quantities of

regulated contaminants. Furthermore, even if SCI believes that reportable quantities are not present, the client bears the risk that such contaminants may be present or may migrate to the site after the study is complete. Likewise, the client agrees to hold SCI harmless from any claim or liability for injury or loss arising from the unanticipated discovery of hazardous materials or suspected hazardous materials to the fullest extent permitted by law.

15. FAILURE TO FOLLOW RECOMMENDATIONS

SCI disclaims any and all responsibility and liability for problems that may occur during implementation of SCI's plans, specifications, or recommendations when SCI is not retained to observe such implementation.

17. ALTERATION OF INSTRUMENTS OF SERVICE

Client agrees that designs, plans, specifications, reports, proposals, and similar documents prepared by SCI are instruments of professional service, and as such, they may not under any circumstances be altered by any party except SCI. Client warrants that SCI's instruments of service will be used only and exactly as submitted by SCI. Accordingly, Client shall waive any claim against SCI and shall, to the fullest extent permitted by law, indemnify, defend, and hold SCI harmless of any claim or liability for injury or loss arising from unauthorized alteration of SCI's instruments of service.

18. MOLD DISCLAIMER The services performed by SCI, unless specifically addressed in our scope of services, are not intended to take into account indoor amplification of mold. SCI's services may comment on depth to groundwater and site drainage, but in no instance is this to be interpreted that we were specifically intending to reduce moisture contents and/or humidity measurements within the structure as they may relate to mold. Client understands our services, unless specifically expressed in our work scope, are in no way intended to address the potential for mold infestation, and, as such, agrees to indemnify and hold SCI harmless from any claim alleging that SCI's services caused or aggravated a mold infestation to the fullest extent permitted by law.

19. OTHER PROVISIONS You agree that this contract is entered into by the parties for the sole benefit of the parties to the contract, and that nothing in the contract shall be construed to create a right or benefit for any third party.

a. You agree that any and all limitations of SCI's liability and indemnifications by you shall include and extend to those individuals and entities SCI retains for performance of the services under this Agreement, including but not limited to SCI's officers, directors, and employees and their heirs and assigns, and SCI's subconsultants.

b. In an effort to resolve any conflicts that arise during or following completion of the project, you and SCI agree that all disputes between us arising out of or related to this Agreement shall be submitted to non-binding mediation as a condition precedent to institution of any formal legal proceeding, unless the parties mutually agree otherwise in writing.

c. THE PARTIES TO THIS CONTRACT HEREBY AGREE TO SUBMIT ANY SUCH DISPUTE TO THE CIRCUIT COURT OF ST. CHARLES COUNTY, STATE OF MISSOURI.

d. Test borings and test pits are an accepted and informative means of subsurface exploration. However, in the nature of things, they cannot indicate with absolute certainty the nature of the subsurface conditions between and sample locations of the exploration and below the termination of the borings or pits. Therefore, a report based on test borings, test pits, or other exploration method cannot ascertain the nature of the subsurface conditions between and beyond the specific sample locations. If conditions different than are indicated in our report come to your attention after you receive the report, it is recommended that you contact SCI immediately to inform SCI completely of what you have discovered and to authorize further evaluation, if appropriate.

e. Any recommendations provided in any correspondence, reports, plans, etc. from SCI are for the exclusive use of our client and are specific to the project covered by this contract. Recommendations provided by SCI are not meant to supersede more stringent requirements of local ordinances.

Important Information about This Geotechnical Engineering Proposal

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

Participate in Development of the Subsurface Exploration Plan

Geotechnical engineering begins with the creation of an effective subsurface exploration plan. This proposal starts the process by presenting an initial plan. While that plan may consider the unique physical attributes of the site and the improvements you have in mind, it probably does not consider your unique goals, objectives, and risk management preferences. Subsurface exploration plans that are finalized without considering such factors presuppose that clients' needs are unimportant, or that all clients have the same needs. *Avoid the problems that can stem from such assumptions* by finalizing the plan and other scope elements directly with the geotechnical engineer you feel is best qualified for the project, along with the other project professionals whose plans are affected by the geotechnical engineer's findings and recommendations. If you have been told that this step is unnecessary; that client preferences do not influence the scope of geotechnical engineering service or that someone else can articulate your needs as well as you, you have been told wrong. No one else can discuss your geotechnical options better than an experienced geotechnical engineer, and no one else can provide the input you can. Thus, while you certainly are at liberty to accept a proposed scope "as is," recognize that it could be a unilateral scope developed without direct client/engineer discussion; that authorizing a unilateral scope will force the geotechnical engineer to accept all assumptions it contains; that assumptions create risk. *Manage your risk. Get involved.*

Expect the Unexpected

The nature of geotechnical engineering is such that planning needs to *anticipate the unexpected*. During the design phase of a project, more or deeper borings may be required, additional tests may become necessary, or someone associated with your organization may request a service that was not included in the final scope. During the construction phase, additional services may be needed to respond quickly to unanticipated conditions. In the past, geotechnical engineers commonly did

whatever was required to oblige their clients' representatives and safeguard their clients' interests, taking it on faith that their clients wanted them to do so. But some, evidently, did not, and refused to pay for legitimate extras on the ground that the engineer proceeded without proper authorization, or failed to submit notice in a timely manner, or failed to provide proper documentation. *What are your preferences? Who is permitted to authorize additional geotechnical services on your project? What type of documentation do you require? To whom should it be sent? When? How?* By addressing these and similar issues sooner rather than later, you and your geotechnical engineer will be prepared for the unexpected, to help prevent molehills from growing into mountains.

Have Realistic Expectations; Apply Appropriate Preventives

The recommendations included in a geotechnical engineering report are *not final*, because they are based on opinions that can be verified only during construction. For that reason, most geotechnical engineering proposals offer the construction observation services that permit the geotechnical engineer of record to confirm that subsurface conditions are what they were expected to be, or to modify recommendations when actual conditions were not anticipated. *An offer to provide construction observation is an offer to better manage your risk.* Clients who do not take advantage of such an offer; clients who retain a second firm to observe construction, can create a high-risk "Catch-22" situation for themselves. *The geotechnical engineer of record cannot assume responsibility or liability for a report's recommendations when another firm performs the services needed to evaluate the recommendations' adequacy.* The second firm is also likely to disavow liability for the recommendations, because of the substantial and possibly uninsurable risk of assuming responsibility for services it did not perform. Recognize, too, that no firm other than the geotechnical engineer of record can possibly have as intimate an understanding of your project's geotechnical issues. As such, reliance on a second firm to perform construction observation can elevate risk still more, because its personnel may not

have the wherewithal to recognize subtle, but sometimes critically important unanticipated conditions, or to respond to them in a manner consistent with your goals, objectives, and risk management preferences.

Realize That Geoenvironmental Issues Have Not Been Covered

The equipment, techniques, and personnel used to perform a geoenvironmental study differ significantly from those used to perform a geotechnical study. *Geoenvironmental services are not being offered in this proposal. The report that results will not relate any geoenvironmental findings, conclusions, or recommendations.* Unanticipated environmental problems have led to numerous project failures. If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

Obtain Professional Assistance To Deal with Mold

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the express purpose of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may be addressed as part of the geotechnical engineering study described in this proposal, the geotechnical engineer who would lead this project is **not** a mold prevention consultant; **none of the services being offered have been designed or proposed for the purpose of mold prevention.**

Have the Geotechnical Engineer Work with Other Design Professionals and Constructors

Other design team members' misinterpretation of a geotechnical engineering report has resulted in costly problems. Manage that risk by hav-

ing your geotechnical engineer confer with appropriate members of the design team before finalizing the scope of geotechnical service (as suggested above), and, again, after submitting the report. *Also retain your geotechnical engineer to review pertinent elements of the design team members' plans and specifications.*

Reduce the risk of unanticipated conditions claims that can occur when constructors misinterpret or misunderstand the purposes of a geotechnical engineering report. Use appropriate language in your contract documents. Retain your geotechnical engineer to participate in prebid and preconstruction conferences, and to perform construction observation.

Read Responsibility Provisions Closely

Clients, design professionals, and constructors who do not recognize that geotechnical engineering is far less exact than other engineering disciplines can develop unrealistic expectations. Unrealistic expectations can lead to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their proposals. Sometimes labeled "limitations," many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks, thus to encourage more effective scopes of service. *Read this proposal's provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

Rely on Your ASFE-Member Geotechnical Engineer for Additional Assistance

Membership in ASFE/The Best People on Earth exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit to everyone involved with a construction project. Confer with an ASFE member geotechnical engineer for more information. Confirm a firm's membership in ASFE by contacting ASFE directly or at its website.



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**AGREEMENT
BETWEEN ENGINEER AND
CONSULTANT FOR PROFESSIONAL
SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between

Ford Engineering, Inc. (“Engineer”) and

Freese and Nichols, Inc. (“Consultant”).

A. Engineer has entered into an agreement (“Prime Agreement”) dated _____ with

City of Schertz, Texas (“Owner”)

Which provides for Engineer to perform and furnish professional services in connection with the Project described therein. A copy of the Prime Agreement (excluding compensation and other confidential information) is incorporated as Attachment 1 to this Agreement. The Project described in the Prime Agreement is summarized as follows:

Corbett Site Pump Station and Ground Storage Tank

B. Engineer hereby retains Consultant to provide services under this Agreement generally described as follows:

Engineering services hereinafter set forth in connection with the design and development of the Corbett Site Pump Station and Ground Storage Tank Project that are identified on a Design Phase basis as set forth on Exhibit I hereto. Each percentage for which a “Design Phase” is completed in accordance with Exhibit I shall be referred to herein as a “Phase”. Freese and Nichols, Inc. shall provide expert professional engineering services for each Phase assigned and shall facilitate the exchange of design information to engineer for the coordination of each Phase.

("Consultant's Services").

C. Consultant is an independent contractor, and is not an employee or partner of, or a joint-venture with Engineer.

Engineer and Consultant further agree as follows:

ARTICLE 1 – SERVICES OF CONSULTANT

1.1 Scope

A. Consultant shall provide, or cause to be provided, Consultant's Services the basic consultation services described in detail in paragraph 1, Basic Services of **Exhibit I** “Description of Basic Consulting Services and Related Matters” within the time periods stipulated herein.

- B. All of Consultant's communication to or with Owner or Engineer's other independent professional associates and consultant will be through or with the knowledge of Engineer.
- C. To the extent the terms of the Prime Agreement apply to Consultant's Services, the Consultant assumes toward Engineer all the same obligations, duties, and responsibilities that Engineer has assumed toward the Owner. If there is an inconsistency between the Prime Agreement and this Agreement, this Agreement's terms and conditions shall govern; provided, however, that if the Prime Agreement states that a specific provision must be included in any subagreement, or that a specific provision cannot be waived in a subagreement, then the provision as set forth in the Prime Agreement shall govern.

1.2 *Records Retention*

- A. Consultant shall maintain on file in legible form, for a period of ten years following completion or termination of its services, or for a longer time if required by the Prime Agreement, all Documents, records (including cost records), and design calculations related to Consultant's Services or pertinent to Consultant's performance under this Agreement. Consultant shall provide a electronic copy of all studies, design analyses and completed product to Engineer during each phase of work and retain as described.

ARTICLE 2 – ENGINEER'S RESPONSIBILITIES

2.1 *General*

- A. Engineer shall have the responsibilities set forth herein and in Exhibit II.
- B. Engineer shall pay Consultant as set forth in Exhibit I.
- C. Engineer shall furnish to Consultant information relevant to Consultant's Services as such information becomes available.
- D. Engineer shall be the general administrator and coordinator of the professional services for the Project, and shall facilitate the exchange of information among Engineer's Consultants, as necessary for the coordination of their respective services.
- E. Engineer shall be responsible for, and Consultant may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Engineer to Consultant pursuant to this Agreement. Consultant may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.1 *Commencement*

- A. Consultant is authorized to begin rendering services as of the Effective Date.

3.2 *Time for Completion*

- A. Consultant shall complete its obligations within a reasonable time, and shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services under the Prime Agreement. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer or Consultant, such periods of time or dates are changed, or the orderly and continuous progress of Consultant's Services is impaired, or Consultant's Services are delayed or suspended, then Engineer shall request that Owner modify the Prime Agreement's completion and compensation terms to an extent that would allow Engineer to adjust equitably the time for completion of Consultant's Services, and the rates and amounts of Consultant's compensation. Engineer shall adjust the time for completion of Consultant's Services and the rates and amounts of Consultant's compensation under the provisions of this paragraph only to the extent to which Owner has modified the corresponding terms of the Prime Agreement.
- C. If Engineer authorizes changes in the scope, extent, or character of Consultant's Services, then Engineer shall adjust equitably the time for completion of Consultant's Services, and the rates and amounts of Consultant's compensation.
- D. Engineer shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Consultant's performance of its services.
- E. If Consultant fails, through its own fault, to complete the performance of Consultant's Services within the time set forth, as duly adjusted, then Engineer shall be entitled to recover from Consultant any actual damages incurred by Engineer as a result of Consultant's failure to timely complete performance of Consultant's Services.

ARTICLE 4 – PAYMENTS TO CONSULTANT

4.1 *Method of Payment*

ENGINEER shall pay CONSULTANT for Basic Services rendered under Article 1 as more particularly described in paragraph 1 of Exhibit I "Description of Basic Subcontractor Services and Related Matters" with compensation computed as indicated in Exhibit II "Project Fee Summary".

4.2 *Future Adjustment*

If the general scope, extent or character of This Part of the Project is changed materially through no fault of CONSULTANT, the amount of compensation provided for herein shall be subject to equitable adjustment, provided ENGINEER receives a commensurate adjustment under the Prime Agreement.

4.3 *Times of Payment*

Payments to CONSULTANT shall be made in accordance with this paragraph 4.03

4.3.1 CONSULTANT shall submit monthly statements for Basic and Additional Services rendered per Exhibit A. If ENGINEER objects to any statement submitted by CONSULTANT, ENGINEER shall so advise CONSULTANT giving reasons therefore. "Payment of any invoice by ENGINEER, or submitted of invoice to OWNER by ENGINEER, shall not imply approval or acceptance of the services by the ENGINEER."

4.3.2 ENGINEER shall bill OWNER monthly on account of CONSULTANT's services and expenses and shall pay CONSULTANT within ten (10) days of the time ENGINEER receives payment from OWNER on account thereof. It is intended that payments to CONSULTANT will be made as ENGINEER is paid by OWNER under the Prime Agreement and that ENGINEER shall exert reasonable and diligent efforts to collect prompt payment from OWNER.

4.4 *Reproductions and Information*

4.4.1 CONSULTANT shall at CONSULTANT'S expense furnish ENGINEER copies of all progress reproductions and information required by ENGINEER for performance of ENGINEER's services under the Prime Agreement for review of CONSULTANT's services while in progress.

4.4.2 ENGINEER shall at ENGINEER's expense furnish information and progress reproductions of ENGINEER's work and that of others assigned to the Project as may be required for the orderly performance of CONSULTANT services.

ARTICLE 5 – OPINIONS OF COST

5.1 *Opinions of Probable Construction Cost*

A. Consultant's opinions (if any) of probable Construction Cost as to the parts of the Work designed or specified by Consultant, or as to which Consultant has agreed to provide such an opinion, are to be made on the basis of Consultant's experience and qualifications and represent Consultant's estimate as an experienced and qualified professional generally familiar with the construction industry. However, because Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Consultant. If Owner or Engineer requires greater assurance as to probable Construction Cost, then Engineer must recommend that Owner retain an independent cost estimator.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.1 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Consultant.
- B. *Technical Accuracy:* Neither Engineer nor Owner shall be responsible for discovering deficiencies in the technical accuracy of Consultant's Services. Consultant shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Engineer-furnished or Owner-furnished information.

6.2 *Termination*

6.2.1 The obligation to provide further services under this Agreement may be terminated by CONSULTANT upon thirty (30) days' written notice to ENGINEER in the event of substantial failure by ENGINEER to perform in accordance with the terms hereof through no fault of CONSULTANT. It may also be terminated by ENGINEER without cause or for ENGINEER's convenience upon seven (7) days' written notice certified return receipt to CONSULTANT.

6.2.2 This Agreement will terminate automatically upon termination of the Prime Agreement.

6.2.3 In the event of any termination per Section 6.02.1 or 6.02.2, and if ENGINEER has received an acceptable statement from CONSULTANT, CONSULTANT will be paid on the basis shown in Exhibit I, "Description of Basic Subcontractor Services and Related Matters" for all unpaid Basic Services and Additional Services performed to the date of termination. ENGINEER shall not be obligated to pay CONSULTANT any other termination expenses. ENGINEER releases CONSULTANT from liability for work not completed due to a termination per Section 6.02.1 or 6.02.2.

6.2.4 This Agreement may also be terminated by ENGINEER for cause, including, but not limited to, CONSULTANT's failure to perform the services required for reasons that are not beyond CONSULTANT's control or CONSULTANT's breach of any of the terms of conditions of this Agreement. In such event, the CONSULTANT shall be deemed in default. In the event of such default, ENGINEER may terminate this Agreement immediately and shall have no obligation to make any further payment to CONSULTANT.

6.3 *Reuse of Documents*

- A. All documents furnished by CONSULTANT pursuant to this Agreement are instruments of CONSULTANT's services in respect of This Part of the Project and ENGINEER shall obtain ownership and property interest therein whether or not the Project is complete. However, such documents are not intended or represented to be suitable for reuse by ENGINEER or others on extensions or modifications of the Project or in any other project. Any such reuse without specific written verification and adaptation by CONSULTANT for the specific purposes intended will be at user's sole risk and without liability or legal exposure to CONSULTANT or to CONSULTANT's independent professional associates or sub-subconsultants.

6.4 *Records*

- 6.4.1 Fiscal record of CONSULTANT pertinent to CONSULTANT's compensation and payments under this Agreement will be kept in accordance with generally accepted accounting practices and will not be disposed of by CONSULTANT until after sixty (60) days' prior written notice to and subsequent approval of ENGINEER.
- 6.4.2 CONSULTANT shall maintain all records (fiscal and other) and design calculations on file in legible form. A copy of these shall be available to ENGINEER at CONSULTANT's reasonable expense and the originals shall not be disposed of by CONSULTANT until after sixty (60) days' prior written notice and subsequent approval of ENGINEER.
- 6.4.3 CONSULTANT's records and design calculations will be available for examination and audit during normal business hours with five (5) days prior written notice.

6.5 *Insurance and Indemnification*

- 6.5.1 CONSULTANT agrees and shall submit evidence to the ENGINEER before beginning work on This Part of the Project that CONSULTANT has procured and will maintain Workers Compensation, Commercial General and Contractual Liability, Commercial Automobile Liability, and Professional Liability insurance coverage, with limits as set out in Exhibit III Standard Insurance Specifications. Upon the ENGINEER's request, CONSULTANT shall provide ENGINEER with an exact copy of the insurance policy or policies required hereunder. Any insurance on a "claims made" basis shall be maintained for at least two (2) years after completion of the Work or any time period required by the Prime Contract, whichever is longer.

Prior to the commencement of this part of the Project, CONSULTANT shall provide ENGINEER with certificates of insurance evidencing the required insurance. Such certificates shall be issued by an insurance carrier(s) acceptable to ENGINEER and shall be endorsed to include: (1) ENGINEER and OWNER as additional insured's on the Commercial General Liability and Commercial Automobile Liability Policies; and (2) thirty (30) days prior written notice of cancellation or material change in any of the above coverages; (3) a waiver of subrogation on the Commercial General Liability, Commercial Automobile Liability and Worker's Compensation Policies; (4) primary insurance coverage on the Commercial General

Liability and Commercial Automobile Liability Policies; and (5) be attached as Exhibit III to this Agreement.

MINIMUM REQUIRED INSURANCE

- | | | |
|---|---|--|
| 1. Workers Compensation | - | Statutory |
| Employer's Liability | - | \$1,000,000 per occurrence |
| 2. Commercial General & Contractual Liability | | |
| Bodily Injury | - | \$1,000,000 per occurrence
\$2,000,000 in the aggregate |
| Property Damage | - | \$1,000,000 per occurrence
\$1,000,000 in the aggregate |
| Personal Injury | - | \$1,000,000 per occurrence |
| 3. Commercial Automobile Liability Coverage for all owned (private and others), hired and non-owned vehicles; | | |
| Bodily Injury | - | \$1,000,000 per occurrence
\$1,000,000 in the aggregate |
| Property Damage | - | \$1,000,000 per occurrence
\$1,000,000 in the aggregate |
| 4. Professional Liability | - | \$1,000,000 per claim
\$1,000,000 in the aggregate |

*Including, when site visitation is required, XCU (explosion, collapse, and underground) hazard coverage and premises operations, independent contractors, products, completed operations, contractual, personal injury (with employee exclusion deleted) and property damage coverages.

In the event CONTRACTOR fails to obtain or maintain any insurance coverage required under this Agreement, ENGINEER may terminate this Agreement for cause.

6.5.2 CONSULTANT shall also cause other independent professional associates and subcontractors retained by CONSULTANT for the Project to procure and maintain the same insurance coverages with endorsements.

6.5.3 CONSULTANT shall indemnify and save harmless and defend the OWNER, ENGINEER, its agents, servants and employees from and against any claim, demand or cause of action of every name or nature arising out of the error, omission or negligent act of the CONSULTANT, its subcontractors, agents, servants or employees in the performance of services under this Agreement. The indemnification provided by this Article 6.05.3 shall in no way be limited by the minimum required insurance identified above. For professional liability claims,

CONSULTANT shall reimburse the OWNER, ENGINEER, its agents, servants and employees for all reasonable costs of their defense in the same proportion CONSULTANT is found liable, rather than "defend" as above."

6.6 *Successors and Assigns*

6.6.1 ENGINEER and CONSULTANT each is hereby bound, and the partners, successors, executors, administrators, and legal representatives of each and to the extent permitted by paragraph 6.06.2 the assigns of ENGINEER and CONSULTANT are hereby bound, to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

6.6.2 Neither ENGINEER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in this Agreement (including, but without limitation, moneys that may become due or moneys that are due) without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

6.6.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than ENGINEER and CONSULTANT and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of ENGINEER and CONSULTANT and not for the benefit of any other party.

6.7 *Delegation of Duties*

If in this Agreement it is stated that the Basic Services of CONSULTANT are to be performed by one or more specified individuals within CONSULTANT's organization, only the individuals so specified shall perform services hereunder and their duties shall not be delegated to any other individual or entity without the written consent of ENGINEER. CONSULTANT may employ such other independent professional associates and subcontractors as CONSULTANT may deem appropriate for assistance in the performance of services hereunder with the prior written consent of ENGINEER.

6.8 *Nondiscrimination and Affirmative Action*

In connection with its performance under this Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. CONSULTANT shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or

because he or she is a disabled veteran or veteran of the Vietnam era. Such actions shall include recruiting and hiring, selection for training, promotion, fixing rates or other

compensation, benefits, transfers and layoff or termination.

6.9 *Confidentiality*

All services performed by CONSULTANT, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the CONSULTANT, pursuant to this Agreement, are for the sole use of the ENGINEER and OWNER, their agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the ENGINEER and OWNER.

In addition, CONSULTANT shall not grant any interviews or make any written or oral statements to any news media representatives regarding the project nor publish any article or make any presentation concerning the Project or services performed by CONSULTANT with the prior written consent of the ENGINEER and OWNER.

6.10 *Governing Law*

This Agreement shall be governed by the laws of the State of Texas.

6.11 *Dispute Resolution*

In the event of any dispute between the parties arising out of or in connection with the contract or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. If the parties are unable to resolve the dispute through negotiation within 45 days, then either party may give written notice within 10 days thereafter that it elects to proceed with non-binding mediation pursuant to the commercial mediation rules of the American Arbitration Association. In the event that mediation is not invoked by the parties or that the mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a Statute of Limitations may expire.

Each party shall be responsible for its own cost and expense including attorneys' fees and court cost incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

ARTICLE 7 – EXHIBITS AND OTHER PROVISIONS

EXHIBIT I, Scope of Work

EXHIBIT II, Project Fee Summary

EXHIBIT III, Certificate of Insurance

7.1 *Total Agreement*

A. This Agreement, together with the Exhibits constitutes the entire agreement between

ENGINEER and CONSULTANT and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.2 Designated Representatives

- A. With the execution of this Agreement, Consultant and Engineer shall each designate a specific individual to act as the party's representative under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party that the individual represents.

7.3 Consultant's Certifications

- A. Consultant certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement.
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Engineer or Owner, or (b) to deprive Engineer or Owner of the benefits of free and open competition;
 - 3. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Engineer:

Ford Engineering, Inc.

By: _____

Title: Principal

Date Signed: _____

Address for giving notices:

10927 Wye Dr., Suite 104

San Antonio, Texas 78217

Designated Representative:

Name: Mark Hill, P.E.

Title: Principal

Phone Number: 210-590-4777

Facsimile Number: 210-590-4940

E-Mail Address: mark@fordengineering.com

Consultant:

Freese and Nichols, Inc.

By: 

Title: David T. Bennett, P.E., Principal

Date Signed: 04-14-2001

Professional License No. or

Firm's Certificate No.

(if required by State law): F-2144

Address for giving notices:

801 Cherry Street, Suite 2800

Fort Worth, Texas 76102

Designated Representative:

Name: David T. Bennett, P.E.

Title: Principal

Phone Number: 210-298-3829

Facsimile Number: 210-298-3801

E-Mail Address: David.Bennett@freese.com

EXHIBIT I, Scope of Work

The electrical scope will include the incoming 480V electrical service, Variable Frequency Drives (VFDs), switchboard, back-up power supply – diesel generator, SCADA, and building/cooling for VFD design for the Ground Storage Tank, Pump Station, and Generator. FNI will also provide the design of an equipment building to house the electrical equipment – switchboard and VFDs. Additional structural design will be for the generator pad and pump pad.

Preliminary Phase

- Provide Preliminary Engineering Report (PER) including incoming 480V electrical service, , options for VFDs, switchboard, generator sizing, SCADA, and building/cooling for the VFDs and other major electrical equipment.
- Coordinate with local Utility for incoming 480V power to the Pump Station.
- Run heat load on equipment building with new VFDs
- Preliminary equipment selection
 - Assume using packaged air-cooled DX units
 - Wall packs or ground mounted RTU
- Make one site visit during design.
- Prepare Opinion of Probable Construction Cost (OPCC).
- Attend one review meeting with the Client at the PER stage.

Design Phase

- Provide electrical, instrumentation and SCADA design for the Pump Station and Ground Storage Tank.
- Provide structural design for the generator pad, pump pad, and building to house the major electrical equipment.
- Provide design for wall mounted HVAC or ground mounted RTU (air cooled DX/electric heating)
- Provide ductwork design for air distribution
- Design controls for lead-lag redundancy for HVAC units
- Design condensate drainage system (no plumbing)
- Provide plans and specifications in PDF format for the 60% Submittal.
- Prepare Opinion of Probable Construction Cost (OPCC).
- Attend one review meeting with the Client at Design Phase interim submittal stage

Final Design Phase

- Update and finalize electrical and structural plans and specifications based on comments from the 60% design submittal stage.
- Provide plans and specifications in PDF format for the Final Submittal.
-
- Prepare Opinion of Probable Construction Cost (OPCC).

Bid Phase

- Respond to requests for information (RFIs) and assist with addenda as required.

- Provide Issued for Construction set of plans/specs.

Construction Phase Services

- Respond to requests for information (RFIs).
- Review shop drawing submittals.
- Attend preconstruction meeting
- Attend up to two site visits during construction for observation (no special inspections)
- Attend up to two site visits for final walk-thru/punch list
- Record Drawings
- Review O&M manuals

EXHIBIT II, Project Fee Summary

Lump Sum: Compensation to Consultant shall be the lump sum fee of **Two Hundred Fifty-five Thousand Seven Hundred Twenty-five Dollars (\$255,725.00)**. If Consultant sees the Scope of Services changing so that additional services are needed, Consultant will notify Engineer for Engineer's approval before proceeding. Additional Services shall be computed based on a negotiated lump sum fee.

Phase	Amount	Fee type
Preliminary Phase	\$ 60,296	Lump Sum
Design Phase	\$ 137,514	Lump Sum
Bid Phase	\$ 13,976	Lump Sum
Construction Phase Services	\$ 43,939	Lump Sum
Total	\$ 255,725	

EXHIBIT III, Certificate of Insurance

CITY COUNCIL MEMORANDUM

City Council Meeting: May 25, 2021

Department: Engineering

Subject: Resolution No. 21-R-45 – Consideration and/or action approving a Resolution by the City of Schertz, Texas authorizing a contract with Kimley-Horn and Associates, Inc. relating to the 16” Dedicated Transmission Main Engineering and Design Project and authorizing the budget expenditures for the project. (B. James/K. Woodlee/J. Shortess)

BACKGROUND

The Dedicated Transmission Main project is a new water transmission main installment project consisting of approximately 18,600 linear feet of 16-inch diameter pipe to connect the Live Oak Tank to the I-35 Elevated Tank. These tanks are currently not directly connected, so the I-35 Tank is fed through the distribution network. Operating in this manner requires the distribution system to operate at a higher pressure than ideal, which is undesirable for residents near the Live Oak Tank site and also causes operation and maintenance issues with the pumps and pipe network due to the pressure stress on the system.

Because of the scope of the project, the design consultant services are broken into two phases. The first phase (awarded with resolution 20-R-81) included a route study to select the best route for the project considering existing utilities, right-of-way, easements, and environmental concerns. The second design phase of this project, which is being awarded with resolution 21-R-45, will include final design, bid, and construction phase services.

City Staff is recommending awarding the engineering services Task Order Agreement to Kimley-Horn because of their experience in completing similar transmission main projects that require extensive coordination and their ability to provide the majority of the required services within their local office and their previous work on the route study and preliminary engineering report.

Construction of the 16” Dedicated Transmission Main will be funded separately after final design is complete. The estimated construction cost of this project is \$5.4 million.

GOAL

To obtain authorization from Council to execute a Task Order Agreement with Kimley-Horn and Associates, Inc. for \$1,371,705.00, and a not to exceed amount of \$1,508,875.50, for the 16” Dedicated Transmission Main Engineering and Design proposal.

COMMUNITY BENEFIT

Completing the installation of the 16” Dedicated Transmission main will improve water service to City of Schertz customers and reduce operation and maintenance costs.

SUMMARY OF RECOMMENDED ACTION

Authorize execution of the professional services Task Order Agreement for 16” Dedicated Transmission Main with Kimley-Horn and Associates, Inc., for \$1,371,705.00, and a not to exceed amount of \$1,508,875.50.

FISCAL IMPACT

The cost of the project shall not exceed \$1,508,875.50 and funding is available from Water Reserves.

RECOMMENDATION

Staff recommends Council approve Resolution 21-R-45 and authorize award of the Task Order Agreement for the 16” Dedicated Transmission Main Engineering and Design to Kimley-Horn and Associates, Inc. for \$1,371,705.00 and a not to exceed amount of \$1,508,875.50.

Attachments

Resolution No. 21R-45

Exhibit A

Kimley Horn Task Order

RESOLUTION NO. 21-R-45

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A CONTRACT WITH KIMLEY-HORN AND ASSOCIATES, INC. RELATING TO THE DEDICATED TRANSMISSION MAIN ENGINEERING AND DESIGN PROJECT AND AUTHORIZING THE BUDGET EXPENDITURES FOR THE PROJECT

WHEREAS, The City staff of the City of Schertz (the "City") has recommended that the City accept the proposal from Kimley-Horn and Associates, Inc. relating to the Dedicated Transmission Main Engineering and Design and approve the project expenditures; and

WHEREAS, City staff has received qualifications indicating that Kimley-Horn and Associates, Inc. is qualified to provide such services for the City; and

WHEREAS, Kimley-Horn and Associates, Inc. is an approved On-Call Engineering Firm for the City of Schertz; and

WHEREAS, pursuant to Section 252.022(a)(4) of the Texas Local Government Code, the City is not required to seek bids or proposals with respect to procurement for personal, professional, or planning purposes; and

WHEREAS, the project is a planned project and will be funded from Water Reserves; and

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to execute and deliver the Task Order Agreement with Kimley-Horn and Associates, Inc. in accordance with their approved Master Agreement in substantially the form set forth in Exhibit A in the amount not to exceed \$1,508,875.50 for the phase two professional engineering services for the 16" Dedicated Transmission Main Project.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 25th day of May, 2021.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor


ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

CITY MANAGEMENT

Coordination Sheet

FROM:	Purchasing			
DATE: Oct 15, 2019		NAME	INITIALS	DATE
	X	Mr. Brian James Assistant City Manager	BZ	10/16/19
	X	Mr. Charles Kelm Assistant City Manager	CK	Oct 17
	X	Ms. Sarah Gonzalez Assistant to the City Manager	SG	10/17/19
	X	Mr. Mark Browne City Manager	B	10/17/19
COMMENTS:	<p>On-Call Engineering Master Services Agreement with Kimley-Horn. Approved on 19-R-134, 9/24/19. No CAF required as no financials tied to MSA.</p> 			
RETURN TO:	Julie Gohlke			

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated project and the controlling laws and regulations.

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

TASK ORDER EDITION

Note: The City of Schertz, Texas has modified this document. The modified language is indicated by strikeout and/or underlining

Prepared by



Issued and Published Jointly by



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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

TASK ORDER EDITION

THIS IS AN AGREEMENT effective as of October 1, 2015

("Effective Date of the Agreement") between

The City of Schertz "Owner"

("Owner") and

Kimley-Horn & Associates, Inc.

("Engineer").

Other terms used in this Agreement are defined in Article 7.

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.1 Scope

- A. Engineer's services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided.
- B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.

1.2 Task Order Procedure

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. With respect to the scope of Engineer's services, each specific Task Order shall either (1) be accompanied by and incorporate a customized Exhibit A, "Engineer's Services for Task Order," prepared for the Specific Project, (2) state the scope of services in the Task Order document itself, or (3) incorporate by reference all or portions of Exhibit A, "Engineer's Services for Task Order," as attached to this Agreement. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order.
- C. Engineer shall provide, or cause to be provided, the services set forth in the Task Order.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth in this Agreement; in Exhibit B, "Owner's Responsibilities"; and in each Task Order.
- B. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement; such responsibility extends to requirements, instructions, programs, reports, data, and other information furnished by Owner pursuant to any Task Order. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of: (1) any development that affects the scope or time of performance of Engineer's services; (2) the presence at the Site of any Constituent of Concern; or (3) any relevant, material defect or nonconformance in Engineer's services, the Work, the performance of any Constructor, or in Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.1 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for [3] years from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term for up to two additional terms of 1 year each.

3.2 *Times for Rendering Services*

- A. The Effective Date of the Task Order and the times for completing services or providing deliverables will be stated in each Task Order. Engineer is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
- F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), then the Task Order will state the schedule for performance of Engineer's services in order to sequence and properly coordinate such services as are applicable to the Work under the Construction Contracts. If the Task Order does not address such sequencing and coordination, then Owner and Engineer shall jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

ARTICLE 4 – INVOICES AND PAYMENTS

4.1 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.2 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under the Task Order, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement

shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

ARTICLE 5 – OPINIONS OF COST

5.1 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, recent bid results for similar work, and general familiarity with the construction industry. The same standards of performance in Section 6.01.A shall apply to the preparation of Engineer's opinions of probable Construction Cost. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.2 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit for a Specific Project is established between Owner and Engineer in a Task Order, then such Construction Cost limit and Engineer's rights and responsibilities with respect thereto will be governed by Exhibit F, "Construction Cost Limit," which shall be attached to and incorporated in the Task Order. If no Construction Cost limit is established in a Task Order, then Exhibit F does not apply.

5.3 *Opinions of Total Project Costs*

- ~~A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.~~

ARTICLE 6 – GENERAL CONSIDERATIONS

6.1 *Standards of Performance*

- A. The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. Engineer warrants and represents that it has the capability, experience, available personnel, and means required to perform the services contemplated by this Agreement. Services will be performed using personnel and equipment qualified and/or suitable to perform the work requested by the Owner. Owner retains the right to report to Engineer any unsatisfactory performance of Engineer personnel for appropriate corrective action. Engineer shall comply with applicable federal, state, and local laws in connection with any work performed hereunder. No other warranty, express or implied, is included in this Agreement or in any Task Order, drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the Services. ~~Standard of Care: The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.~~

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures*
1. Engineer and Owner shall comply with applicable Laws and Regulations.
 2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of the Task Order. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date of the Task Order to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of the Task Order of Owner-provided written policies and procedures;
 - c. changes after the Effective Date of the Task Order to Owner-provided policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee and as modified by the City of Schertz, unless expressly indicated otherwise in Exhibit J or in the specific Task Order.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws

and Regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at a Site, Engineer, its Consultant, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.2 *Design Without Construction Phase Services*

- A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been expressly required of Engineer in the authorizing Task Order. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against Engineer that may be in any way connected to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

6.3 *Use of Documents*

- ~~A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed.~~

B.A. If Engineer is required to prepare or furnish Drawings or Specifications under the specific Task Order, then Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.

C. B. Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by the City shall be delivered to and become the property of the City. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT LIABILITY TO THE

PROFESSIONAL. Where applicable, Professional shall retain all pre-existing proprietary rights in the materials provided to the City but shall grant to the City a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at Professional's expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Specific Project. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and its Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

D.C. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.4 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Specific Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Specific Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement or a Task Order does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the

recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.5 Insurance

- A. Commencing with the Effective Date of the Agreement, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer that is applicable to a Specific Project.
- ~~B. Commencing with the Effective Date of the Agreement, Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability insurance policies carried by Owner, which are applicable to the Specific Project.~~
- C. B. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Specific Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor.
- ~~D. C.~~ D. Owner and Engineer shall each deliver to the other ~~Owner~~ certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished promptly after the Effective Date of the Agreement and at renewals thereafter during the life of this Agreement.
- E. D. All policies of property insurance relating to a Specific Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. E. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. F. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.6 *Suspension and Termination*

A. *Suspension*

1. By Owner: Owner may suspend a Task Order for up to 90 days upon seven days written notice to Engineer.
2. By Engineer: Engineer may suspend services under a Task Order (a) if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or (b) in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.A.4.
3. A suspension on a specific Task Order, whether by Owner or Engineer, shall not affect the duty of the two parties to proceed with their obligations under other Task Orders.

B. *Termination for Cause—Task Order:* The obligation to provide further services under a specific Task Order may be terminated for cause:

1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the specific Task Order or this Agreement, whose terms govern the specific Task Order, through no fault of the terminating party.
2. By Engineer:
 - a. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - b. upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.A.5.
 - c. Engineer shall have no liability to Owner on account of such termination.
 - d. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.06.B.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

C. *Termination for Cause—Agreement:* In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon seven days notice Engineer may terminate this Agreement, including Engineer's services under all Task Orders.

- D. *Termination for Convenience by Owner:* Owner may terminate a Task Order or this Agreement for Owner's convenience, effective upon Engineer's receipt of notice from Owner.
- E. *Effective Date of Termination:* The terminating party under Paragraphs 6.06.B, C, and D may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.
- F. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with the specific Task Order and this Agreement, and for all expenses incurred through the effective date of termination, to the extent that the specific Task Order (or Task Orders) allows reimbursement for such expenses. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.F.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using the basis of compensation for Additional Services, as indicated in the specific Task Order.

6.7 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the ~~state~~ State of Texas ~~in which the Specific Project is located.~~

6.8 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. The Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in any Construction Contract Documents prepared for any Specific Project under this Agreement.

6.9 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. With respect to each specific Task Order, Specific Project, and Site (unless indicated otherwise in a specific Task Order):
 1. Owner represents to Engineer that as of the Effective Date of the Task Order, to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
 2. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
 3. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
 4. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, immediately suspend performance of services on the portion of the Specific Project affected thereby until such portion of the Specific Project is no longer affected.
 5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under the specific Task Order, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating the specific Task Order for cause on seven days notice.

6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under a specific Task Order or this Agreement.

6.11 *Indemnification and Mutual Waiver*

A. Professional agrees to indemnify and hold the City of Schertz, Texas and all of its present, future and former agents, employees, officials and representatives harmless in their official, individual and representative capacities from any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, for injuries to persons (including death) or to property (both real and personal) created by, arising from or in any manner relating to the services or goods performed or provided by Professional – expressly including those arising through strict liability or under the constitutions of the United States or Texas – BUT ONLY TO THE EXTENT ALLOWABLE BY SEC. 271.904(a) OF THE TEXAS LOCAL GOVERNMENT CODE AS APPLICABLE. ~~Indemnification by Engineer: To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."~~

~~B. Indemnification by Owner: Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.~~

~~C. Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys' fees) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.~~

~~D. No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.~~

~~E. Percentage Share of Negligence: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or~~

~~damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.~~

~~F.A. Mutual Waiver: To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, any Task Order, or a Specific Project, from any cause or causes.~~

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services under each Task Order, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under the Task Order. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices*: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of such Specific Project.
- F. *Applicability to Task Orders*: The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. *Non-Exclusive Agreement*: Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

ARTICLE 7 – DEFINITIONS

7.1 Defined Terms

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order, but which are not included in Basic Services for that Task Order.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Article 8.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with a specific Task Order, as specified in the Task Order (but not including Additional Services performed or furnished pursuant to an amendment to the specific Task Order).
 6. *Change Order*—A document which is signed by a Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by a Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
 8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 9. *Construction Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The numbers of days or the dates by which a Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion, and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of an entire Specific Project designed or specified by or for Engineer under this Agreement and the specific Task Order, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damage to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Specific Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and their employees, agents, and representatives.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer’s independent professional associates, consultants, subcontractors, or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by a Contractor.
19. *Effective Date of the Agreement*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. *Effective Date of the Task Order*—The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
21. *Engineer*—The individual or entity named as such in this Agreement.

22. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Owner*—The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.
25. *Record Drawings*—Drawings depicting the completed Specific Project, or a specific portion of the completed Specific Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Resident Project Representative*—The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR. The duties and responsibilities of the RPR will be as set forth in each Task Order.
27. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
28. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
29. *Site*—Lands or areas indicated in the Construction Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of a Contractor.
30. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
31. *Specific Project*—The total specific undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under a specific Task Order are a part.
32. *Subcontractor*—An individual or entity having a direct contract with a Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently

complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

- 34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with a Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
- 35. *Task Order*—A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
- 36. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost and all other Specific Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to Owner.
- 37. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning; all as required by such Construction Contract Documents.
- 38. *Work Change Directive*—A written directive to a Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.1 *Suggested Form of Task Order*

- A. The Suggested Form of Task Order is attached as Attachment 1, and shall be used as the basis for preparing a specific Task Order for each Specific Project under this Agreement.

8.2 *Exhibits Included*:

- A. Exhibit A, Engineer's Services for Task Order. Services, tasks, and terms in Exhibit A as included with this Agreement are for reference in preparing the scope of services for specific Task Orders, and are contractually binding only to the extent expressly incorporated in a specific Task Order
- B. Exhibit B, Owner's Responsibilities. This Exhibit applies to all Task Orders.

- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. The terms of Exhibit C that will be applicable to and govern compensation under a specific Task Order will be determined by the selection of compensation methods made in Paragraph 6, "Payments to Engineer," of the specific Task Order.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. This Exhibit is not contractually binding except when expressly incorporated in a specific Task Order.
- E. Exhibit E, Notice of Acceptability of Work. Engineer shall use this Notice of Acceptability of Work form at the conclusion of construction on a Specific Project if (1) the form is expressly incorporated by reference in a specific Task Order, and Engineer's scope of services in the specific Task Order includes providing such a notice to Owner and Contractor, and (2) the Work is in fact acceptable pursuant to applicable requirements, subject to the terms of the notice.
- F. Exhibit F, Construction Cost Limit. This Exhibit is contractually binding only with respect to those specific Task Orders that (1) expressly incorporate Exhibit F by reference in the Task Order, Paragraph 2, "Services of Engineer," and (2) expressly state a specific Construction Cost Limit and contingency for the Specific Project in Paragraph 2, "Services of Engineer," of the specific Task Order.
- G. Exhibit G, Insurance. This Exhibit is applicable to all Task Orders.
- ~~H. Exhibit H, Dispute Resolution. This Exhibit is applicable to all Task Orders.~~
- ~~I. Exhibit I, Limitations of Liability. This Exhibit is applicable to all Task Orders.~~
- J-H. Exhibit J, Special Provisions. This Exhibit is applicable to all Task Orders.
- ~~K-I.~~ Exhibit K, Amendment to Task Order. Owner and Engineer may use this form during a Specific Project to modify the specific Task Order.

8.3 *Total Agreement*

- A. This Agreement (together with the Exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.
- B. An executed Task Order under this Agreement (including any incorporated exhibits or attachments) constitutes the entire agreement between Owner and Engineer with respect to the Specific Project, and supersedes all prior written or oral understandings. Such a Task Order may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments to such a Task Order should be based whenever possible on the format of Exhibit K to this Agreement.

8.4 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party that the individual represents. Each Task Order shall likewise designate representatives of the two parties with respect to that Task Order.

8.5 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER:

By:

Print Name: Dr. Mark Browne

Title: City Manager

Date Signed:

Date Signed:

10/17/19

Address for Owner's receipt of notices:

1400 Schertz Parkway

Schertz, Texas 78154

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

Kathryn Woodlee

Title: City Engineer

Phone Number: 210-619-1823

E-Mail Address: kwoodlee@schertz.com

ENGINEER:

Jeffrey A. Farnsworth, PE - Asst Secretary

By:

Print Name:

Title:

Date Signed:

Engineer License or Firm's Certificate No. (if required):

State of : Texas - 80190

Date Signed:

10/10/19

Address for Engineer's receipt of notices:

601 NW Loop 410, Suite 350

San Antonio, Texas

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

Stephen Aniol

Title: Project Manager

Phone Number: 210-321-3404

E-Mail Address: stephen.aniol@kimley-horn.com

**SUGGESTED FORM OF
TASK ORDER**

This is Task Order
No. _____, consisting of
_____ pages.

Task Order

[NOTE TO USER: Modify as to scope, compensation, schedule, and other key items.]

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated [] ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project (title):
- e. Specific Project (description):

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:

[Select one of the following three options and delete the other two.]

- ☐ set forth in Part 1—Basic Services of Exhibit A, "Engineer's Services for Task Order," modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

[or]
- ☐ as follows: [] ***[Note: Insert scope of services here, or incorporate by reference a scope of services set out in a separate document such as a letter or proposal.]***

[or]
- ☐ the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference: ***[Note: If this option is selected, include only those sections below that are part of Basic Services for the specific Task Order, and delete those sections below that do not apply.]***
 - Study and Report Services (Exhibit A, Paragraph A1.01)
 - Preliminary Design Phase (Exhibit A, Paragraph A1.02)

Task Order Form

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and American Society of Civil Engineers. All rights reserved.

- Final Design Phase (Exhibit A, Paragraph A1.03)
- Bidding or Negotiating Services (Exhibit A, Paragraph A1.04)
- Construction Phase Services (Exhibit A, Paragraph A1.05)
 - including Resident Project Representative (RPR) services (A1.05.A.2)
 - *[or]* [not including Resident Project Representative (RPR) services (A1.05.A.2)]
- Post-Construction Phase Services (Exhibit A, Paragraph A1.06)
- Commissioning Services (Exhibit A, Paragraph A1.07)

B. Resident Project Representative (RPR) Services

If the scope of services established in Paragraph 2.A above includes RPR services, then Exhibit D of the Agreement is expressly incorporated in this Task Order by reference.

[1. If RPR services are not in the scope of this Task Order, do not include any references to RPR services in Exhibit A (Paragraph A1.05.A.2) for this Task Order (or state "Does not apply" or similar), or in any other scope of services text or document.

2. If appropriate, modify Exhibit D for this specific Task Order, and attach it, rather than incorporating the Exhibit D that is included with the Agreement.]

C. Designing to a Construction Cost Limit

[If the design under this Task Order will be governed by a Construction Cost limit, then include the following clause, with blanks filled in, and thereby incorporate Exhibit F; if not, then delete the clause or indicate "Does not apply" or similar]]

Under this Task Order Engineer will design to a Construction Cost Limit, subject to the terms of Paragraph 5.02 of the Agreement and of Exhibit F to the Agreement. Exhibit F is expressly incorporated by reference. The Construction Cost Limit is \$_____. The bidding or negotiating contingency to be added to the Construction Cost Limit is _____ percent.

D. Other Services

Engineer shall also provide the following services: ***[Summarize or provide a brief description of other services (if any) that are to be provided by Engineer as Basic Services, but have not been addressed in Paragraphs 2.A through 2.C. If applicable, categorize such other services by phases, such as other Study and Report Phase Services, other Preliminary Design Phase Services, and so on. If all Basic Services have been covered in Paragraphs 2.A through 2.C, then indicate "None" here in 2.D, or delete 2.D in its entirety.]***

- E. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Additional Services

- A. Additional Services that may be authorized or necessary under this Task Order are:

[Select one of the following three options and delete the other two.]

- ☐ set forth as Additional Services in Part 2—Additional Services, of Exhibit A, "Engineer's Services for Task Order," modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

[or]

- ☐ as follows: ☐ ***[Note: Insert list of Additional Services here, or incorporate by reference a list of Additional Services set out in a separate document. Indicate whether advance authorization is needed, and include other governing terms and conditions.]***

[or]

- ☐ those services (and related terms and conditions) set forth in Paragraph A2.01 of Exhibit A, as attached to the Agreement referred to above, such paragraph being hereby incorporated by reference.

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following: ***[State any additions or modifications to Exhibit B for this Specific Project here.]***

5. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule: ***[Revise and amend for each specific Task Order.]***

<u>Party</u>	<u>Action</u>	<u>Schedule</u>
Engineer	Furnish <input type="checkbox"/> review copies of the Report and other Study and Report Phase deliverables to Owner.	Within <input type="checkbox"/> days of the Effective Date of the Task Order.
Owner	Submit comments regarding Report and other Study and Report Phase deliverables to Engineer.	Within <input type="checkbox"/> days of the receipt of Report and other Study and Report Phase deliverables from Engineer.
Engineer	Furnish <input type="checkbox"/> copies of the revised Report and other Study and Report Phase deliverables to Owner.	Within <input type="checkbox"/> days of the receipt of Owner's comments regarding the Report and other Study and Report Phase deliverables.
Engineer	Furnish <input type="checkbox"/> review copies of the Preliminary Design Phase documents,	Within <input type="checkbox"/> days of Owner's authorization to proceed with Preliminary Design Phase

Task Order Form

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	opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	services.
Owner	Submit comments regarding Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.	Within [] days of the receipt of Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables from Engineer.
Engineer	Furnish [] copies of the revised Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	Within [] days of the receipt of Owner's comments regarding the Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Furnish [] copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within [] days of Owner's authorization to proceed with Final Design Phase services.
Owner	Submit comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Engineer.	Within [] days of the receipt of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables from Engineer.
Engineer	Furnish [] copies of the revised final Drawings and Specifications, assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within [] days of the receipt of Owner's comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables

6. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

[Notes: 1. Delete line items that do not apply to this Task Order. 2. For each line item indicate either "Lump Sum," "Direct Labor," or "Hourly Rates" as the Basis of Compensation. 3. Cross-references are to Exhibit A. Revise if necessary, or

delete cross-references if Exhibit A is not used to establish the scope of services under this Task Order.]

Description of Service		Amount	Basis of Compensation
1.	Basic Services (Part 1 of Exhibit A)	\$[]	[]
a.	Study and Report Phase (A1.01)	\$[]	[]
b.	Preliminary and Final Design Phase (A1.02, A1.03)	\$[]	[]
c.	Bidding or Negotiating Phase (A1.04)	\$[]	[]
d.	Construction Phase (A1.05)*	\$[]	[]
e.	Resident Project Representative Services* (A1.05.A.2).	\$[]	[]
f.	Post-Construction Phase (A1.06)	\$[]	[]
g.	Commissioning Phase (A1.07)	\$[]	[]
h.	Other Services (see A1.08, and 2.D above)	\$[]	[]
TOTAL COMPENSATION (lines 1.a-h)		\$[]	
2.	Additional Services (Part 2 of Exhibit A)	(N/A)	[]

[Many of the line items under Line 1, Basic Services, will frequently be governed by a single Basis of Compensation; however, it is not unusual to have some variation among the services so the table allows the user to establish different bases of compensation for the various Basic Compensation phases (1.a-1.h).]

*Based on a []-month continuous construction period.

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

7. Consultants retained as of the Effective Date of the Task Order:

8. Other Modifications to Agreement and Exhibits:

[Supplement or modify Agreement and Exhibits, if appropriate.]

9. Attachments:

10. Other Documents Incorporated by Reference:

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is [].

OWNER:

ENGINEER:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Engineer License or Firm's

Certificate No. (if required): _____

State of: _____

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

E-Mail
Address: _____

E-Mail
Address: _____

Phone: _____

Phone: _____

Task Order Form

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This is **EXHIBIT A**, consisting of [] pages, referred to in and part of the Task Order dated [].

Engineer's Services for Task Order

[Introductory Note to User:

The following text as published describes a variety of services that may be included, in whole or in part, in a specific Task Order issued under the Agreement. Until this exhibit is customized for inclusion in a specific Task Order, or some or all of the exhibit is incorporated in a specific Task Order by reference, it has no legal or contractual effect.

Not all possible services are included in this exhibit. The user should revise and supplement the descriptions of services provided here for purposes of drafting the scope of Engineer's Services for each specific Task Order. The scope of services will typically include a list of potential Additional Services (see Paragraph A2.01) that may be needed as the Specific Project progresses. The user may choose to categorize some items shown here as Additional Services as Basic Services, or move some tasks listed in the Basic Services categories (Paragraphs A1.01 through A1.08) into Additional Services. Note that for the Additional Services in A2.01.A, Engineer is not authorized to perform and receive compensation for an Additional Service unless authorized by Owner to do so under a written amendment.]

PART 1—BASIC SERVICES

A1.01 Study and Report Phase Services

A. As Basic Services, Engineer shall:

- 1.** Consult with Owner to define and clarify Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a.** If Owner has already identified one or more potential solutions to meet its Specific Project requirements, then proceed with the study and evaluation of such potential solutions: ***[List the specific potential solutions here.]***
 - b.** If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.
 - c.** If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify three alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.

Exhibit A – Engineer's Services

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2. Identify potential solution(s) to meet Owner's Specific Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Specific Project requirements.
4. Visit the Site, or potential Specific Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Specific Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Specific Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Specific Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Specific Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Specific Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Specific Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Specific Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.

Exhibit A – Engineer's Services

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13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
 14. Pursuant to the Task Order schedule, furnish the required number of review copies of the Report and any other Study and Report Phase deliverables to Owner, and review it with Owner. Owner shall submit to Engineer any comments regarding the furnished items within the time established in the Task Order schedule.
 15. Pursuant to the Task Order schedule, revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish the required number of copies of the revised Report and any other Study and Report Phase deliverables to the Owner.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 Preliminary Design Phase

- A. As Basic Services, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Specific Project.
 2. In preparing the Preliminary Design Phase documents, use any specific applicable Specific Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
 3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
 4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
 5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 6. Continue to assist Owner with Specific Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
 7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.

Exhibit A – Engineer's Services

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8. Obtain ~~and review~~ Owner's instructions regarding Owner's procurement of construction services (including ~~instructions regarding advertisements for bids~~, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain ~~and review~~ copies of Owner's design and construction standards, Owner's standard forms, ~~general conditions (if other than modified EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition)~~, supplementary conditions, text, and related documents or content for Engineer to include in the ~~draft~~ bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
 9. Pursuant to the Task Order schedule, furnish the required number of review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner, and review them with Owner. Within the time established in the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items.
 10. Pursuant to the Task Order schedule, revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner the required number of copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. As Basic Services, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.

5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
 6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Pursuant to the Task Order schedule, furnish for review by Owner, its legal counsel, and other advisors, the required number of copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the ~~draft~~ bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, and review them with Owner. Within the time required by the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 10. Pursuant to the Task Order schedule, revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit the required number of final copies of such documents to Owner after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Task Order is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Task Order.

A1.04 *Bidding or Negotiating Phase*

- A. As Basic Services, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of Subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Task Order).

A1.05 Construction Phase

A. As Basic Services, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in the Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform

services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the testing services identified in Exhibit B, Paragraph B2.01.A.
4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement, this Task Order, and the Construction Contract Documents, but rather are to be limited to spot checking, selective

sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.

14. *Change Orders and Work Change Directives*: Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
15. *Differing Site Conditions*: Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews, obtain information, and prepare findings, conclusions, and recommendations for Owner's use, subject to the limitations and responsibilities under the Agreement and the Construction Contract.
16. *Non-reviewable matters*: If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
17. *Shop Drawings, Samples, and Other Submittals*: Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
19. *Inspections and Tests*:
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's

supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement or this Task Order. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection,

tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
 24. *Final Notice of Acceptability of the Work:* Conduct a final visit to the specific Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") (also available as a construction form, EJCDC® C-626 (2013)) that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under the Agreement and this Task Order.
 25. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the specific Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the final Construction Contract under the Task Order.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, as Basic Services, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair

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of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

A1.07 Commissioning Phase

A. As Basic Services, Engineer shall:

1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.
2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
3. Prepare operation and maintenance manuals.
4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.
5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

A1.08 *Other Services:* Each specific Task Order may include Basic Services that do not fit into the categories above. Such services should be expressly stated in the specific Task Order itself.

PART 2—ADDITIONAL SERVICES

A2.01 Additional Services Requiring an Amendment to Task Order

- A. *Advance Written Authorization Required:* During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Specific Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Specific Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Specific Project.

2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Specific Project designed or specified by Engineer, or the Specific Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of the Task Order or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
5. Services required as a result of Owner's providing incomplete or incorrect Specific Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. based on the engineering and technical aspects of the Project, the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:

Exhibit A – Engineer's Services

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- a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.C or the specific Task Order.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
- 11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services.
 - 12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
 - 13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
 - 14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
 - 15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
 - 16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
 - 17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
 - 18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
 - 19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
 - 20. Preparation of operation, maintenance, and staffing manuals.
 - 21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
 - 22. Assistance to Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.

Exhibit A – Engineer's Services

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23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
 24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding involving the Project.
 25. Overtime work requiring higher than regular rates.
 26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
 27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
 28. Excessive services during any correction period, or with respect to guarantees called for in the Construction Contract (except as agreed to under Basic Services).
 29. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.
 30. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.
- B. *Advance Written Authorization Not Required:* Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for Interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

Exhibit A – Engineer's Services

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This is **EXHIBIT B**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated []

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

82.01 Specific Responsibilities

A. Owner shall:

1. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
2. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, ~~general conditions (if other than modified version of EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition)~~, supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
3. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
4. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - a. Property descriptions.

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- b. Zoning, deed, and other land use restrictions.
 - c. Utility and topographic mapping and surveys.
 - d. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - e. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 - f. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Specific Project, the Site, and adjacent areas.
 - g. Data or consultations as required for the Project but not otherwise identified in this Agreement.
5. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
6. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
- a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 - b. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - c. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
7. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
8. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

Exhibit B—Owner's Responsibilities

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9. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
10. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
11. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, other work is to be performed at or adjacent to the Site by others or by employees of Owner, or if Owner arranges to have work performed at the Site by utility owners, then Owner shall coordinate such work unless Owner designates an individual or entity to have authority and responsibility for coordinating the activities among the various prime Contractors and others performing work. In such case Owner shall define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
12. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
13. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
14. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
15. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
16. Place and pay for advertisement for Bids in appropriate publications.
17. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
18. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
19. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

Exhibit B— Owner's Responsibilities

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20. Perform or provide the following: *[Here list any additional Owner responsibilities]*.

This is **EXHIBIT C**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [] .

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 Basis of Compensation

- A. The bases of compensation (compensation methods) for Basic Services (including if applicable the bases of compensation for individual phases of Basic Services) and for Additional Services shall be identified in each specific Task Order (see Suggested Form of Task Order, Paragraph 6). Owner shall pay Engineer for services in accordance with the applicable basis of compensation.
- B. The three following bases of compensation are used for services under the Task Orders, as identified in each specific Task Order:
 1. Lump Sum (plus any expenses expressly eligible for reimbursement)
 2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)
 3. Direct Labor Costs Times a Factor (plus any expenses expressly eligible for reimbursement)

C2.02 Explanation of Compensation Methods

A. Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. The Lump Sum constitutes full and complete compensation for Engineer's services in the specified category, including labor costs, overhead, profit, expenses (other than those expenses expressly eligible for reimbursement, if any), and Consultant charges.
3. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of the services in the specified category (see Appendix 1 for rates or charges): [] **[List any such reimbursable expenses here, or indicate "None." If "None" then the reference to Appendix 1 may be deleted.]**
4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph C2.03 below, and Appendix 1.
2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.
4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, and reimbursable expenses (including Consultants' charges, if any).
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus reimbursable expenses (including Consultant's charges, if any).
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of []) to reflect equitable changes in the compensation payable to Engineer.

C. Direct Labor Costs Times a Factor

1. For the specified category of services, the Owner shall pay Engineer an amount equal to Engineer's Direct Labor Costs times a factor of [] for the services of Engineer's employees engaged on the Specific Project. Direct Labor Costs means salaries and wages paid to employees but does not include payroll-related costs or benefits. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph C2.03 below, and Appendix 1.
2. Engineer's Reimbursable Expenses Schedule is attached to this Exhibit as Appendix 1.
3. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation incorporates all labor, overhead, profit, and reimbursable expenses (including Consultant's charges, if any).
4. The amounts billed will be based on the applicable Direct Labor Costs for the cumulative hours charged to the specified category of services on the Specific Project during the billing period times the above-designated Factor, plus reimbursable expenses (including Consultant's charges, if any).
5. The Direct Labor Costs and the factor applied to Direct Labor Costs will be adjusted annually (as of []) to reflect equitable changes in the compensation payable to Engineer.

C2.03 Reimbursable Expenses

- A. Under the Lump Sum method basis of compensation to Engineer, unless expressly indicated otherwise the Lump Sum amount includes the following categories of expenses: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; and Consultant charges. These expenses are not reimbursable under the Lump Sum method, unless expressly indicated otherwise in C2.02.A.3 above.
- B. Expenses eligible for reimbursement under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods of compensation include the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Task Order: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier services; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; Consultant charges; and any other expenses identified in Appendix 1.
- C. Reimbursable expenses reasonably and necessarily incurred in connection with services provided under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods shall be paid at the rates set forth in Appendix 1, Reimbursable Expenses Schedule, subject to the factors set forth below.
- D. The amounts payable to Engineer for reimbursable expenses will be the Project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external reimbursable expenses allocable to the Specific Project, the latter multiplied by a factor of [].
- E. Whenever Engineer is entitled to compensation for the charges of its Consultants, those charges shall be the amount billed by such Consultants to Engineer times a factor of [].
- F. The external reimbursable expenses and Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C2.04 Serving as a Witness

- A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.A.20, at a rate of [] times the witness's standard hourly rate. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

C2.05 Other Provisions Concerning Payment

- A. *Extended Contract Times:* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*

1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition**, dated [].

Reimbursable Expenses Schedule

Expenses eligible for reimbursement are subject to review and adjustment per Exhibit C. Rates and charges for reimbursable expenses as of the date of the Agreement are:

8"x11" Copies/Impressions	_____/page
Copies of Drawings	_____/sq. ft.
Mileage (auto)	_____/mile
Air Transportation	at cost
CAD Charge	_____/hour
Laboratory Testing	at cost
Health and Safety Level D	_____/day
Health and Safety Level C	_____/day
Meals and Lodging	at cost

[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this Specific Project]

This is **Appendix 2 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [REDACTED].

Standard Hourly Rates Schedule

The following standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services as of the Effective Date of the Task Order are:

Billing Class VIII	\$ /hour
Billing Class VII	\$ /hour
Billing Class VI	\$ /hour
Billing Class V	\$ /hour
Billing Class IV	\$ /hour
Billing Class III	\$ /hour
Billing Class II	\$ /hour
Billing Class I	\$ /hour

[Note to User: The categories above (Billing Classes VIII through I) are traditional hourly rate classes for engineering services, but the classes themselves do not currently have widely accepted or understood meanings or definitions. Many approaches are possible for establishing the hourly rates that will be charged. These include defining the categories (for example, "Billing Class VI—Assistant Project Manager"), or using the engineering firm's own professional classifications. If hourly rates are ascribed to specific individuals, the user should ensure that changes in professional personnel and rates are allowable over the Project's course.]

This is **EXHIBIT D**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated []

Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

The following duties, responsibilities, and limitations of authority may be incorporated in the Task Order for a Specific Project:

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, as incorporated in this Task Order, are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work*
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not

compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and

- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Specific Project documentation.

- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion, submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of, Owner, and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Specific Project in whole or in part.

This is **EXHIBIT E**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

[Notes to User

- 1. Exhibit A, Paragraph A1.05.A.24 of this Agreement indicates that in connection with recommending final payment of the Construction Contractor with respect to a specific Construction Contract, the Engineer will also provide a notice to Owner and Contractor of the acceptability of the Work, subject to stated limitations. The form for that purpose, "Notice of Acceptability of Work," is attached on the following pages of this Exhibit E. The same form is also available as a construction form, EJCDC® C-626 (2013).*
- 2. The Notice of Acceptability of Work should be served in compliance with the requirements for service of notice under the Construction Contract. See Paragraph 18.01, Giving Notice, of EJCDC® C-700 (2013), Standard General Conditions of the Construction Contract.]*



**ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE**

NOTICE OF ACCEPTABILITY OF WORK

SPECIFIC PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To:

OWNER

And To:

CONTRACTOR

From:

ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the following terms and conditions of this Notice.

Exhibit E – Notice of Acceptability of Work

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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and American Society of Civil Engineers. All rights reserved.

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT F**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

Construction Cost Limit

Paragraph 5.02 of the Agreement is amended and supplemented to include the following when incorporated in the Task Order for a Specific Project:

F5.02 Designing to Construction Cost Limit

- A. A Construction Cost limit may be set forth in the Task Order.
- B. If a Construction Cost limit is set forth in a Task Order, then the Task Order will also specify bidding or negotiating contingency to be added to such Construction Cost limit.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types of materials, equipment and component systems, and the types and quality thereof are to be included in the Drawings and Specifications and to make reasonable adjustments in the scope, extent, and character of a Specific Project to the extent consistent with the project requirements and sound engineering practices to bring the project within the Construction Cost limit.
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer, and Owner shall consent to an adjustment in such Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Specific Project within a reasonable time, or (3) cooperate in revising the Specific Project's scope, extent, or character to the extent consistent with the Specific Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of its responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

Exhibit F – Construction Cost Limit

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CITY OF SCHERTZ
REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Schertz accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

1. The City of Schertz shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement.**
2. A waiver of subrogation in favor of The City of Schertz shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement.**
3. All insurance policies shall be endorsed to the effect that The City of Schertz will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Schertz as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Schertz of any material change in the insurance coverage.
7. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Schertz.
10. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
13. Upon request, Contractor shall furnish The City of Schertz with certified copies of all insurance policies.
14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Schertz within ten (10) business days after contract award and prior to starting any work by the successful Contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Schertz, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Schertz. The certificate of insurance and endorsements shall be sent to:

City of Schertz
Purchasing Department
1400 Schertz Parkway
Schertz, TX 78154

Emailed to:
jgohlke@schertz.com
Faxed to: 210-619-1169



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/01/1900

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If ENDORSEMENT IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER ABC Insurance Agency 555 Main Street Tampa, FL 33333-0000	INSURER XYZ Company 123 Apple Street Tampa, FL 22222-0000	INSURANCE COVERAGE INSURER A: Insurance Center INSURER B: Insurance Center INSURER C: Insurance Center INSURER D: Insurance Center INSURER E: Insurance Center INSURER F: Insurance Center	NAME 00000 00000 00000 00000 00000 00000
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COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY PERIOD	LIMITS
GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	X123450	01/01/1900 01/01/1900	EACH OCCURRENCE \$1,000,000 AGGREGATE \$100,000 MED EXP (per occ./acc.) \$5,000 PERSONAL & ADVERTISING \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPLETED \$1,000,000
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> AUTO AND ALL OWNED AUTOS <input type="checkbox"/> HIREN AUTOS	123456789	01/01/1900 01/01/1900	BODILY INJURY (per person) \$1,000,000 BODILY INJURY (per family) \$1,000,000 PROPERTY DAMAGE (per accident) \$1,000,000
<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB	01234	01/01/1900 01/01/1900	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000
<input checked="" type="checkbox"/> WORKERS COMPENSATION <input type="checkbox"/> EMPLOYERS LIABILITY <input type="checkbox"/> ANY PROPERTY OR ALLIANCE/EXECUTIVE <input type="checkbox"/> OFFICER/DIR/BOARD/INDEMNITY <input type="checkbox"/> BUILDERS RISK	123456	01/01/1900 01/01/1900	100% Insurable Value, replacement cost basis \$1,000,000 each claim / \$1,000,000 aggregate

DESCRIPTION OF OPERATIONS (LOCATIONS / VEHICLES (attach ACORD 101, additional Remarks Schedule, if more space is required))

Effective January 1, 2012 must be compliant with Chapter 1011, Tax Ins Code (SB 426 enacted by Texas Legislature 07/07 Session in 2011).

CERTIFICATE HOLDER City of Schertz 1400 Schertz Parkway Schertz, Tx 78154 Attn: Purchasing Dept	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE AUTHORIZED SIGNATURE REQUIRED HERE
--	--

ACORD 20 (10/09/93)

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(Instructions for completing and submitting a certificate to the City of Schertz)

Complete the certificate of insurance with the information listed below:

- A) Certificate of Insurance date
- B) Producer (Insurance Agency) Information – complete name, address, telephone information, & email address.
- C) Insured's (Insurance Policy Holder) Information – complete name & address information
- D) Insurer (name/names of insurance company) **(Remember the city requires all insurance companies to be Authorized to do business in the State of Texas be rated by A.M. Best with a rating of B+ (or better) Class VI (or higher) or otherwise be acceptable to the City if not rated by A.M. Best)
- E) NAIC # (National Association of Insurance Commissioners, a # that is assigned by the State to all insurance companies)
- F) Insurer letter represents which insurance company provides which type of coverage from D
- G) General Liability Insurance Policy – must have an (x) in box. Also, "Occurrence" type policy – must have an (x) in the box (occurrence policy preferred but claims made policy can be accepted with special approval)
- H) This section shall be filled in with "Y" for yes under Additional Insured for all coverages, except for Contractor Liability and Workers' Compensation. There shall also be a "Y" for yes under all coverages for subrogation waived.
- I) Automobile Liability Insurance – must be checked for Any Auto, All Owned Autos, Hired Autos
- J) Umbrella Coverage – must be checked in this section and by occurrence whenever it is required by written contract and in accordance with the contract value.
- K) Worker's Compensation and Employers Liability Insurance – information must be completed in this section of the certificate of insurance form (if applicable).
- L) Builder's Risk Policy – for construction projects as designated by the City of Schertz.
Professional Liability Coverage – for professional services if required by the City of Schertz.
- M) Insurance Policy #'s
- N) Insurance policy effective dates (always check for current dates)
- O) Insurance Policy limits (See Insurance Requirements Checklist)
- P) This section is to list projects, dates of projects, or location of project. Endorsements to the insurance policy(ies) must be provided separately and not in this section. The following endorsements are required by the City of Schertz.
 - (1) Adding the City of Schertz as an additional insured. The "additional insured" endorsement is not required for professional liability and workers compensation insurance; and
 - (2) Waiver of Subrogation
 - (3) Primary and Non-Contributory
 - (4) Cancellation Notice
- Q) City of Schertz's name and address information must be listed in this section
- R) Notice of cancellation, non-renewal, or material change to the insurance policy(ies) must be provided to the City of Schertz in accordance with a cancellation notice endorsement to the policy and/or per the policy provisions based on the endorsement adding the city as an additional insured. (Sec. 1811.155, Tex. Ins. Code)
- S) The certificate must be signed by the Authorized Agent in this section of the certificate form.

This is **EXHIBIT J**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Special Provisions

Paragraph(s)____of the Agreement is/are amended to include the following agreement(s) of the parties:

This is **EXHIBIT K**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

Amendment To Task Order No. _____

1. Background Data:

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project:

2. Description of Modifications

[Include the following paragraphs that are applicable and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform the following Additional Services: []
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous amendments, if any, is modified as follows: []
- c. The responsibilities of Owner with respect to the Task Order are modified as follows: []
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: []
- e. The schedule for rendering services under this Task Order is modified as follows: []
- f. Other portions of the Task Order (including previous amendments, if any) are modified as follows: []

[List other Attachments, if any]

3. Task Order Summary (Reference only)

- | | | |
|----|----------------------------------|-------|
| a. | Original Task Order amount: | \$[] |
| b. | Net change for prior amendments: | \$[] |
| c. | This amendment amount: | \$[] |
| d. | Adjusted Task Order amount: | \$[] |

The foregoing Task Order Summary is for reference only and does not alter the terms of the Task Order, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and Task Order not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

By: _____

Title: _____

Date
Signed: _____

ENGINEER:

By: _____

Title: _____

Date
Signed: _____

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2019-497809

Date Filed:
05/30/2019

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Kimley-Horn and Associates, Inc.
Dallas, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Schertz

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

2019-016

On-call engineering services for projects including water transmission and distribution, wastewater collection and conveyance, streets, drainage facilities, and site work.

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Schiller, Mike	Dallas, TX United States	X	
	Wilson, Mark	Dallas, TX United States	X	
	Atz, John	Dallas, TX United States	X	
	Peed, Brooks	Dallas, TX United States	X	

5 Check only if there is NO Interested Party.

☐


6 UNSWORN DECLARATION

My name is Kevin Hoppers, and my date of birth is 03/12/1975

My address is 13455 Noel Road, Suite 700, Dallas, TX, 75240, USA
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on the 30 day of May, 20 19
(month) (year)


Signature of authorized agent of contracting business entity
(Declarant)

RESOLUTION NO. 19-R-134

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AND APPROVING PROFESSIONAL SERVICES AGREEMENTS WITH FORD ENGINEERING, INC., HALFF ASSOCIATES, INC., KIMLEY-HORN AND ASSOCIATES, INC., AND UTILITY ENGINEERING GROUP, PLLC. FOR ON-CALL ENGINEERING SERVICES AND ALL MATTERS IN CONNECTION THEREWITH

WHEREAS, the City staff of the City of Schertz (the "City") has determined that the City requires a professional services agreement with Ford Engineering, Inc., Halff Associates, Inc., Kimley-Horn and Associates, Inc., and Utility Engineering Group, PLLC, relating to on-call engineering services for the City; and

WHEREAS, City staff has determined that Ford Engineering, Inc., Halff Associates, Inc., Kimley-Horn and Associates, Inc., and Utility Engineering Group, PLLC, are qualified to provide such services for the City; and

WHEREAS, the City Council has determined that it is in the best interest of the City to contract with Ford Engineering, Inc., Halff Associates, Inc., Kimley-Horn and Associates, Inc., and Utility Engineering Group, PLLC, pursuant to the Professional Services Agreement for Engineering Services attached hereto as Exhibit A (the "Agreement"); and

WHEREAS, the agreements for On-Call Engineering Services will remain in force for three years: October 1, 2019 through September 30, 2022 with the option to renew the contract up to two terms of one year each.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to execute and deliver the Professional Services Agreement with Ford Engineering, Inc., Halff Associates, Inc., Kimley-Horn and Associates, Inc., and Utility Engineering Group, PLLC, in substantially the form set forth on Exhibit A.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

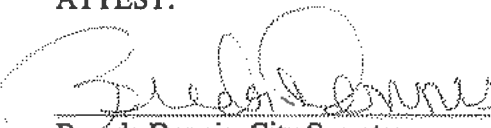
Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

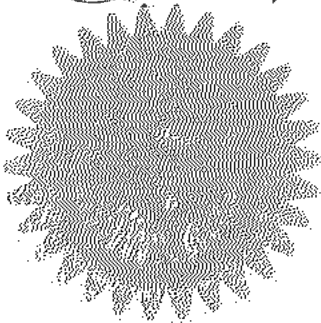
PASSED AND ADOPTED, this 24th day of September, 2019.

CITY OF SCHERTZ, TEXAS


Michael Carpenter, Mayor

ATTEST:


Brenda Dennis, City Secretary



TASK ORDER FORM

This is Task Order
No. 05, consisting of
62 pages.

Task Order

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated [October 17, 2019] ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order:
- b. Owner: The City of Schertz
- c. Engineer: Kimley-Horn and Associates, Inc.
- d. Specific Project (title): Dedicated Transmission Main
- e. Specific Project (description): The City of Schertz plans to install a 16-inch dedicated transmission main to connect the ground storage tank at Live Oak Road near FM 3009 (Live Oak Tank) to the elevated storage tank near Hope Lane and Tulip Street (I-35 Tank). The purpose of this task order is to design and construct the proposed transmission main, which will follow up the recently completed route study and preliminary engineering phase.

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:
 - ☐ as follows: [Reference Engineer Scope and Fee proposal dated May 14, 2021]
- B. Resident Project Representative (RPR) Services: Does Not Apply
- C. Designing to a Construction Cost Limit: Does Not Apply
- D. Other Services: None
- E. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

2. Additional Services

- A. Additional Services that may be authorized or necessary under this Task Order are:
 - ☐ as follows: [Reference Engineer scope and fee proposal dated May 14, 2021 for supplemental and additional service tasks. Additionally, items specifically excluded from the basic scope of services are listed under the exclusions section of the referenced scoped and fee proposal and were not included in the base compensation. In the event items excluded from scope and fee are required

Task Order Form

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to finalize scope associated with this work authorization, or assumptions are modified throughout the project, the need for additional services will be required. Engineer will notify the City of Schertz and submit an additional service proposal for additional tasks and will proceed once an amended work authorization is fully executed. For supplemental service items included in the referenced scope and fee proposal, Engineer will submit a request for authorization of supplemental funds letter to the City prior to commencing work.]

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following: *[Reference Engineer Scope and Fee Proposal for items to be provided by owner. Additionally, City shall provide results of proposed system model analysis for the review of connection options to the I-35 Tank]*

4. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule:

The proposed schedule for this work authorization is based on a total duration of 24 months, inclusive of design, bid and construction. This schedule is highly contingent on the receipt of items to be provided by owner, ultimate results of the environmental investigation, cooperation of property owners to access private property, and the timely completion of land acquisition services by property owners for each parcel identified. Any delays with obtaining this information will impact design milestone and the schedule will be adjusted accordingly. For the purposes of this task order schedule, a Notice to Proceed date of June 12, 2021 has been assumed.

Notice to Proceed (NTP) – June 14, 2021

60% Design Services – June 15, 2021 to November 18, 2021

City 60% Design Review – November 19, 2021 to December 10, 2021

100% Design Services (Unsigned Submittal) – December 13, 2021 to February 10, 2022

City 100% Design Unsigned Review – February 11, 2022 to February 23, 2022

Procurement including Signed and Sealed Construction Drawings – February 24, 2022 to April 29, 2022

Anticipated Delivery Date of Signed and Sealed Construction Drawings is March 10, 2022

Construction – May 2, 2022 to June 15, 2023

Includes council action and Contractor NTP

<u>Party</u>	<u>Action</u>	<u>Schedule</u>
Engineer	Furnish [N/A] review copies of the Report and other Study and Report Phase deliverables to Owner.	Within [N/A] days of the Effective Date of the Task Order.
Owner	Submit comments regarding Report and other Study and Report Phase deliverables to Engineer.	Within [N/A] days of the receipt of Report and other Study and Report Phase deliverables from Engineer.

Engineer	Furnish [N/A] copies of the revised Report and other Study and Report Phase deliverables to Owner.	Within [N/A] days of the receipt of Owner's comments regarding the Report and other Study and Report Phase deliverables.
Engineer	Furnish [N/A] review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	Within [N/A] days of Owner's authorization to proceed with Preliminary Design Phase services.
Owner	Submit comments regarding Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.	Within [N/A] days of the receipt of Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables from Engineer.
Engineer	Furnish [pdf] copies of the 60% Design documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	[Per Schedule above] from receipt of Owner's Notice to proceed to the 60% Design Phase Deliverable Date, submit 60% Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Furnish [pdf] copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	[Per Schedule above] from Owner's delivery of design comments and authorization to proceed with Final Design Phaseservices.
Owner	Submit comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Engineer.	Within [13] days of the receipt of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables from Engineer.
Engineer	Furnish [5] copies of the revised final Drawings and Specifications, assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within [15] days of the receipt of Owner's comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables

Task Order Form

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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5. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Task	Description of Service	Amount	Basis of Compensation
	BASIC SERVICES		
1	Project Management	\$ 54,190.00	[Lump Sum]
2	Environmental	\$ 48,310.00	[Lump Sum]
3	Land Acquisition Coordination	\$ 253,000.00	[Lump Sum]
4	Permit Coordination	\$ 26,500.00	[Lump Sum]
5	Geotechnical Investigation and Report Preparation	\$ 44,655.00	[Lump Sum]
6	Subsurface Utility Engineering (SUE)	\$ 90,705.00	[Lump Sum]
7	Survey Services	\$ 180,535.00	[Lump Sum]
8	60% Design	\$ 136,720.00	[Lump Sum]
9	100% Design	\$ 71,525.00	[Lump Sum]
10	Procurement	\$ 27,485.00	[Lump Sum]
11	Construction Phase Services	\$ 84,180.00	[Lump Sum]
12	Record Drawing Preparation	\$ 7,380.00	[Lump Sum]
13	Reimbursable Project Expenses	\$ 5,600.00	[Lump Sum]
	Total Compensation (BASIC SERVICES)	\$ 1,030,785.00	[Lump Sum]
	SUPPLEMENTAL SERVICES		
S-1	Supplemental Design Services	\$ 75,760.00	[Lump Sum]
S-2	Environmental	\$ 59,400.00	[Lump Sum]
S-3	Land Acquisition Coordination	\$ 156,200.00	[Lump Sum]
S-4	Geotechnical	\$ 12,860.00	[Lump Sum]
S-5	Subsurface Utility Engineering (SUE)	\$ 15,810.00	[Lump Sum]
S-6	Survey	\$ 20,890.00	[Lump Sum]
	Total Compensation (SUPPLEMENTAL SERVICES)	\$ 340,920.00	[Lump Sum]
	Total Compensation (BASIC + SUPPLEMENTAL SERVICES)	\$ 1,371,705.00	[Lump Sum]

*Based on a [24] -month continuous design and construction period.

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

6. **Consultants retained as of the Effective Date of the Task Order:** Kimley-Horn and Associates, Inc.
7. **Other Modifications to Agreement and Exhibits:** Scope associated with this task order is identified in scope and fee proposal dated May 14, 2021. No other modifications to Agreement and Exhibits are proposed at this time
8. **Attachments:** Engineer scope and fee proposal dated May 14, 2021
9. **Other Documents Incorporated by Reference:** None
10. **Terms and Conditions**

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is [].

OWNER:

By: _____

Print Name: Dr. Mark Browne

Title: City Manager

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Kathryn Woodlee, PE

Title: City Engineer

Address: 11 Commercial Place, Schertz, TX 78153

E-Mail
Address: kwoodlee@schertz.com

Phone: (210) 619-1823

ENGINEER:

By: 

Print Name: Jeffrey A. Farnsworth, PE

Title: Asst. Secretary

Engineer License or Firm's
Certificate No. (if required): 80190
State of: Texas

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Stephen J. Aniol, PE

Title: Senior Project Manager

Address: 601 NW Loop 410, Ste. 350
San Antonio, TX 78216

E-Mail
Address: stephen.aniol@kimley-horn.com

Phone: (210) 321-3404



May 14, 2021

Jennifer Shortess, PE
Project Manager
City of Schertz – Engineering
11 Commercial Place
Schertz, Texas 78154

**RE: *16-Inch Dedicated Transmission Main Project (Live Oak Tank Site to I-35 Tank) –
Scope and Fee Proposal (Task Order – 05)***

Dear Ms. Shortess:

Kimley-Horn and Associates (Kimley-Horn) is pleased to submit this scope and fee proposal for professional engineering services for the Dedicated Transmission Main (DTM) project. Kimley-Horn previously completed a pipeline routing study with alternative alignments and submitted the final Preliminary Engineering Report (PER) and 30% plans on March 18, 2021. This scope and fee proposal includes design, bid and construction phase services for the proposed 16-inch transmission main, and is based on a design scoping meeting held on February 12, 2021 between Kimley-Horn and the City.

PROJECT UNDERSTANDING

It is our understanding that this project will entail full design, bid and construction phase services for the Dedicated Transmission Main project, with the design building upon the recently completed PER and 30% plans. The selected alignment is approximately 3.53-miles in length and will serve specifically as a transmission main with the intent of minimum connection. The transmission main is currently proposed to connect to the existing system at two locations: 1) west of FM 3009 and approximately 1,000-LF north of Live Oak Road, and 2) at an unknown point at the I-35 elevated storage tank site near Hope Lane and Tulip Street. Kimley-Horn will engage multiple sub-consultants to provide a variety of services for the design development phase, including survey, geotechnical engineering, subsurface utility engineering (SUE), environmental sampling and limited site investigations (LSI), archaeology, and land acquisition support services.

The connection to the I-35 tank site is unknown at this time. Options currently being considered include a direct connection to the elevated storage tank or a tap into the existing main within the site. The City is coordinating with a separate consultant under contract to develop a masterplan to run hydraulic modeling scenarios of the proposed transmission main. The separate consultant will provide modeling results to the City with recommended connection options at the I-35 tank site and confirm the diameter of the dedicated transmission Main.

The City has also expressed an interest to bid out as a separate project two locations where an existing, in-active Chevron petroleum pipeline will require removal for installation of the proposed transmission main. Kimley-Horn coordinated with Chevron's Owners Representative during the PER phase and they have confirmed the pipe to be inactive.

BASIC SERVICES

The tasks below outline the proposed basic scope of services to be completed by Kimley-Horn for this project, and coincide with the detailed project work plan included as an Attachment:

1. Project Management

- 1.1. Prepare Monthly Summary Reports/Invoicing
- 1.2. Sub-Contract Management
- 1.3. Update Project Management Plan
- 1.4. Schedule Development and monthly updates – Schedule will be developed in Microsoft Project format and pdf copy will accompany the monthly invoice.
- 1.5. Ongoing coordination and communications with Client and internal team meetings
 - 1.5.1. Includes monthly Project Manager meetings
- 1.6. Dietz Creek Silt Removal Project Coordination
 - 1.6.1. Kimley-Horn will coordinate with the City's consultant on this project and incorporate any adjustments of the creek boundary into the proposed design. Kimley-Horn recommends the City complete the Dietz Creek project first (if feasible) so it does not impede with the DTM project design schedule.
- 1.7. Meetings
 - 1.7.1. Prepare for and conduct monthly progress meetings with Client (nine (9) meetings)
 - 1.7.2. Prepare meeting notes
- 1.8. Deliverables
 - 1.8.1. Project Management Plan in Adobe PDF format
 - 1.8.2. Monthly schedule updates in Adobe PDF format

2. Environmental Desktop Review

- 2.1. Environmental Phase/Sub-Consultant Coordination
- 2.2. Waters of the US Memo Study
 - 2.2.1. Archaeologist Desktop Review and Initial THC Submittal
 - 2.2.2. Site Visit
 - 2.2.3. Nationwide Permit (NWP) 58 Memo to File
 - 2.2.3.1. At this time it is unknown if preconstruction notification to the USACE will be required. The 30% alignment developed during the preliminary engineering phase was based on available maps, aerial imagery and windshield studies. Kimley-Horn will evaluate existing conditions along the confirmed alignment, identify the ordinary high-water mark and determine if impacts exceed the threshold for NWP 58.
 - 2.2.3.2. Based on the assumption that pre-construction notification is not required, Kimley-Horn will provide a descriptive memo discussing the use of NWP 58 (Utility Line

Activities for Water and Other Substances) under a non-notification scenario. The memo can be used to document the non-notification permitting scenario and to provide the selected contractor with information relating to permit compliance. A description of selected General Conditions and a suggested list of Best Management Practices (BMPs) required for compliance with the Texas Commission on Environmental Quality (TCEQ) water quality certification will be included. Though no notification with the USACE is anticipated, the use of this permit constitutes compliance with appropriate Federal regulations. All terms and conditions of the permit must be met by the owner.

2.3. Phase I ESA

2.3.1. Records Review

2.3.2. Site Reconnaissance

2.3.3. Interviews

2.3.4. Phase I ESA Report Preparation

- 2.3.4.1. Kimley-Horn will prepare a report of the results of the Phase I ESA in accordance with ASTM E 1527-13. This task assumes preparation of one (1) Phase I ESA for the project corridor

2.4. Cultural Resource Coordination

2.4.1. Cultural Resource Survey

2.4.2. THC Coordination

2.5. Environmental Monitoring and Sampling

2.5.1. Limited Site Investigation (LSI)

2.5.1.1.

- 2.5.1.2. Includes two soil borings with laboratory analyses, one adjacent to each Chevron pipeline crossing

2.6. Review Phase I ESA/LSI

2.7. Deliverables

2.7.1. Phase I ESA (Corridor) in Adobe PDF format

2.7.2. Cultural Resources Survey in Adobe PDF format

2.7.3. Limited Site Investigation in Adobe PDF format

3. Land Acquisition Coordination

3.1. Land Acquisition Phase/Sub-Consultant Coordination

3.2. Acquisition Services for a total of twenty (20) parcels for both permanent and temporary construction easement.

3.2.1. Title & Title Curative

3.2.2. Administrative Fee

3.2.3. Permanent Easement/Temporary Construction Easement Acquisition (17 parcels)

3.2.4. Temporary Construction Easement Acquisition (2 parcels)

3.2.5. In Fee Acquisition (1 parcel)

3.2.6. Closing Services

- 3.3. Appraisal Services for eighteen (18) permanent and temporary construction easement combination and one (1) temporary construction easement. Consultant will prepare and complete appraisals to be administratively reviewed and approved by the City.

- 3.3.1. Permanent Easement & Temporary Construction Easement

- 3.3.2. Temporary Construction Easement Only

- 4. Permit Coordination

- 4.1. Perform ongoing coordination and communication with each permitting entity

- 4.2. Meetings

- 4.2.1. Prepare for and conduct coordination meetings with each of the following entities/agencies (assume six (6) meetings total):

- 4.2.1.1. TxDOT

- 4.2.1.2. City of Cibolo

- 4.2.1.3. Guadalupe County

- 4.2.1.4. Texas Commission on Environmental Quality (TCEQ)

- 4.2.1.5. Other impacted entities/agencies

- 4.2.2. Prepare meeting notes

- 4.3. Permits

- 4.3.1. TxDOT Utility Installation Request (UIR)

- 4.3.2. Chevron Petroleum Pipeline

- 5. Preliminary Geotechnical Investigation

Perform soil bores along alignment to establish representative subsurface conditions and at major trenchless crossings (major intersections, creeks, etc.). Seventeen (16) bores to an average depth of twenty (20) feet and seven (7) pavement bores to an average depth of ten (10) feet are assumed.

Consultant will complete the following tasks:

- 5.1. Geotechnical Sub-Consultant Coordination

- 5.2. Prepare Geotechnical Bore Plan Exhibits

- 5.3. Review Draft Boring Logs

- 5.4. Review Draft Geotechnical Engineering Report

- 5.5. Perform Geotechnical Borings

- 5.6. Laboratory Testing to determine physical and engineering sample characteristics.

- 5.7. Report Development

- 5.8. Deliverables

- 5.8.1. Final Geotechnical Engineering Report in Adobe PDF format

- 6. Subsurface Utility Engineering (SUE)

Perform Quality Level (QL) A and B SUE services to identify the location and depth of existing critical utilities crossing selected alignment. Given the analysis during the 30% Preliminary Engineering Report Phase, a total of forty-seven (47) QL-A SUE services have been assumed. Consultant will complete the following tasks:

- 6.1. Prepare a detailed SUE plan for Final Design
- 6.2. SUE and Survey Field Coordination
- 6.3. SUE QL-A and QL-B Services
- 6.4. Review draft QL "A" SUE Test Hole Summary Sheet and individual QL "A" Exhibits
- 6.5. Review draft QL "B" SUE Markings
- 6.6. Deliverables
 - 6.6.1. Draft QL "A" SUE Test Hole Data Sheets in Adobe PDF format
 - 6.6.2. Final QL "A" SUE Test Hole Data Sheets in Adobe PDF format
 - 6.6.3. Signed and Sealed Test Hole Data Forms and Test Hole Summary Sheet in Adobe PDF format
 - 6.6.4. Utility file in CAD format depicting all designated and located utilities

7. Survey Services

Provide full topographic survey, in accordance with survey scope detailed in Attachment 5, for development of design drawings:

- 7.1. Survey Sub-Consultant coordination
- 7.2. Topographic Survey
- 7.3. Detailed Tree Survey
- 7.4. Obtain Geotechnical Information with Support Files
- 7.5. Obtain SUE Information with Supporting Files
- 7.6. Dietz Creek Channel Improvements re-survey
- 7.7. Project Control Sheet
 - 7.7.1. Review Project Control Sheet 60% Design Phase
 - 7.7.2. Review Project Control Sheet 100% Design Phase (Unsigned)
- 7.8. Easement Strip Map
 - 7.8.1. Review Easement Strip Map 60% Design Phase
 - 7.8.2. Review Easement Strip Map 100% Design Phase (Unsigned)
- 7.9. Plat and Field Notes (PFNs) (19 EA)
 - 7.9.1. Review Plat and Field Notes

8. 60% Design Phase

- 8.1. 60% Stakeholder and Utility Provider Coordination
- 8.2. Conduct site visits for 60% design and survey validation
- 8.3. Prepare Utility Layout Sheets
- 8.4. Prepare Utility Conflict/Coordination Matrix
- 8.5. Meetings
 - 8.5.1. Conduct coordination meetings with impacted utilities (assume four (4) meetings total).
Consultant will prepare meeting agenda and necessary exhibits/graphics.
 - 8.5.2. Prepare and distribute meeting notes
- 8.6. 60% Construction Drawings
 - 8.6.1. Perform Design Calculations
 - 8.6.1.1. Joint Restraint Calculations (for one (1) pipe material)

- 8.6.1.2. Channel Embankment Stabilization
- 8.6.1.3. Scour
- 8.6.1.4. Buoyancy
- 8.6.1.5. Combination Air Vacuum and Air Release Valve (location)
- 8.6.1.6. Blow-off Valve (location)
- 8.6.2. Develop 60% Plan Set
 - 8.6.2.1. All plan sheets to be 22"x34"
 - 8.6.2.2. General Sheets (Cover, Project Layout, General Notes, Overall Quantities, etc.)
 - 8.6.2.3. Overall Dimensional Control Plan
 - 8.6.2.4. Survey Control Sheets
 - 8.6.2.5. Contractor access sheets (including permanent access driveways, low water crossings, etc)
 - 8.6.2.6. Plan and Profile sheets (Scale: 1"=100' H, 1"=20' V (22"x34" Sheets))
 - 8.6.2.7. Erosion Control Sheets
 - 8.6.2.8. Standard Details
 - 8.6.2.9. Project Specific Details
 - 8.6.2.10. Traffic Control Sheets
 - 8.6.2.11. Tree Preservation Plans
- 8.7. Preparation of 60% Project Manual
- 8.8. 60% Opinions of Probable Construction Cost
- 8.9. Perform internal QC and address QC comments.
- 8.10. Prepare and Submit 60% Design Submittal Package
- 8.11. Review City Comments and Provide Response to Comments
- 8.12. 60% Design Review Meeting
 - 8.12.1. Conduct 60% Design Review Meeting
 - 8.12.2. Prepare and distribute meeting notes
- 8.13. 60% Design Phase Deliverables
 - 8.13.1. 60% Design Deliverables (plans and specifications)
 - 8.13.2. Draft Geotechnical Report
 - 8.13.3. Draft Environmental Phase 1 ESAs and LSI Report
 - 8.13.4. Updated list of permits required for the project
 - 8.13.5. SUE Deliverables
 - 8.13.6. Updated Project Schedule
 - 8.13.7. 60% Design Review meeting notes
 - 8.13.8. 60% Opinion of Probable Construction Cost (OPCC)
- 9. 100% Design Phase
 - 9.1. 100% Stakeholder and Agency Coordination
 - 9.2. Conduct site visits as needed for 100% design
 - 9.3. Update Utility Layout Sheets
 - 9.4. Update utility conflict/coordination matrix
 - 9.5. Meetings

- 9.5.1. Conduct coordination meetings with impacted utilities (assume four (4) meetings total).
Consultant will prepare meeting agenda and necessary exhibits/graphics.
- 9.5.2. Prepare and distribute meeting notes
- 9.6. 100% Construction Drawings
 - 9.6.1. General Sheets (Cover, Project Layout, General Notes, Overall Quantities, etc.)
 - 9.6.2. Overall Dimensional Control Plan
 - 9.6.3. Survey Control sheets
 - 9.6.4. Contractor access sheets (including permanent access driveways, low water crossings, etc)
 - 9.6.5. Plan and Profile sheets (Scale: 1"=50' H, 1"=5' V (22"x34" Sheets))
 - 9.6.6. Erosion Control Sheets
 - 9.6.7. Standard Details
 - 9.6.8. Project Specific Details
 - 9.6.9. Traffic Control Plans
 - 9.6.10. Tree Preservation Plans
- 9.7. 100% Project Manual
 - 9.7.1. Contract Documents to include language for Request for Competitive Sealed Proposals (RFCSP)
 - 9.7.2. To include all applicable specifications approved by the City of Schertz and specific to the project, Special Provisions, and Special Conditions
- 9.8. 100% Opinions of Probable Construction Cost
- 9.9. Perform internal QC and address QC comments
- 9.10. Prepare and Submit 100% Design Submittal Package (Unsigned)
- 9.11. Review City Comments and Provide Response to Comments
- 9.12. 100% Unsigned Design Review Meeting
- 9.13. 100% Unsigned Design Phase Deliverables
 - 9.13.1. 100% Design Deliverables (plans and specifications) – Unsigned and Sealed
 - 9.13.2. Final Geotechnical Report
 - 9.13.3. Final Environmental Phase 1 ESAs and LSI Report
 - 9.13.4. Permits
 - 9.13.5. Updated Project Schedule
 - 9.13.6. 100% Design Review meeting notes
 - 9.13.7. 100% Opinion of Probable Construction Cost (OPCC)
- 10. Procurement
 - 10.1. Final QA/QC of Construction Drawings and Project Manual
 - 10.2. Signed and sealed 100% Construction Drawings
 - 10.3. Signed and sealed 100% Project Manual
 - 10.4. Submit Final Documents for Advertisement
 - 10.5. Pre-Bid Conference
 - 10.5.1. Prepare Meeting Agenda and attend Pre-Bid Conference
 - 10.5.2. Prepare meeting minutes consolidating contractor questions
 - 10.5.3. Attend Site Walk

- 10.6. Prepare Addenda and Clarifications
- 10.7. Attend Proposal Opening
- 10.8. Review Contractors Proposals
 - 10.8.1. Perform Contractor References Check
 - 10.8.2. Confirm Contractor Experience
 - 10.8.3. Prepare Bid Tabulation
 - 10.8.4. Prepare Recommendation for Award
- 10.9. Prepare Conformed Contract Documents

11. Construction Phase Services

- 11.1. Pre-Construction Meeting
- 11.2. Monthly Construction Progress Meetings (Estimated 12-month construction schedule)
- 11.3. Construction Site Visits
 - 11.3.1. Assume an average of one (1) monthly site visits throughout the construction phase
 - 11.3.2. An observation report will be prepared and provided for each site visit.

Kimley-Horn will make site visits in accordance with proposed basic scope of work in order to observe the progress of the work. Such observations will not be exhaustive or extend to every aspect of Contractor's work. Observations will be limited to spot checking, selective measurement, and similar methods of general observation. Based on information obtained during site visits, Kimley-Horn will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Kimley-Horn will keep the City informed of the general progress of the work.

Additionally, Kimley-Horn will not supervise, direct, or have control over Contractor's work, nor shall Kimley-Horn have authority to stop the Work or have responsibility for the means, methods, techniques, equipment choice and usage, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for any failure of Contractor to comply with any laws. Kimley-Horn does not guarantee the performance of any Contractor and has no responsibility for Contractor's failure to perform its work in accordance with the Contract Documents.

- 11.4. Ongoing construction coordination and communications with Client
- 11.5. Pay Estimate Reviews
- 11.6. Shop Drawings/Submittals Reviews
- 11.7. Request for Information (RFIs)
- 11.8. Request for Proposals (RFPs) and Change Orders (COs)
- 11.9. Substantial and Final Completion Walk-Throughs

12. Record Drawing Preparation

- 12.1. Prepare Record Drawings from Contractor As-Builts
- 12.2. Deliverables
 - 12.2.1. One (1) CD containing final record drawings in .pdf format

- 12.2.2. One (1) CD with final unsealed drawings in CADD (.dwg) format
- 12.2.3. One (1) CD with a GIS submittal of as-built infrastructure with asset IDs

13. Reimbursable Project Expenses

- 13.1. Mileage for site visits and meetings. Mileage will be reimbursed based on the current standard business mileage rate of \$0.575 per mile (Estimated 50 meetings/site visits at 40 mi/RT).
- 13.2. ESRI Database Package (for Task 2.2)
- 13.3. Large scale plotting for any document or plot in excess of 11" x 17"

SUPPLEMENTAL SERVICES

Kimley-Horn has coordinated with each sub-consultant and identified potential areas that may require supplemental design services to this project. Many of these services are listed in the individual sub-consultant's fee proposal but are not meant to be a complete list. The tasks below provide a brief outline of the proposed supplemental services and will only be completed upon written authorization from the Client. Kimley-Horn will coordinate development of a fee proposal with necessary sub-consultants and submit to the City for review.

1. Supplemental Design Services

- 1.1. Chevron Pipeline Removal Package
 - 1.1.1. If the City elects to move forward with a separate bid package for the Chevron Pipeline removal package, Kimley-Horn will develop a separate construction drawing and bid package set, provide bid phase services, and participate in construction phase services assuming a 2-month duration
- 1.2. Unspecified Engineering Design Services
 - 1.2.1. This task will account for supplemental or additional service tasks that may come up during the design or construction phase

2. Environmental Services

- 2.1. Additional environmental Borings for LSI
 - 2.1.1. Included in the event the environmental borings completed with the basic scope of services yields results that warrant additional soil samples
- 2.2. Environmental monitoring during construction
 - 2.2.1. Includes up to three days of monitoring during excavation of the Chevron Petroleum pipeline
- 2.3. Mechanical (deep) testing for archaeological sites
 - 2.3.1. If required by the THC, Kimley-Horn will engage a sub-consultant to complete deep testing at archaeological sites that may be uncovered during the cultural resources survey
- 2.4. Phase I ESA (Individual Parcels along Old Wiederstein) for Fee Simple Purchase

- 2.4.1. If the City elects to proceed with ROW acquisition for parcels along Old Wiederstein, separate Phase I ESAs will be required, developed to ASTM standards noted above. These parcels include GCAD ID No. 148510, 147296, 68333, 68330, 68331, 68302

3. Land Acquisition Coordination

- 3.1. Includes acquisition and appraisal for up to 4 additional parcels, with a permanent/temporary construction easement combination
- 3.2. Appraisal updates for condemnation
 - 3.2.1. Condemnation support services not included in base scope of work
- 3.3. Supplemental appraisal for complex properties
- 3.4. In Fee Acquisition for parcels along Old Wiederstein (parcels noted in Sup 2.4 above)
- 3.5. In Fee Appraisal for parcels along Old Wiederstein (parcels noted in Sup 2.4 above)

4. Geotechnical Engineering

- 4.1. Kimley-Horn coordination efforts
- 4.2. Additional Geotechnical borings
- 4.3. Tree/Brush Clearing
 - 4.3.1. This task is included in the event minor brush clearing is required for the geotechnical subconsultant to adequately complete their work

5. Subsurface Utility Engineering

- 5.1. Additional SUE services (up to 4 additional potholes)

6. Survey

- 6.1. Plat and Field Notes (up to 3 additional PFNs)
- 6.2. Miscellaneous survey services that may be required during the design phase

ASSUMPTIONS

The following tasks document assumptions made by Consultant for development of this scope and fee proposal:

- 1. Selected alignment will generally remain the same
- 2. Construction method will follow either open cut or jack and bore method
- 3. Connection to the existing system near the Live Oak tank site will be as identified in the 30% plans submitted on March 18, 2021
- 4. Connection to the existing system at the I-35 tank site is unknown at this time. Kimley-Horn will coordinate with the City and their modeling consultant, then will prepare a supplemental services proposal for the ultimate improvements
- 5. Completion of a separate design package for the Chevron pipeline removal will be considered a supplemental service

6. City will provide all relevant utility block maps and record drawings for City owned utilities within the project area
7. USACE Permitting NWP 58, non-notification and memo to file will suffice for project
8. Impacts to Waters of the US will not trigger notification to the core. Kimley-Horn will prepare a memo to file for the City to maintain for official records. Upon receipt of alignment Kimley-Horn will modify alignment to determine ultimate impacts. If notification to the core is required Kimley-Horn will coordinate with the City to complete this as a supplemental service
9. The project will not include impacts to special aquatic sites including wetlands, and will not result in stream channelization
10. A Phase 1 ESA will be completed for the project corridor and for GCAD Parcel ID 148510, in accordance with ASTM E 1527-13
11. Mechanical (Deep) testing for archaeological sites will be completed as a supplemental service if required by the THC
12. Land Acquisition services will be based off alignment presented in PER, at number and type of parcels noted above. Additional ROEs and/or easement acquisition required due to an alignment change will be coordinated with the City
13. Land Acquisition sub-consultant will analyze preliminary title report to determine potential title problems and propose methods to cure title deficiencies, and will attempt to obtain subordination of liens, waiver of lienholders and clear titles. If sub-consultant cannot cure title through standard practices, City will be responsible for obtaining legal counsel to remedy any title deficiencies as required by title or alternatively, may elect to close the easement without a title policy.
14. Utility coordination meetings will be split into 4 meetings for 60% and 4 meetings for 100% unsigned phases
15. All permit fees will be paid by the City
16. Standard TxDOT Utility Installation Request permit will be required. No temporary construction driveways will be required on TxDOT roadways
17. Per previous coordination calls with Chevron's Owners Representative, additional soil sampling to what is proposed with the LSI at the petroleum pipeline crossing locations will not be required
18. Total of 19 Plat and Field Note (PFN) packages
19. Land Acquisition support includes 17 parcels for permanent and temporary construction easements, 2 parcels with temporary construction easement only, and 1 parcel for fee simple purchase
20. The effort included in supplemental services for in fee purchase for parcels along Old Wiederstein is the cost to perform those services. If the City determines to move forward with acquisition in lieu of easements prior to the Land Acquisition sub proceeding with their work, Kimley-Horn will coordinate with the City to adjust the basic scope of work and bill only for fees listed in the supplement task
21. City of Cibola will not require acquisition services, they will allow a shared use agreement
22. A price range has been provided for appraisal services to allow flexibility for more complex parcels. The cost estimated for base services assumes middle of the range. The remainder of the range for each parcel is included in Supplemental Services

- 23. Traffic control design services will be limited to City streets, with minor signage on FM 3009 (TXDOT)
- 24. City will utilize Request for Competitive Sealed Proposals (RFCSP) Bid Format

EXCLUSIONS

The following services are excluded from the basic scope of this project, but can be completed by Consultant upon execution of an additional service should the City request it:

- A. Design schedule assumes a 9-month duration, with an additional 3 months to complete land acquisition closeout
- B. Construction schedule assumes a 12-month duration
- C. Hydraulic modeling for this project, including proposed transmission main and facility connections
- D. Connection to the Live Oak Tank site, including corresponding facility modifications and utility relocations
- E. Connection to the I-35 elevated storage tank. The hydraulic modeling results will determine proposed improvements and are not available at the time this scope and fee was developed
- F. Utility relocation, drainage, street reconstruction, or structural design services
- G. Hike and Bike Trail design. Additional easements or areas required for a hike and bike trail also excluded from scope of services.
- H. Channel/stream stabilization design
- I. Determination of remediation costs or mitigation measures for hazardous materials for regulatory closure. Based on the results of the proposed environmental services, recommendations may be provided for additional investigation or consulting services, as appropriate, if contaminants are discovered in soil or groundwater
- J. Final report for environmental monitoring during construction phase. Environmental monitoring is a supplemental service that will require authorization by the City.
- K. Possible development of mitigation plans based on results of LSI
- L. USACE pre-construction notification
- M. Condemnation support including Kimley-Horn and land acquisition support services. Reference Attachment 3 scope of services for list of items to be considered part of condemnation support services.
- N. Additional round of comments to what is specified in the Assumptions
- O. Milestones in addition to what is proposed for this project
- P. Any other services not listed in the basic services

SCHEDULE

Kimley-Horn estimates a total design schedule of nine (9) months for this project, with an additional (3) months planned to finalize easement and land acquisition. Delays in obtaining information from neighboring jurisdictions or land acquisition closings will add to proposed schedule, and submission of final deliverables will be adjusted accordingly. Kimley-Horn will develop a detailed design schedule to include all scope of services upon execution of the task order for this assignment.

FEE AND BILLING

Consultant will perform the above outlined basic scope of services, including reimbursable project expenses and sub-consultant services, for a lump sum fee of **\$1,030,7050**. Supplemental engineering design and sub-consultant supporting services in the amount of \$340,920 have been included in this scope and fee proposal in the event additional design tasks are required. The total fee for basic and supplemental services reflective of the scope of services presented within this proposal is a lump sum amount not to exceed **\$1,371,705**. Should supplemental services be required, Kimley-Horn will coordinate with necessary sub-consultants to obtain a proposal for submittal to the City, and will begin work upon formal authorization to proceed.

Task	Description of Service	Amount	Basis of Compensation
	BASIC SERVICES		
1	Project Management	\$ 54,190.00	[Lump Sum]
2	Environmental	\$ 48,310.00	[Lump Sum]
3	Land Acquisition Coordination	\$ 253,000.00	[Lump Sum]
4	Permit Coordination	\$ 26,500.00	[Lump Sum]
5	Geotechnical Investigation and Report Preparation	\$ 44,655.00	[Lump Sum]
6	Subsurface Utility Engineering (SUE)	\$ 90,705.00	[Lump Sum]
7	Survey Services	\$ 180,535.00	[Lump Sum]
8	60% Design	\$ 136,720.00	[Lump Sum]
9	100% Design	\$ 71,525.00	[Lump Sum]
10	Procurement	\$ 27,485.00	[Lump Sum]
11	Construction Phase Services	\$ 84,180.00	[Lump Sum]
12	Record Drawing Preparation	\$ 7,380.00	[Lump Sum]
13	Reimbursable Project Expenses	\$ 5,600.00	[Lump Sum]
	Total Compensation (BASIC SERVICES)	\$ 1,030,785.00	[Lump Sum]
	SUPPLEMENTAL SERVICES		
S-1	Supplemental Design Services	\$ 75,760.00	[Lump Sum]
S-2	Environmental	\$ 59,400.00	[Lump Sum]
S-3	Land Acquisition Coordination	\$ 156,200.00	[Lump Sum]
S-4	Geotechnical	\$ 12,860.00	[Lump Sum]
S-5	Subsurface Utility Engineering (SUE)	\$ 15,810.00	[Lump Sum]
S-6	Survey	\$ 20,890.00	[Lump Sum]
	Total Compensation (SUPPLEMENTAL SERVICES)	\$ 340,920.00	[Lump Sum]
	Total Compensation (BASIC + SUPPLEMENTAL SERVICES)	\$ 1,371,705.00	[Lump Sum]

Consultant will submit monthly progress invoices to Client in accordance with terms and conditions of executed professional services contract.

We appreciate the opportunity to be of service to the City and look forward to successfully completing this project. Please don't hesitate to contact me at stephen.aniol@kimley-horn.com or (210) 321-3404 should you have any questions on the proposed scope and fee.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

TBPE# 928



By: Stephen J. Aniol, P.E.
Senior Project Manager

Attachments

- 1 – Project Work Plan
- 2 – Geotechnical Engineering/Environmental LSI Sub-Consultant Proposal (Terracon)
- 3 – Land Acquisition Sub-Consultant Proposal (7 Arrows Land Staff)
- 4 – SUE Sub-Consultant Proposal (The Rios Group)
- 5 – Survey Sub-Consultant Proposal (Sherwood Surveying)
- 6 – Archaeologist Sub-Consultant Proposal (Stone Point Services)

			Project Name:	Dedicated Transmission Main										
			Design Firm:	On-Call Engineering Services, Task Order - 05										
			Date Proposal Submitted:	Kimley-Horn and Associates, Inc.										
			CoS Project Manager:	5/14/2021										
			Kimley-Horn Project Manager:	Jennifer Shortess, PE										
				Stephen Aniol, PE										

CITY OF SCHERTZ

Fee/Price Proposal Breakdown for Professional Services

	Project Name:	Dedicated Transmission Main
	Design Firm:	On-Call Engineering Services, Task Order - 05
	Date Proposal Submitted:	Kimley-Horn and Associates, Inc.
	CoS Project Manager:	5/14/2021
	Kimley-Horn Project Manager:	Jennifer Shortess, PE
		Stephen Aniol, PE

			Position/Personnel Title	QA/QC Manager	Sr. Project Manager	Senior Civil Engineer	Civil Engineer	Staff Engineer III	Staff Engineer II	Staff Engineer I	Senior Design Technician	Administrative/ Clerical		Consultant Fee Total	Sub-Consultant Fee Total	Fee Total
			Contract Approved Rates	\$ 225.00	\$ 195.00	\$ 180.00	\$ 145.00	\$ 125.00	\$ 115.00	\$ 105.00	\$ 115.00	\$ 75.00				
			Task to be performed/Phase Description (including Sub-consultant work)										Total Hours			
	5.1		Geotechnical Sub-Consultant Coordination		4		8						12	\$ 1,940.00	\$ -	
	5.2		Prepare Geotechnical Bore Plan/Exhibits		2		4		8				14	\$ 1,890.00	\$ -	
	5.3		Review Draft Boring Logs		2		4						6	\$ 970.00	\$ -	
	5.4		Review Draft Engineering Report		2		4						6	\$ 970.00	\$ -	
	5.5		Geotechnical Boring										0	\$ -	\$ 18,280.00	
	5.6		Laboratory Testing										0	\$ -	\$ 10,215.00	
	5.7		Report Development										0	\$ -	\$ 10,390.00	
	5.8		Deliverables										0	\$ -	\$ -	
	5.8.1		Geotechnical Engineering Report										0	\$ -	\$ -	
	6		Subsurface Utility Engineering (SUE)	0	8	0	24	0	36	0	0	0	68	\$ 9,180.00	\$ 81,525.00	\$ 90,705.00
	6.1		Prepare detailed SUE Plan for Final Design		2		8		16				26	\$ 3,390.00	\$ -	
	6.2		SUE and Survey Field Coordination		4		12		12				28	\$ 3,900.00	\$ -	
	6.3		SUE QL-A and QL-B Services										0	\$ -	\$ -	
	6.3.1		ROW Permits (City of Schertz)										0	\$ -	\$ 375.00	
	6.3.2		Traffic Control (Standard)										0	\$ -	\$ 2,800.00	
	6.3.3		Flowable Backfill										0	\$ -	\$ 4,050.00	
	6.3.4		Deliverable Preparation										0	\$ -	\$ 7,500.00	
	6.3.5		QL "B" SUE Designating										0	\$ -	\$ 12,000.00	
	6.3.6		QL "A" SUE Test Holes (47 Test Holes)										0	\$ -	\$ 54,800.00	
	6.4/6.5		Review draft QL "A" SUE Test Hole Summary Sheet, QL "B" SUE Markings and individual QL-A exhibits		2		4		8				14	\$ 1,890.00	\$ -	
	6.6		Deliverables										0	\$ -	\$ -	
	6.6.1		Draft QL-A SUE test hole data sheets in Adobe PDF format										0	\$ -	\$ -	
	6.6.2		Final QL-A SUE test hole data sheets in Adobe PDF format										0	\$ -	\$ -	
	6.6.3		Signed and Sealed Test Hole Data Forms and Test Hole Summary Sheet										0	\$ -	\$ -	
	7		Survey Services	0	17	0	36	0	20	0	0	0	73	\$ 10,835.00	\$ 169,700.00	\$ 180,535.00
	7.1		Survey Sub-Consultant Coordination		8		8						16	\$ 2,720.00	\$ -	
	7.2		Topographic Survey										0	\$ -	\$ 88,500.00	
	7.3		Detailed Tree Survey										0	\$ -	\$ 29,700.00	
	7.4		Obtain Geotechnical Information with Support Files										0	\$ -	\$ 5,800.00	
	7.5		Obtain SUE Information with Supporting Files										0	\$ -	\$ 8,500.00	
	7.6		Dietz Creek Channel Improvements Re-Survey		2		8		4				14	\$ 2,010.00	\$ 6,300.00	
	7.7		Project Control Sheet										0	\$ -	\$ 4,800.00	
	7.7.1		Review Project Control Sheet 60%		2		4						6	\$ 970.00	\$ -	
	7.7.2		Review Project Control Sheet 100%/Final		1		3						4	\$ 630.00	\$ -	
	7.8		Easement Strip Map										0	\$ -	\$ 5,200.00	
	7.8.1		Review Easement Strip Map 60%		1		6						7	\$ 1,065.00	\$ -	
	7.8.2		Review Easement Strip Map 60%/Final		1		3						4	\$ 630.00	\$ -	
	7.9		Plat and Field Notes (19 EA)										0	\$ -	\$ 20,900.00	
	7.9.1		Review Plat and Field Notes		2		4		16				22	\$ 2,810.00	\$ -	
	8		60% Design	8	114	24	222	0	412	0	240	16	1036	\$ 136,720.00	\$ -	\$ 136,720.00
	8.1		60% Stakeholder and Utility Provider Coordination		8		12		16				36	\$ 5,140.00	\$ -	
	8.2		Conduct Site Visit, Validate Survey		4		16		16				36	\$ 4,940.00	\$ -	
	8.3		Prepare Utility Layout Sheets		4		12		24				40	\$ 5,280.00	\$ -	
	8.4		Update Utility Conflict/Coordination Matrix		2		4		16				22	\$ 2,810.00	\$ -	
	8.5		Meetings										0	\$ -	\$ -	
	8.5.1		Conduct coordination meetings with Impacted Utilities (Split into 4 meetings)		8		8		12				28	\$ 4,100.00	\$ -	
	8.5.2		Prepare and Distribute Meeting Notes		2		4		4				10	\$ 1,430.00	\$ -	
	8.6		60% Construction Drawings										0	\$ -	\$ -	
	8.6.1		Perform Design Calculations		4	8	12		16				40	\$ 5,800.00	\$ -	
	8.6.2		60% Plan Set Development		40	16	100		240		240		636	\$ 80,380.00	\$ -	
	8.6.3		Miscellaneous Details		4		8		24				36	\$ 4,700.00	\$ -	
	8.7		60% Project Manual		12		16		8			8	44	\$ 6,180.00	\$ -	
	8.8		60% Opinion of Probable Construction Cost		4		12		12				28	\$ 3,900.00	\$ -	
	8.9		Internal QA/QC	8	8								16	\$ 3,360.00	\$ -	
	8.10		Prepare 60% Design Submittal Package		4		4		8			8	24	\$ 2,880.00	\$ -	
	8.11		Review City Comments and Provide Response to Comments		8		12		12				32	\$ 4,680.00	\$ -	
	8.12		60% Design Review Meeting & Meeting Notes		2		2		4				8	\$ 1,140.00	\$ -	
	9		100% Design	8	91	12	134	0	166	0	80	28	519	\$ 71,525.00	\$ -	\$ 71,525.00
	9.1		100% Stakeholder and Agency Coordination		4		8		8				20	\$ 2,860.00	\$ -	
	9.2		Conduct Site Visit		4		4		4				12	\$ 1,820.00	\$ -	
	9.3		Update Utility Layout Sheets		2		4		8				14	\$ 1,890.00	\$ -	

CITY OF SCHERTZ

Fee/Price Proposal Breakdown for Professional Services

	Project Name:	Dedicated Transmission Main
	Design Firm:	On-Call Engineering Services, Task Order - 05
	Date Proposal Submitted:	Kimley-Horn and Associates, Inc.
	CoS Project Manager:	5/14/2021
	Kimley-Horn Project Manager:	Jennifer Shortess, PE
		Stephen Aniol, PE

			Position/Personnel Title	QA/QC Manager	Sr. Project Manager	Senior Civil Engineer	Civil Engineer	Staff Engineer III	Staff Engineer II	Staff Engineer I	Senior Design Technician	Administrative/ Clerical		Consultant Fee Total	Sub-Consultant Fee Total	Fee Total
			Contract Approved Rates	\$ 225.00	\$ 195.00	\$ 180.00	\$ 145.00	\$ 125.00	\$ 115.00	\$ 105.00	\$ 115.00	\$ 75.00				
			Task to be performed/Phase Description (including Sub-consultant work)										Total Hours			
	9.4		Update Utility Conflict/Coordination Matrix		1		4		8				13	\$ 1,695.00	\$ -	
	9.5		Meetings										0	\$ -	\$ -	
		9.5.1	Conduct coordination meetings with Impacted Utilities (Split into 4 meetings)		8		8		12				28	\$ 4,100.00	\$ -	
		9.5.2	Prepare and Distribute Meeting Notes		2		4		4				10	\$ 1,430.00	\$ -	
	9.6		100% Construction Drawings		24	12	40		80		80		236	\$ 31,040.00	\$ -	
	9.7		100% Project Manual		24		40		20			20	104	\$ 14,280.00	\$ -	
	9.8		100% Opinion of Probable Construction Cost		4		8		8				20	\$ 2,860.00	\$ -	
	9.9		Internal QA/QC	8	8								16	\$ 3,360.00	\$ -	
	9.10		Prepare 100% Design Submittal Package (Unsigned)		4		4		4			8	20	\$ 2,420.00	\$ -	
	9.11		Review City Comments and Provide Response to Comments		4		8		6				18	\$ 2,630.00	\$ -	
	9.12		100% Design Review Meeting (Unsigned)		2		2		4				8	\$ 1,140.00	\$ -	
	10		Procurement	3	40	0	50	0	68	0	16	28	205	\$ 27,485.00	\$ -	\$ 27,485.00
	10.1		Internal QA/QC	3	3								6	\$ 1,260.00	\$ -	
	10.2		Signed and Sealed 100% Construction Drawings		8		8		16		16		48	\$ 6,400.00	\$ -	
	10.3		Signed and Sealed 100% Project Manual		2		4		8			8	22	\$ 2,490.00	\$ -	
	10.4		Submit Final Documents for Advertisement		4		4		4			8	20	\$ 2,420.00	\$ -	
	10.5		Pre-Bid Conference										0	\$ -	\$ -	
		10.5.1	Prepare Agenda and attend Pre-Bid Conference		3		3						6	\$ 1,020.00	\$ -	
		10.5.2	Prepare Meeting Notes (Consolidate Contractor Questions)				1		2			4	7	\$ 675.00	\$ -	
		10.5.3	Attend Site Walk		4		4						8	\$ 1,360.00	\$ -	
	10.6		Prepare Addenda and Clarifications		4		8		16				28	\$ 3,780.00	\$ -	
	10.7		Attend Proposal Opening		2								2	\$ 390.00	\$ -	
	10.8		Review Contractor Proposals										0	\$ -	\$ -	
		10.8.1	Perform Contractor References Check		2		4		4				10	\$ 1,430.00	\$ -	
		10.8.2	Confirm Contractor Experience		2		4						6	\$ 970.00	\$ -	
		10.8.3	Prepare Bid Tabulation				2		6				8	\$ 980.00	\$ -	
		10.8.4	Prepare Recommendation for Award		2				4				6	\$ 850.00	\$ -	
	10.9		Prepare Conformed Documents		4		8		8			8	28	\$ 3,460.00	\$ -	
	11		Construction Phase Services	0	170	0	192	0	186	0	0	24	572	\$ 84,180.00	\$ -	\$ 84,180.00
	11.1		Pre-Construction Meeting		4		4						8	\$ 1,360.00	\$ -	
	11.2		Monthly Construction Progress Meetings (Anticipate 12 Meetings)		24		18		18				60	\$ 9,360.00	\$ -	
	11.3		Construction Site Visits										0	\$ -	\$ -	
		11.3.1	Additional monthly site visit (Anticipate 12 Site Visits)		18		18		24				60	\$ 8,880.00	\$ -	
		11.3.2	Prepare Observation Report for each Site Visit		8		16		24				48	\$ 6,640.00	\$ -	
	11.4		Construction Coordination with Client		48		24						72	\$ 12,840.00	\$ -	
	11.5		Pay Estimate Reviews		8		12		24				44	\$ 6,060.00	\$ -	
	11.6		Shop Drawings/Submittal Review		16		32		32			12	92	\$ 12,340.00	\$ -	
	11.7		Requests for Information (RFIs)		24		40		40			12	116	\$ 15,980.00	\$ -	
	11.8		Requests for Proposals (RFPs) and Change Orders (COs)		16		24		24				64	\$ 9,360.00	\$ -	
	11.9		Substantial/Final Completion Walk-Throughs		4		4						8	\$ 1,360.00	\$ -	
	12		Record Drawing Preparation	0	4	0	16	0	32	0	0	8	60	\$ 7,380.00	\$ -	\$ 7,380.00
	12.1		Prepare Record Drawings from Contractor As-Built		4		16		32			8	60	\$ 7,380.00	\$ -	
	13		Reimbursable Project Expenses	0	0	0	0	0	0	0	0	0	0	\$ 5,600.00	\$ -	\$ 5,600.00
	13.1		Mileage for Site Visits and Meetings											\$ 1,100.00	\$ -	
	13.2		ERIS Database Package (For Task 2.2)											\$ 1,500.00	\$ -	
	13.3		Large Scale Plotting											\$ 3,000.00	\$ -	
			Total Hours (Basic Services):	21	763	36	968	0	1157	0	336	134	3415			
			Total Fee (Basic Services):											\$ 487,695.00	\$ 543,090.00	\$ 1,030,785.00

CITY OF SCHERTZ

Fee/Price Proposal Breakdown for Professional Services

			Dedicated Transmission Main On-Call Engineering Services, Task Order - 05										
			Project Name:										
			Design Firm:										
			Date Proposal Submitted:										
			CoS Project Manager:										
			Kimley-Horn Project Manager:										
			Kimley-Horn and Associates, Inc.										
			5/14/2021										
			Jennifer Shortess, PE										
			Stephen Aniol, PE										

			Position/Personnel Title											QA/QC Manager	Sr. Project Manager	Senior Civil Engineer	Civil Engineer	Staff Engineer III	Staff Engineer II	Staff Engineer I	Senior Design Technician	Administrative/ Clerical		Consultant Fee Total	Sub-Consultant Fee Total	Fee Total
			Contract Approved Rates											\$ 225.00	\$ 195.00	\$ 180.00	\$ 145.00	\$ 125.00	\$ 115.00	\$ 105.00	\$ 115.00	\$ 75.00				
			Task to be performed/Phase Description (including Sub-consultant work)																				Total Hours			
			SUPPLEMENTAL SERVICES																							
S-1			Supplemental Design Services											4	28	0	60	0	80	0	0	20	192	\$ 75,760.00	\$ -	\$ 75,760.00
	1.1		Chevron Pipeline Removal Design Package											4	28		60		80			20	192	\$ 25,760.00	\$ -	
	1.2		Supplemental Design Services																			0	\$ 50,000.00	\$ -		
S-2			Environmental											0	0	0	0	0	0	0	0	0	\$ 28,360.00	\$ 31,040.00	\$ 59,400.00	
	2.1		Supplemental Environmental Borings (Ph. 1/LSI)												4		4		8				16	\$ 2,280.00	\$ 6,760.00	
	2.2		Supplemental Environmental Monitoring during Construction (3 days at \$1,500/day)												2		8					10	\$ 1,550.00	\$ 4,500.00		
	2.3		Mechanical Deep Testing												4		12		8				24	\$ 3,440.00	\$ 19,780.00	
	2.4		Phase I ESA (Individual Parcels)																			0	\$ -	\$ -		
		2.4.1	GCAD Parcel ID No's. 148510, 147296, 68333, 68330, 68331, 68302											12	12		90					114	\$ 18,090.00	\$ -		
		2.4.2	ERIS Database Package (6 parcels at \$500/EA)																			0	\$ 3,000.00	\$ -		
																						\$ -	\$ -			
S-3			Land Acquisition Coordination											0	72	0	80	0	64	0	0	0	216	\$ 10,700.00	\$ 145,500.00	\$ 156,200.00
	3.1		Land Acquisition Supplemental Coordination												40		20						60	\$ 10,700.00	\$ -	
		3.1.1	PE/TCE Acquisition @ \$7,500 per parcel (4 Additional parcels)																			0	\$ -	\$ 30,000.00		
		3.1.2	PE/TCE Appraisal @ \$4,500 per parcel (4 Additional parcels)																			0	\$ -	\$ 18,000.00		
	3.2		Appraisal Updates for Condemnation (3 parcels)																			0	\$ -	\$ 13,500.00		
	3.3		Supplemental Appraisal for Complex Properties																			0	\$ -	\$ 9,000.00		
	3.4		In Fee Acquisition @ \$7,500 per parcel (6 parcels)																			0	\$ -	\$ 45,000.00		
	3.5		In Fee Appraisal @ \$5,000 per parcel (6 parcels)																			0	\$ -	\$ 30,000.00		
S-4			Geotechnical											0	12	0	24	0	24	0	0	0	60	\$ 2,860.00	\$ 10,000.00	\$ 12,860.00
	4.1		Supplemental Geotechnical Engineering Services																				0	\$ -	\$ -	
		4.1.1	Coordination Efforts												2		4		4				10	\$ 1,430.00	\$ -	
		4.1.2	Additional Geotechnical Borings																			0	\$ -	\$ 5,000.00		
		4.1.3	Tree/Brush Clearing												2		4		4				\$ 1,430.00	\$ 5,000.00		
																						\$ -	\$ -			
																						\$ -	\$ -			
S-5			Subsurface Utility Engineering (SUE)											0	12	0	22	0	24	0	0	0	58	\$ 2,570.00	\$ 13,240.00	\$ 15,810.00
	5.1		SUE QL-A & B (4 Additional Locations)												4		6		8				18	\$ 2,570.00	\$ 13,240.00	
S-6			Survey											0	6	0	12	0	12	0	0	0	30	\$ 4,290.00	\$ 16,600.00	\$ 20,890.00
	6.1		Plat and Field Notes (Up to 3 Additional @ \$1,100/PFN)												2		4		4				10	\$ 1,430.00	\$ 3,300.00	
	6.2		Miscellaneous Survey Services												4		8		8				20	\$ 2,860.00	\$ 13,300.00	
			Total Hours (Supplemental Services):											4	106	0	152	0	156	0	0	20	438			
			Total Fee (Supplemental Services):																				\$ 124,540.00	\$ 216,380.00	\$ 340,920.00	
			TOTAL FEE (Basic + Supplemental Services):																				\$ 612,235.00	\$ 759,470.00	\$ 1,371,705.00	

March 16, 2021



Kimley-Horn
601 NW Loop 410, Suite 350
San Antonio, TX 78216

ATTACHMENT 2

Attn: Mr. Stephen J. Aniol, P.E.
D: (210) 321-3404
M: (210) 612-0546
E: Stephen.Aniol@kimley-horn.com

Re: Revised Proposal for Geotechnical Engineering and Environmental Services
Proposed 16-inch Transmission Main
From I-35 Elevated Storage Tank to Live Oak Tank Site
Schertz, Texas
Terracon Proposal Number: P90205189R1

Dear Mr. Aniol:

Based on an email requests dated June 3, 2020 and March 3, 2021, Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this revised proposal to provide geotechnical / environmental engineering services for the above referenced project. **We understand that we have been selected to provide these services for this publicly funded project. Therefore, providing cost information is in compliance with the Texas Professional Services Procurement Act.** This proposal outlines our understanding of the project and scope of services and provides a lump sum fee for our services.

A. PROJECT INFORMATION

Project information

Kimley-Horn (client) is submitting a proposal to the City of Schertz to install a 16-inch water transmission line. The client has identified an abandoned, underground pipeline owned by Chevron which will be removed during the construction phase of the project. Terracon is not aware of the depth or length of the pipeline, nor the contents formerly transmitted through the pipeline.

Site Location

ITEM	DESCRIPTION
Project Description & Location	We understand a 16" water transmission main is planned that will connect the I-35 Elevated Storage Tank and Live Oak Tank Site in Schertz, Texas.
Existing improvements	Based on the provided information borings will be along TxDOT right-of-way, City Street and in undeveloped land.



B. SCOPE OF GEOTECHNICAL SERVICES

The geotechnical services to be provided by Terracon are summarized in the following paragraphs.

Field Program – Based on the request from the client, our field exploration will consist of:

Number of Borings	Approximate Depth Below Existing Grade, feet	Location
7	10 or auger refusal	Along TxDOT and City Roadway
16	20 or auger refusal	Undeveloped Land

Sampling will be in general accordance with industry standard procedures wherein Shelby tube samples (ASTM D-1587) or split-barrel samples (ASTM D-1586) are obtained. Sampling will be performed in 2-ft intervals to the boring completion depths. Groundwater, if encountered will be measured during and after drilling. Once the samples have been collected and classified in the field, they will be placed in appropriate sample containers for transport to our laboratory.

Permitting and Traffic Control – We understand the Terracon will need to obtain a TxDOT and City permit to allow work in their ROW. Terracon will coordinate with the TxDOT. Terracon will provide traffic control, likely to consist of signage only. We understand, we will be provided a TxDOT and City point of contact to obtain TxDOT/City permit.

Conditions/Items to be provided by Client: Items to be provided by the client include the right of entry to conduct the exploration and the awareness and/or location of any private subsurface utilities existing in the area. We will contact Texas 811, Schertz Water Utilities for location of utilities in public easements. Location of private lines on the property is not part of Terracon scope. All private lines should be marked by others prior to commencement of drilling.

Terracon will take reasonable efforts to reduce damage to the property, such as rutting of the ground surface. However, it should also be understood that in the normal course of our work, some such disturbances could occur. We have not budgeted to restore the site beyond backfilling our boreholes. If there are any restrictions or special requirements regarding this site or exploration, these should be known prior to commencing field work.

The drilling services for this project will be performed by a drilling subcontractor under Terracon's direction. Our fee is based on the site being accessible to our conventional two-wheel drive truck-mounted drilling equipment. Additional costs may result if this is not the case. It does not include services associated with damage of existing landscape or location of

underground utilities beyond contacting Texas811. If such conditions are known to exist on the site, Terracon should be notified so that we may adjust our scope of services and fee, if necessary.

For safety purposes, all borings will be backfilled promptly and patched with asphalt or concrete, as appropriate, after their completion. Because backfill material often settles below the surface after a period of time, we recommend the boreholes be checked periodically and backfilled if necessary.

Laboratory Testing – The samples will be tested in our laboratory to determine physical engineering characteristics. Testing will be performed under the direction of a geotechnical engineer and will include visual classification, moisture content, gradation, Atterberg limits, and sulfate contents.

- Moisture Content Test.
- Gradation Tests or Percent Finer than the No. 200 Mesh (75-µm) Sieve.
- Atterberg Limits.
- Soluble Sulfate Tests.

In addition, three representative bulk samples will be collected from near the roadway and will be tested for the following:

- pH lime series tests.
- PI lime series tests.
- Moisture density relationship (ASTM D698).
- California Bearing Ratio (CBR).

Engineering Report – The results of our field and laboratory programs will be evaluated by a professional geotechnical engineer licensed in the State of Texas. Based on the results of our evaluation, an engineering report will be prepared that details the results of the testing performed, provides logs of the borings, and a diagram of the site/boring layout. A data report will be provided for the watermain and an engineering report will be provided for the pavement design. The engineering report will include the following:

- Boring location plan.
- Subsurface exploration procedures.
- Computer generated boring logs with soil classification.
- Summarized laboratory data.
- Groundwater levels observed during and after completion drilling.
- Encountered soil conditions.
- Subgrade soil modification recommendations for pavement design.
- Observed existing pavement thickness at the pavement boring locations.
- Review of Schertz backfill requirements and comment on suitability for use in light of the encountered conditions.

- Estimation of modulus of soil reaction, E' , for pipe design based on backfill.
- Pavement design recommendation in accordance with the Schertz design manual

Schedule - We can generally begin the field exploration program within 9 days after receipt of our signed contract and City/TxDOT permit, if site and weather conditions permit. The field work can be done in 5 days if locations can be accessed. A draft report will be completed within 5 weeks of completion of drilling. A final report can be issued 1 week from receipt of the review comments. In situations where information is needed prior to submittal of our report, we can provide verbal information or recommendations for specific project requirements after we have completed our field and laboratory programs. We will issue a PDF copy of the geotechnical report as the deliverable for this project.

C. SCOPE OF ENVIRONMENTAL SERVICES

The proposed scope for environmental services was developed based on the email dated March 3, 2021 from a client representative (Rebekah Cramblitt) which identified the following recognized environmental conditions (RECs) and/or site concerns.

REC/Site Concern	Description
Underground petroleum pipeline	Abandoned, underground pipeline owned by Chevron

Terracon will conduct a Limited Site Investigation (LSI) and, if requested, environmental monitoring at the site. Environmental services will be limited to the area between borings B-1 and B-2 shown on Exhibit 1.

Please note that Terracon did not conduct a Phase I Environmental Site Assessment (ESA) of the property, and that the scope of services for this proposal is based solely on information provided by the client.

Objectives

The objective of the proposed environmental services is to assess the presence of chemicals commonly associated with the identified RECs and/or site concerns in soil at selected locations considered likely to have been impacted by the concerns identified in Section 2.0. ***This proposed scope of work is not intended to provide a comprehensive understanding of the extent of impact to soil or groundwater, or of potential costs which may be incurred if remediation is necessary, or the time required to achieve regulatory closure, if appropriate.*** Based on the results of the proposed environmental services, recommendations may be provided for additional investigation or consulting services, as appropriate, if contaminants are discovered in soil or groundwater.

Sampling and Laboratory Analytical Program

Limited Site Investigation (LSI) - Terracon will perform an LSI during the design phase of the project. A total of 2 soil borings will be advanced using a Geoprobe with direct push technology (DPT). Refer to the attached Exhibit 1 for the proposed sampling locations provided to Terracon by the client. The proposed sampling locations may be modified in the field to account for utility clearance, access limitations, and/or site conditions. The client will be notified of any significant modifications to the sampling locations.

The geology within the proposed water line right-of-way (ROW) is clay underlain by bedrock. Based on GoogleEarth, the elevation of the bedrock observed in the dry creek bed is 711 feet above mean sea level compared to the ground elevation of 730 feet msl at boring B-1. If bedrock is encountered prior to reaching the desired depth, the drilling method will be switched to air rotary.

Investigation-derived waste (IDW) resulting from the LSI will be managed in accordance with state and local requirements. IDW will be transported to and disposed at an approved receiving facility according to federal and state regulations. The estimated fee assumes transport and disposal of up to two 55-gallon drums of IDW as Class 2 non-hazardous waste. The Client or its authorized agent will be responsible for signing the waste manifest, as required, or authorizing Terracon to sign on its behalf. The IDW will be staged at the site until disposal can be authorized by the landfill and transportation of the waste can be scheduled. ***This process can take 3 or more weeks to complete.***

The sampling and analytical program for the LSI, including the number and types of samples and laboratory analyses, is summarized in Table 1.

Table 1 - Sampling and Analytical Program

Type and Designation ¹	REC/Site Concern	Method	Estimated Depth (ft) ²	Media	Analytical Parameters				
					TPH	BTEX	PAHs	TCLP Benzene	Moisture
B-1	Chevron pipeline crossing	Geoprobe with direct push technology (DPT)	20	Soil	1	1	2	1	1
		Geoprobe with air rotary		Bedrock	1	1		1	1
B-2		Geoprobe with DPT		Soil	1	1		1	1
		Geoprobe with air rotary		Bedrock	1	1		1	1

Notes:

¹Type and Designation: B = Soil Boring

²Proposed maximum depth based on current knowledge of subsurface conditions and depth to groundwater in area. Depths may be modified based on the actual depth to groundwater or refusal on bedrock. If boring advancement beyond above depths is necessary, client will be notified to discuss options and associated costs.

³Number of unsaturated zone soil / bedrock samples to be submitted for analytical testing. Samples will be assigned based on photoionization detector (PID) readings and/or professional judgement considering the type of chemical, nature and depth of source, and chemical fate and transport characteristics.

⁴Analytical Methods:

BTEX: Benzene, toluene, ethylbenzene and xylenes by EPA 8260; TPH: Total Petroleum Hydrocarbons: TCEQ TX1005; PAHs: Polycyclic aromatic hydrocarbons by EPA 8270; Moisture by ASTM or standard method; TCLP: Toxicity characteristic leaching procedure by EPA 1311.

Investigation and sample collection procedures will be conducted in accordance with local industry standard practices. Any temporary investigation locations will be plugged and abandoned in accordance with applicable state requirements.

Supplemental Borings – If requested by the client, Terracon will advance up to three additional borings (B-3 through B-5) during the LSI to investigate the proposed ROW for the water line between borings B-1 and B-2. Based on the boring locations provided by the client, there is approximately 1,200 linear feet between boring B-1 and boring B-2. The supplemental borings will be equally spaced along the proposed ROW. The borings will be advanced using the same methodology and sampling program described for the LSI. The IDW from the supplemental borings will be managed as described for the LSI. We anticipate one additional drums of IDW per boring will be generated during the supplemental LSI.

Please note: The supplemental borings must be drilled on the same day as the LSI borings. Otherwise, additional charges will be applied.

Table 2 - Sampling and Analytical Program

Type and Designation ¹	REC/Site Concern	Method	Estimated Depth (ft) ²	Media	Analytical Parameters				
					TPH	BTEX	PAHs	TCLP Benzene	Moisture
B-3	Chevron pipeline (adjacent)	Geoprobe with DPT	20	Soil	1	1	1	1	1
		Geoprobe with air rotary		Bedrock	1	1		1	1
B-4		Geoprobe with DPT		Soil	1	1		1	1
		Geoprobe with air rotary		Bedrock	1	1		1	1
B-5		Geoprobe with DPT		Soil	1	1		1	1
		Geoprobe with air rotary		Bedrock	1	1		1	1

Notes:

¹Type and Designation: B = Soil Boring

²Proposed maximum depth based on current knowledge of subsurface conditions and depth to groundwater in area. Depths may be modified based on the actual depth to groundwater or refusal on bedrock. If boring advancement beyond above depths is necessary, client will be notified to discuss options and associated costs.

³Number of unsaturated zone soil / bedrock samples to be submitted for analytical testing. Samples will be assigned based on photoionization detector (PID) readings and/or professional judgement considering the type of chemical, nature and depth of source, and chemical fate and transport characteristics.

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Supplemental Environmental Monitoring – If requested, Terracon will conduct environmental monitoring at the site during the construction phase of the project. Terracon will provide an environmental technician and equipment necessary to measure the lower explosive limit (LEL) as well as the organic vapor concentrations during the removal of the pipeline. No soil samples will be submitted for laboratory analyses during the environmental monitoring. The scope of services is limited to a 10-hour day including round-trip travel between Terracon's San Antonio office and the site. The cost estimate is based on 3 days of environmental monitoring.

Environmental Deliverables

LSI - Following completion of the site activities associated with the LSI, including any supplemental borings, and receipt of the laboratory analytical results, a report will be prepared that will include the following:

- Documentation of field activities;
- Site plan showing pertinent site features;
- Soil boring/monitoring well logs;
- Analytical laboratory results;
- Data evaluation and presentation of findings; and,
- Recommendations concerning further action, if necessary.

The written report will include a summary of the investigation results as well as conclusions and recommendations that will take precedence over any verbal or preliminary reports that Terracon personnel may have provided. The analytical results will be compared to the protective concentration levels (PCLs) established by the Texas Commission on Environmental Quality (TCEQ) for direct exposure based on commercial / industrial land use or construction workers.

Environmental Monitoring - A daily log will be maintained and submitted to the client at the end of each day. A final report, related to environmental monitoring, is not included in this scope of services.

Schedule - The Schedule for the services will be based on the project schedule. The client will notify Terracon within 5 business days of the planned start date to allow for resources to be

coordinated and scheduled. The LSI Report will be submitted to the client within 5 business days of receiving the final laboratory report. The actual project schedule will be based on the availability of environmental drillers and other subcontractors. If schedule delays are anticipated based on subcontractor availability, weather, and/or encountered site conditions, you will be contacted to discuss changes in the schedule. The standard laboratory analytical completion schedule is 10 business days. If you would like to have laboratory analyses completed quicker, please contact the project manager to discuss the options and additional fees.

D. COMPENSATION

For the scope of geotechnical and environmental services outlined in this proposal (including drilling, laboratory testing, and reporting), the lump sum fees are:

Task	Lump Sum Fee
Subsurface Exploration, Laboratory Testing, Geotechnical Consulting & Reporting	\$38,885
Limited Site Investigation (LSI)	\$11,880

Additional services not part of the base fee include the following:

Additional Services (see Exhibit B)	Lump Sum Fee	Initial for Authorization
Private Utility Locate Service ¹	\$2,400	
Supplemental environmental borings	\$6,760	
Supplemental environmental monitoring during construction (\$1,500 per day – budgeted for 3 days)	\$4,500	
Tree Clearing (if required) ¹	\$2,500 per day	
Plans and Specifications Review	\$850	
Construction Materials Testing Services	TBD	

1. If the owner/client is unable to accurately locate private utilities, we can subcontract a private utility locating firm and/or utilize geophysical equipment, if necessary. The detection of underground utilities is dependent upon the composition and construction of utility lines. Some utilities are comprised of non-electrically conductive materials and may not be readily detected. The use of a private locate service does not relieve the owner of their responsibilities in identifying private underground utilities.

A breakdown of the fees for geotechnical services is attached. Unless instructed otherwise, the invoice will be sent to your attention at the above address. Should it be necessary to expand our services beyond those outlined in this proposal, we will notify you, then send a supplemental proposal stating the additional services and fee. We will not proceed without your authorization, as evidenced by your signature on the Supplement Agreement form.

E. AUTHORIZATION

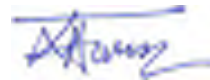
Terracon and Kimley-Horn have a Master Service Agreement for in place (dated March 22, 2016). The proposed Scope of Services may be authorized by a Purchase Order referencing the existing Master Services Agreement. Services will be initiated upon acceptance of PO and receipt of authorization with written notice to proceed (including e-mail). The terms, conditions and limitations stated in the Master Services Agreement, including sections of this proposal incorporated therein, shall constitute the exclusive terms and conditions and services to be performed for this project.

We appreciate the opportunity to provide this proposal and look forward to the opportunity of working with you. If you have any questions regarding this proposal, please feel free to contact the undersigned.

Sincerely,

Terracon Consultants, Inc.

(Firm Registration: TX F3272)



Tariqul Anwar, P.E.
Project Engineer



Gregory P. Stieben, P.E., D.GE
Senior Consultant

TA/GPS/mhb – P90205189R1

Attachment: Environmental Boring Locations
 Fee Breakdown (Geotechnical)

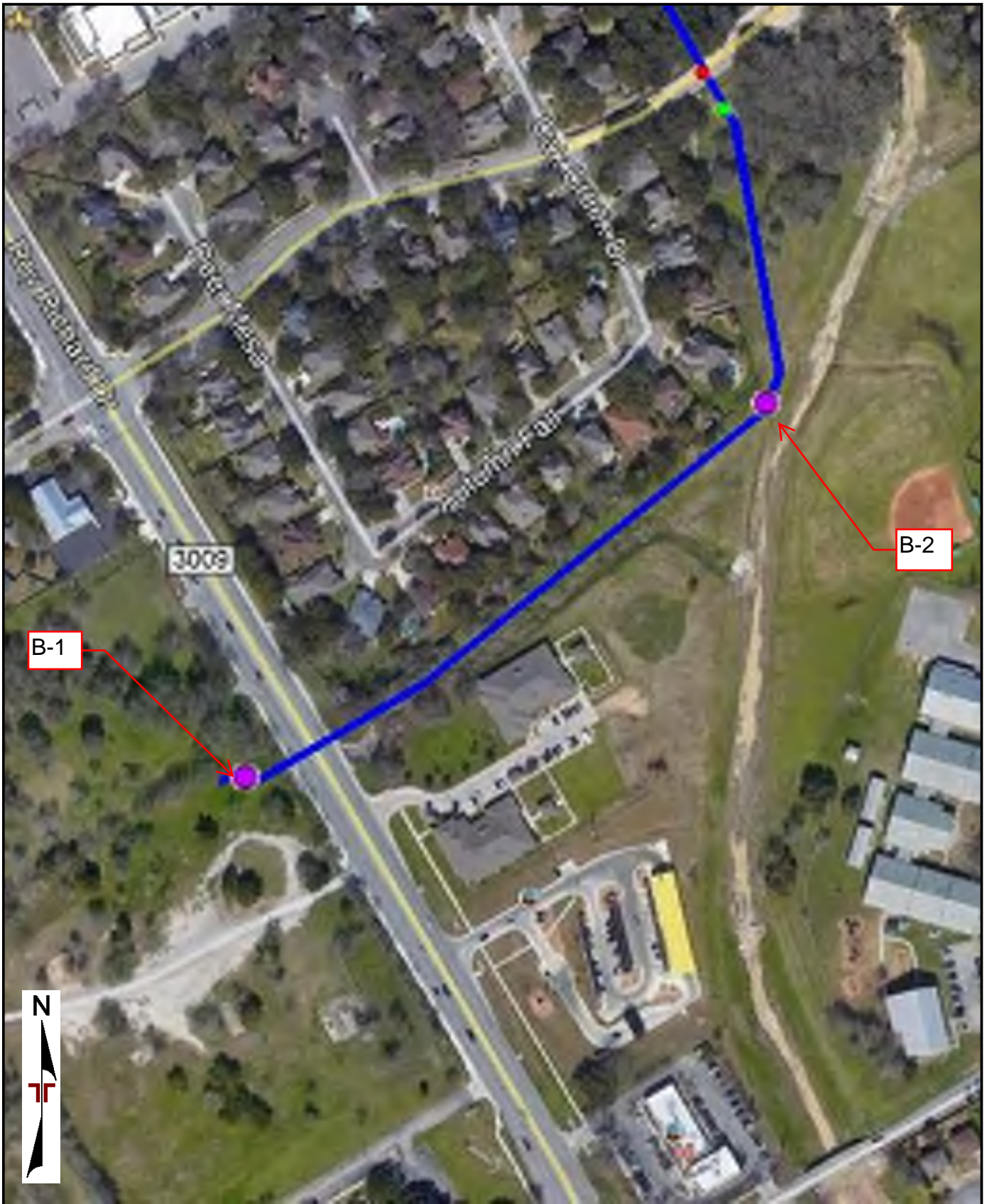


DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

AERIAL PHOTOGRAPHY PROVIDED BY GOOGLE EARTH

Project Manager: TA	Project No. P90205189	 <p>6911 Blanco Road San Antonio, Texas 78216</p>	<p>Environmental Boring Locations</p> <p>Proposed 16-inch Transmission Main Line Near Roy Richard Road Schertz, Texas</p>	<p>Exhibit</p> <p>1</p>
Drawn by: LN	Scale: AS SHOWN			
Checked by: PJP	File Name: Exhibit 1			
Approved by: PJP	Date: 3-10-2021			



Fee Breakdown for Final Geotechnical Study
Proposed 16-inch Water Transmission Main
Schertz, Texas
Proposal No. P90205189R

Geotechnical Borings	Quantity	Unit	Rate	Subtotal
TXDOT / City Permit & Traffic Control	4	each	\$1,500.00	\$6,000.00
Drill Rig and Crew Mob/Demob	4	each	\$350.00	\$1,400.00
Drilling and Sampling - Soil	390	ft	\$17.00	\$6,630.00
Senior Technician (Drilling & Utility Coordination)	50	hour	\$75.00	\$3,750.00
Vehicle Charge	5	each	\$100.00	\$500.00
				\$18,280.00

Laboratory Testing	Quantity	Unit	Rate	Subtotal
Water Content	146	each	\$10.00	\$1,460.00
Liquid and Plastic Limits (3 points)	50	each	\$95.00	\$4,750.00
Sieve Analysis (No. 200)	20	each	\$50.00	\$1,000.00
Density of Undisturbed Samples - Soil	5	each	\$15.00	\$75.00
Unconfined Compression - Soil	5	each	\$60.00	\$300.00
Pocket Penetrometer	40	each	\$5.00	\$200.00
Soluble Sulfates (TEX-145-E)	10	each	\$30.00	\$300.00
Maximum Density Relations (proctors)	3	each	\$225.00	\$675.00
CBR, Three Point	3	each	\$150.00	\$450.00
Lime modification optimum (using pH)	3	each	\$85.00	\$255.00
Soil-lime mixture design (using plasticity index)	3	each	\$250.00	\$750.00
				\$10,215.00

Professional Services	Quantity	Unit	Rate	Subtotal
Project Principal	14	hour	\$200.00	\$2,800.00
Project Manager	33	hour	\$150.00	\$4,950.00
Staff Engineer	20	hour	\$120.00	\$2,400.00
Clerical	4	hour	\$60.00	\$240.00
				\$10,390.00

Total Estimated Fee \$38,885.00



ATTACHMENT 3

April 6, 2021

Kimley-Horn and Associates, Inc.
Attn: Stephen J. Aniol, P.E.
601 NW Loop 410, Suite 350
San Antonio, TX 78216

Re: City of Schertz
Dedicated Transmission Main
Land Rights Acquisition Services

SCOPE OF SERVICES

GENERAL: The City of Schertz (City) has real estate impacts associated with the Dedicated Transmission Main Project (the Project) which will include appraisal and real estate acquisition services. 7Arrows Land Staff, LLC (7Arrows) shall provide a variety of services to support Kimley-Horn and Associates, Inc. (Kimley-Horn) and the City in execution of the project including appraisal and land rights acquisition services. 7Arrow's services may also include, as directed by City, assistance with open houses or similar meetings with the public, presentations to all approval authorities, and other real estate and property work that may be needed from time to time to support the timely execution of the project.

BASIC SERVICES: 7Arrows shall render the following professional services in connection with the development of the Project.

1. Title Services for 20 Parcels

- a) Review preliminary title commitment (Schedules A, B & C) or preliminary title search information for all properties.
- b) Secure title commitments and updates in accordance with insurance rules and requirements for parcel payment submissions for properties which will be acquired in fee simple and for ROW easements.
- c) Secure title insurance for all parcels, insuring acceptable title. Cure all exceptions on Schedule C, when applicable. Written approval by City will be required for any exceptions to coverage.
- d) Attend closings and provide closing services in conjunction with Title Company for all tracts.
- e) Record all original instruments immediately after closing at the respective County Clerk's Office.
- f) Research title and provide Condemnation Title Report to legal counsel for property rights that will be acquired through Eminent Domain. (See item 7 below)



2. Appraisal Services for 18 Permanent/TCE and 2 Temporary Construction Easement Acquisitions

- a) Kimley-Horn to provide right of entry letters for use by appraiser.
- b) Prepare and conduct personal pre-appraisal contact with interest owner(s) for each parcel.
- c) Contact property owners or their designated representative to offer opportunity to accompany the appraiser on the appraiser's inspection of subject property. Maintain record of contact in file.
- d) Finalize complete appraisal report for each parcel. These reports shall conform to the City's policies and procedures along with the Uniform Standards of Professional Appraisal Practice.
- e) All completed appraisals will be administratively reviewed and approved by the City.
- f) Appraisal fee could be adjusted based on complexity of evaluation within range provided in Fee Schedule.

3. Negotiation Services for 18 Permanent/TCE and 2 Temporary Construction Easements Acquisitions

- a) Analyze appraisal reports and confirm approved value prior to making offer for each parcel.
- b) Analyze preliminary title report to determine potential title problems and propose methods to cure title deficiencies. (Exhaust all efforts to obtain subordinations of liens, waiver of lienholders and clear any title, if 7Arrows staff cannot cure title through standard practices, the City will be responsible for obtaining legal counsel to remedy any tile deficiencies as required by title or alternatively, may elect to close the easement without a title policy).
- c) Prepare the initial offer letter and any other documents required or requested by the City in an acceptable form.
- d) Contact each property owner or owner's designated representative and present the written offer in person where practical. When owners do not wish to have offers delivered in person, they will be mailed via certified mail with return receipt for documentation of delivery/receipt. Maintain follow-up contacts and secure the necessary instruments upon acceptance of the offer for the closing.
- e) Provide a copy of the appraisal report for the subject property exclusively to the property owner or authorized representative at the time of the offer.
- f) Respond to property owner inquiries verbally and/or in writing within two business days.
- g) Prepare a separate negotiator contact report for each parcel file for each contact.
- h) Maintain parcel files of original documentation related to the purchase of the real property or property interests/acquisition of the Easement or Right of Way.
- i) Present counteroffers in a form as directed by the City. Transmit any written counteroffer from property owners including supporting documentation, and Agent's recommendation with regard to the counteroffer.



j) Prepare second and final offer letter as necessary.

4. Acquisition/Closing Services for 18 Permanent/TCE and 2 Temporary Construction Easement Acquisitions

- a) Prepare check request, review closing documents and facilitate execution of all necessary documents. Attend closings and provide closing services in conjunction with Title Company for all tracts.
- b) Transport any documents to the City and landowner for signatures.
- c) Record or cause to be recorded all original instruments immediately after closing at the respective County Clerk's Office.
- d) Review Title Policy and provide to City for permanent storage.

5. Project Administration for 18 Permanent/TCE, and 2 Temporary Construction Easement Acquisitions

- a) Maintain current status reports of all parcel and project activities.
- b) Provide bi-weekly update reports to Kimley-Horn.
- c) Participate in up to 10 project review meetings as requested, all additional meetings will be charged on a per hour basis.
- d) Copy designated Kimley-Horn representative on all property owner correspondence.
- e) Maintain copies of all correspondence and contacts with property owners.
- f) Update database with current status information and documentation.
- g) Condemnation Support Services are not included in the Basic Scope of Services.



SUPPLEMENTAL SERVICES (Not contemplated within BASIC SCOPE & FEE):

6. Condemnation Support

- a) Upon receipt to proceed with Eminent Domain from City, order updated "Condemnation Limited Title Report" (search parameters set by City and/or outside legal counsel)
- b) Prepare condemnation package as directed by City and deliver to City's designee or legal counsel.
- c) Upon notification from City, request update of appraisal.
- d) As necessary, the appraiser will appear and or testify as an Expert Witness in eminent domain proceedings and be available for pre-hearing or pre-trial meetings as directed by City (additional fees to be charged on an hourly basis).
- e) As necessary, ROW Manager will appear and provide Expert Witness testimony when requested (Additional fees will be charged on an hourly basis).
- f) Supplemental Appraisal Fee to be applied for complex appraisals as needed.

7. In Fee Acquisition Services – In the Basic Scope of Services, all land rights are anticipated to be acquired as Permanent Easement or Temporary Construction Easements. Should the City of Schertz determine that In Fee Acquisition is needed, this scope contemplates acquisition of up to 6 In Fee Parcel Acquisitions as a Supplemental Service to the Basic Scope and Fee.

Submitted By: Nicole Costanza

Nicole Costanza, Managing Partner

Date: 4/6/21



**City of Schertz
Dedicated Transmission Main**

FEE SCHEDULE – BASIC SERVICES	
Service Item	Per Parcel Fixed Fee
ACQUISITION SERVICES:	
Title & Title Curative	\$1,500.00
Administrative Fee	\$1,500.00
*Permanent Easement/ROW Acquisition	\$3,000.00
**Temporary Construction Acquisition	\$2,000.00
Closing Services	\$1,500.00
<i>*18 Parcels with PE/TCE @ \$7,500</i>	<i>\$135,000.00</i>
<i>**2 Parcels with TCE Only @ \$6,500</i>	<i>\$13,000</i>
ACQUISITION SUBTOTAL:	\$148,000.00
APPRAISAL SERVICES:	
<i>Permanent Easement & TCE</i>	<i>\$3,500.00 to \$4,500.00</i>
<i>Temporary Construction Easement Only</i>	<i>\$3,000.00 - \$4,000.00</i>
<i>18 Parcels with PE/TCE @ \$4,000</i>	<i>\$72,000.00</i>
<i>2 Parcel with TCE Only @ \$3,500</i>	<i>\$7,000.00</i>
APPRAISAL SUBTOTAL:	\$79,000.00
TOTAL ESTIMATED COST:	\$227,000.00



FEE SCHEDULE – SUPPLEMENTAL SERVICES	
Service Item	Per Parcel Fixed Fee
4 Additional Parcels	
PE/TCE Acquisition @ \$7,500 per parcel	\$30,000.00
PE/TCE Appraisal @ \$4,500 per parcel	\$18,000.00
In Fee Acquisition @ \$7,500 per parcel (6 parcels)	\$45,000.00
In Fee Appraisal @ \$5,000 per parcel (6 parcels)	\$30,000.00
Appraisal Updates for Condemnation (3 parcels)	\$13,500.00
Supplement Appraisal for complex properties	\$9,000.00
ROW Manager Hourly Rate	\$200.00
Agent Hourly Rate	\$125.00
*7Arrows only charges for services performed on each parcel.	
*Estimate includes up to 10 project meetings with ROW Manager, all additional meetings will be charged at hourly rate.	
*Estimate excludes condemnation support.	

March 10, 2021

Stephen J. Aniol, P.E.
Kimley-Horn
601 NW Loop 410, Suite 350
San Antonio, Texas 78216
210.321.3404 office
Stephen.Aniol@kimley-horn.com

ATTACHMENT 4

**RE: Subsurface Utility Engineering
City of Schertz - Transmission Main**

Dear Mr. Aniol:

The Rios Group, Inc. (TRG) is pleased to submit a cost proposal for Subsurface Utility Engineering (SUE) for the above referenced project. This proposal is based on information provided via email on March 7, 2021.

Introduction

TRG will perform SUE services for this project in general accordance with the recommended practices and procedures described in ASCE publication CI/ASCE 38-02 "Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data." As described in the publication, four levels have been established to describe and depict the quality of subsurface utility information. The four quality levels are as follows:

- Quality Level D (QL"D") – Information obtained from existing utility records.
- Quality Level C (QL"C") – Surveyed data depicting visible above-ground features supplemented with QL"D" information.
- Quality Level B (QL"B") – Two-dimensional horizontal information obtained through the application and interpretation of non-destructive surface geophysical methods. Also known as "designating," this level incorporates QL"C" information and provides horizontal positioning of subsurface utilities to within approximately 1.0 foot.
- Quality Level A (QL"A") – Three-dimensional horizontal and vertical information obtained through non-destructive vacuum excavation equipment to expose utilities at critical points. Also known as "locating," this level incorporates QL"B" information and provides horizontal and vertical positioning of subsurface utilities to within approximately 0.05 feet.

Scope of Work

Based on information provided by Kimley-Horn (Client), TRG has developed a proposed scope for SUE services on this project. This scope may be modified, with Client and TRG concurrence, during the performance of work if warranted by changing or unexpected field conditions.

The base scope of this proposal includes QL "B" and QL"A" SUE. In general, SUE services are requested within the limits of the City of Schertz Transmission Main project in Schertz, TX. TRG will research utility records and attempt to designate (QL "B") existing underground utilities within the proposed 16" transmission main alignment at up to **eight (8)** street crossings. TRG will designate all utilities within a 50 radius of the intersection as shown within the red clouded area on Exhibit B to this proposal. As agreed, to with the Client, this scope of work includes mapping of the following utilities: water, reclaimed water, chilled water, wastewater, natural gas, gas/oil pipelines, electric, telephone, fiber,

duct banks, cable TV, and storm sewer. It is assumed that TRG will invert all sanitary sewer and storm sewer lines and that those utilities will be shown as QL "C" within the project limits. Overhead utilities and irrigation lines are excluded from this scope of work.

The base scope also includes up to **forty-seven (47)** QL "A" test holes all located within the limits of the City of Schertz – Transmission Main Project – Schertz, Texas. To layout the test hole locations, TRG will perform QL "B" SUE designating in accordance with the *QL "B" – Designating* procedures described below. TRG will attempt to designate the requested utility for 10 feet on each side of the test hole locations. Forty-two (42) of the proposed test hole locations are shown on Exhibit B. TRG has also included up to **five (5)** additional test holes, if required.

Supplemental Services: As supplemental services, the client has requested TRG to provide an estimated fee for additional QL "A" & QL "B" SUE Services. If required, this supplemental fee estimate includes up to **two (2) days of QL "B"** and up to **five (5) QL "A" SUE test holes**.

*The survey of QL "B" and QL "A" SUE information is **not** included in this scope of work. It is assumed that Sherwood Surveying will provide survey of TRG's paint marks and flags.*

Any necessary Right-of-Entry (ROE) permits, including railroad ROE, will be provided by the Client prior to the start of TRG field work.

TRG Procedures

QL "D" and "C" – Records Research and Surface Feature Survey

It is the responsibility of the SUE provider to perform due-diligence with regard to records research and the acquisition of available utility records. The due-diligence provided for this project will consist of contacting the applicable One Call agency and associated utility owners/municipalities, visually inspecting the work area for evidence of utilities, and reviewing available utility record information. Additional utilities not identified through these efforts will be referred to as Unknown utilities.

QL "B" – Designating

Following a review of the project scope and available utility records with the project manager, TRG field personnel will begin designating the approximate horizontal position of known subsurface utilities within the project area. A suite of geophysical equipment that includes magnetic and electromagnetic induction will be used to designate conductive utilities. Where access is available, a sonde will be inserted into non-conductive utilities to provide a medium for transmission which can then be designated using geophysical equipment. Non-conductive utilities can also be designated using other proven methods, such as rodding and probing. TRG will make a reasonable attempt to designate Unknown utilities identified during field work; however, no guarantee is made that all Unknown utilities will be designated. Utilities will be marked and labeled to distinguish type and ownership. Field data depicting the designated utilities, as well as relevant surface features, will be produced to ensure accuracy and completeness of subsequent survey data. The TRG project manager will review the collected survey data, field data, and utility records for accuracy and completeness.

QL "A" – Locating

TRG will utilize non-destructive vacuum excavation equipment to excavate test holes at the requested locations. To layout the test holes, TRG will follow the *QL "B" – Designating* procedures described above. Once each utility is located, TRG will record the size, type, material, and depth. Test holes will be uniquely marked. Excavations will be backfilled by mechanical means with the appropriate material,

and the original surface will be restored. If necessary, TRG can core pavement up to a depth of 12 inches. Asphalt surfaces will be repaired with an asphalt cold patch, and concrete cores will be epoxied in place, flush with the surrounding surface. TRG assumes that flowable fill will not be required when backfilling test holes and that full-section pavement repair (including sidewalks) will not be required to restore the original pavement surface. If requested, these services can be provided at an additional cost.

TRG will establish any necessary routine traffic control measures at no additional cost. However, if non-routine traffic control measures (lane closures, traffic detours, flagpersons, etc.) are required, this service will be invoiced as a direct expense. Due to the risk of damage, TRG will not attempt to probe or excavate test holes on AC water lines unless approval is obtained from the owner in advance. Additionally, excavation in rock, or to a depth greater than 18 feet, is considered beyond the scope of this proposal.

TRG has made the following assumptions with regard to the test holes on this project:

- All test holes will be accessible to truck-mounted vacuum excavation equipment.
- Right-Of-Way (ROW) permits from the City of Schertz (COS) will be required. TRG will obtain all required permits and ensure that coordination and compliance is provided.
- Designed traffic control plans will **not** be required.
- Non-routine traffic control measures may be required depending on test hole locations. TRG will acquire the services of a qualified Maintenance-Of-Traffic (MOT) Subcontractor and ensure that adequate traffic control is provided.
- The coring of pavement may be required.

Deliverables

TRG will provide the following as a final deliverable to the Client:

- A utility file in CAD format depicting all designated and located utilities. The Client will provide TRG with any necessary background files for use in completing the final deliverables.
- A summary sheet of all test hole coordinate data and depth information.
- 8.5" x 11" Test Hole Data Forms for all test hole locations completed. These plans will be signed and sealed by a Professional Engineer and delivered to the Client in electronic PDF form.

Schedule

TRG can mobilize within three (3) weeks of receiving Notice-To-Proceed (NTP). TRG estimates that the base scope of work can be completed in thirty-seven (37) working days, broken down as follows:

- Layout test holes – 4 days
- QL“B” field work – 3 days
- QL“A” field work – 20 days (after permit approval)
- QL“A” deliverable preparation – 10 days (after receipt of survey data)

TRG estimates that the Supplemental Services Scope of work can be completed in thirteen (13) working days, broken down as follows:

- Layout test holes – 1 day
- QL“B” field work – 2 days
- QL“A” field work – 3 days (after permit approval)
- QL“A” deliverable preparation – 7 days (after receipt of survey data)

Estimated Fee

The total estimated cost to complete the base scope of work described herein is **Eighty-One Thousand Five Hundred Twenty-Five Dollars and 00/100 (\$81,525.00)**. An itemized breakdown of cost is provided in Exhibit A-1.

The total estimated cost to complete the supplemental service scope of work described herein is **Thirteen Thousand Two Hundred Forty Dollars and 00/100 (\$13,240.00)**. An itemized breakdown of cost is provided in Exhibit A-2.

We look forward to working with you on this project. If there are any questions, please do not hesitate to call at 210.981.3050.

Respectfully,

The Rios Group, Inc.

A handwritten signature in black ink, appearing to read 'Albert John Saldivar', with a stylized flourish at the end.

Albert John Saldivar

Project Manager



Estimate for Subsurface Utility Engineering
Transmission Main - Base
Schertz, TX

EXHIBIT A-1

Direct Expenses	<i>Rate</i>	<i>Assumed Quantity</i>	<i>Unit of Measure</i>	<i>Sub-Total</i>
ROW Permits (City of Schertz)	\$ 25.00	15	EA	\$ 375.00
Traffic Control (Standard)	\$ 350.00	8	DAY	\$ 2,800.00
Flowable Backfill	\$ 270.00	15	EA	\$ 4,050.00
Deliverable Preparation	\$ 7,500.00	1	LS	\$ 7,500.00
Sub-Total				\$ 14,725.00
QL"B" SUE Designating	<i>Rate</i>	<i>Assumed Quantity</i>	<i>Unit of Measure</i>	<i>Sub-Total</i>
QL"B" SUE (2-Man)	\$ 2,500.00	3	DAY	\$ 7,500.00
Test Hole Layout (1-Man)	\$ 1,500.00	3	DAY	\$ 4,500.00
Sub-Total				\$ 12,000.00
QL"A" SUE Test Holes				
Unit Rate - Depth	<i>Rate</i>	<i>Assumed Quantity</i>	<i>Unit of Measure</i>	<i>Sub-Total</i>
0 - 4 feet	\$ 850.00	24	EA	\$ 20,400.00
4 - 8 feet	\$ 1,150.00	14	EA	\$ 16,100.00
8 - 12 feet	\$ 1,450.00	9	EA	\$ 13,050.00
12 - 18 feet	\$ 2,300.00		EA	\$ -
Pavement Coring	\$ 350.00	15	EA	\$ 5,250.00
Test Hole Total		47		
Sub-Total				\$ 54,800.00
Total Estimated Cost				\$ 81,525.00



Estimate for Subsurface Utility Engineering
Transmission Main - Supplemental
Schertz, TX

EXHIBIT A-2

Direct Expenses	<i>Rate</i>	<i>Assumed Quantity</i>	<i>Unit of Measure</i>	<i>Sub-Total</i>
ROW Permits (City of Schertz)	\$ 25.00	2	EA	\$ 50.00
Traffic Control (Standard)	\$ 350.00	1	DAY	\$ 350.00
Flowable Backfill	\$ 270.00	2	EA	\$ 540.00
Deliverable Preparation	\$ 1,000.00	1	LS	\$ 1,000.00
Sub-Total				\$ 1,940.00
QL"B" SUE Designating	<i>Rate</i>	<i>Assumed Quantity</i>	<i>Unit of Measure</i>	<i>Sub-Total</i>
QL"B" SUE (2-Man)	\$ 2,500.00	2	DAY	\$ 5,000.00
Test Hole Layout (1-Man)	\$ 1,500.00	0.5	DAY	\$ 750.00
Sub-Total				\$ 5,750.00
QL"A" SUE Test Holes				
Unit Rate - Depth	<i>Rate</i>	<i>Assumed Quantity</i>	<i>Unit of Measure</i>	<i>Sub-Total</i>
0 - 4 feet	\$ 850.00	3	EA	\$ 2,550.00
4 - 8 feet	\$ 1,150.00	2	EA	\$ 2,300.00
8 - 12 feet	\$ 1,450.00		EA	\$ -
12 - 18 feet	\$ 2,300.00		EA	\$ -
Pavement Coring	\$ 350.00	2	EA	\$ 700.00
Test Hole Total		5		
Sub-Total				\$ 5,550.00
Total Estimated Cost				\$ 13,240.00



April 6, 2021

Mr. Stephen J. Aniol, P.E.
Kimley-Horn and Associates, Inc.
601 NW Loop 410, Suite 350
San Antonio, TX 78216

Submitted electronically via email: stephen.aniol@kimley-horn.com

Subject: City of Schertz 3.53-mile-long pipeline route for the proposed 16" dedicated transmission water main connecting the Live Oak tank site to the I-35 tank site for the City of Schertz.

Dear Mr. Aniol:

Thank you for your interest in Sherwood Surveying & S.U.E. capabilities. We appreciate the opportunity to assist you with your surveying needs for the above-mentioned project. We have a general understanding of the project needs based on your emails and have based our proposal on this understanding.

Scope of Work

The scope of work for this project includes the following:

1. Cross sections at 50-foot intervals at all public street crossings (ROW to ROW/top of curb/gutter/center line and/or striped line).
2. Cross sections at 100-foot intervals along the pipeline alignment
3. Obtain elevation shots in grid format within 100-feet of each public street crossing.
4. Locate and pick up noticeable sags/crests that do not follow the normal terrain.
5. Locate and pick up flowline and channel/creek bed characteristic (Top/Toe) for all drainage areas within project limits. Pick up all changes in drainage channel alignment and boundaries.
6. Pick up dimensions & flow lines of all drainage infrastructure within the project limits; include all pipe sizes and flow direction.
7. Call "One Call" and/or individual entities or service providers for locates, pick up utility locates, and pick up visible utility appurtenances within project limits. Review and include utilities from record drawings and contact Project Manager if additional data is needed to clearly define existing utilities. Water and sewer from all entities must be included in the survey and provide all inverts from manholes. Any manhole lids that are bolted down must be opened by surveyor, utilizing necessary tools required. Notate owner of each utility in separate utility base file.
 1. At each location where transmission main crosses existing sewer, surveyor shall obtain upstream and downstream manhole information, including top of manhole, flowline inverts, direction of flow and size of pipes. This data will be used to calculate approximate top of sewer pipe at pipeline crossing.

8. Locate and pick up all traffic signal equipment at Old Wiederstein and Cibolo Valley to include length of mast arms on signal poles and include location and number of all signal heads, dimensions of any traffic equipment footing or foundations (where designated).
9. Pick up curbing, flatwork, wheelchair ramps, driveway cuts, roadway pavement limits, striping, signage, etc. within project limits.
10. Locate and pick up all trees in the right-of-way and describe size and type (8" diameter and above within City of Schertz. 6" diameter and above within City of Cibolo.). Surveyor is responsible for accurately identifying trees. Provide detail tree survey including tree inventory information.
11. Pick up any visible monumentation, confirmed rights-of-way, property pins and parcel boundaries and show all on files.
12. Provide sufficient control points at a maximum spacing of 250' within project limits, adding additional to account for maintaining line of sight at all bends in alignment. Each control point shall be outside of the currently proposed permanent easement whereas to not be removed during construction. Surveyor shall coordinate with KHA prior to setting control
13. Prepare files using AutoCAD 2018 or higher ensuring thorough quality control and quality assurance.
14. Add break lines at lane lines (center line), face of curb, ROW and grade breaks at drainage channels, including top, toe and flowlines etc. Sufficient breaklines should be added to produce accurate cross sections
15. Locate and pick up geotechnical soil and pavement bores (est. up to 25 locations – combined for soil and pavement bores). This will be completed further into the 60% design phase. Survey will be responsible for coordinating with Geotechnical field representatives to identify locations. Assume 2 trips.
16. Locate and pick up all SUE QL-A and QL-B within project limits (est. 50 QL-A locations and QL-B at each public street crossing (8) in base scope). Assume 50' QL-B at each street crossing, ROW to ROW. Survey will be responsible for coordinating with SUE field representatives to identify locations. Assume 3 trips for QL-A and 4-trips for QL-B.
17. Provide a separate file for all SUE work. Also, update the utility base file that incorporates SUE QL-A and QL-B data collected. Within QL-A and B areas, QL-C and QL-D shall be removed and QL-A/B shall be clearly notated on both files.
18. Provide separate survey file for geotechnical soil and pavement bores
19. All existing easements within project limits shall be included in survey file. Survey shall complete necessary easement research to accurately depict all easements. Easements shall be labeled in survey including owner, type, width, etc.
20. Re-survey Dietz Creek Channel Improvements area in accordance with attached design plans, prepared by others. Process and incorporate new survey data into base file and resubmit. Per

plans prepared by others, channel improvements are limited to grading and re-establishing centerline. Utility relocations are not planned.

21. Locate and pick-up environmental borings (2 EA).

Deliverables:

All survey shall be performed in English Units – US Survey feet, NAD83 Texas State Planes, South Central Zone, surface coordinates. All control will be assumed.

DWG files must contain control points as outlined above, drawn to the proper project coordinates and must represent physical “out-on-the-field” control. The points must be labeled in the file to at least the fourth decimal place.

The survey data shall be prepared and provided in AutoCAD 2018 or higher. The entire survey shall be continuous and contained in one file using standard CADD drafting procedures and practices. Surveyor shall collect all ground features to ensure enough mass data points are included to develop a PS&E quality DTM, to depict the entire terrain within the project limits. All visible utilities and drainage features are to be collected and detailed including any overhead facilities, vegetation must be identified to include species and size. Also, any monuments such as iron pins and TxDOT markers are to be located and included in survey file. All fences, buildings, parking lots, sidewalks and any obvious features shall be located and identified. For all overhead power supply, transmission, and electric lines, survey shall obtain height above existing ground and notate in survey file. Also, for all power transmission foundations, survey shall pick up actual diameter of foundation with at least two survey shots on foundation and two survey shots on existing ground.

Topographic files should be in 2D & 3D format. The 2D file must be prepared to use as a topographic background to represent existing conditions on construction drawings. Provide description of elements, flow lines, pipe sizes, top of manholes, etc. on the 2D file with an arrow pointing to the element in order to maintain clarity. The 3D file must contain 3D points in a separate point group representing the actual terrain, including all spot shots, break lines, and voids suitable for developing a DTM triangle model within AutoCAD Civil 3D.

Level structure on all electronic files developed for Kimley-Horn must follow Kimley-Horn CADD standards, to be provided to surveyor prior data collection, so that elements of distinctive types reside on a specific layer and can be manipulated individually. Layer mixing between infrastructure and entities will not be accepted. Utilities such as sewer lines, water lines, gas lines, telephone, CATV, electric conduits, and aerial must reside on discrete levels and linetypes. Size of utility shall be included in each linetype. Power poles shall be drawn in a layer of their own as well as any drainage infrastructure, traffic signal, illumination, and concrete surfaces.

Text on DWG files shall be relative to the final plot scale as dictated by the Project Manager (1”=40’ is desirable). Font 5 (Bridge) is requested for the text used in the survey. Text must be on discrete levels with similar naming to what it represents so it can be manipulated individually or turned off on construction drawings. Text must also be placed parallel to the roadway or pipeline alignment it corresponds to. For plan development purposes, plan sheets will begin at FM 3009 and work towards the I-35 tank site at Hope and Tulip.

Files Provided by Kimley-Horn

- Survey Boundary .KMZ
- Transmission Main Alignment .KMZ
- Right of Entry exhibit
- Easement spreadsheet identifying current proposed temporary construction and

- permanent easements, and joint use agreements.
- Tentative SUE Plan with QL-D Utility Data
- Dietz Creek Channel Improvements plans prepared by others.

Final Deliverables:

Design Milestones will include 60%, 100% unsigned, and Final

The surveyor shall provide the following deliverables:

- An ASCII file with all point numbers and descriptions, X,Y,& Z, P-code format and a DWG file with a full description of all control and benchmark information.
- Complete topographic AutoCAD 2D and 3D files including surface, code lists, field notes and sketches shall also be submitted when electronic files are delivered.
- Separate utility base file
- Separate base file for geotechnical data
- Separate base file for SUE QL-A/B data
- A project control sheet with pertinent benchmark and control points will be signed and sealed by the RPLS and prepared for submittal, and will be included in the final construction drawings developed for the project.
- o Account for 60%, 100% unsigned and final design milestones
- Develop and submit a parcel and easement strip map signed and sealed by the RPLS, which is to be included into the final construction drawings. Assume 22" x 34" plan sheets, horizontal scale of 1" = 200', double plan (5 plan sheets)
- o Account for 60%, 100% unsigned and final design milestones
- Plat & Field Notes including permanent and temporary construction easements, boundary survey, and PFNs. For basic services, estimate 19 PFNs to be developed. Reference current Right of Entry status exhibit and easement spreadsheet.
- A detailed tree survey and tree inventory for trees within the project limits, listed in CAD file and .XLS spreadsheet
- o for trees with a minimum 8-inch diameter within the City of Schertz project limits and a minimum 6-inch diameter within the City of Cibolo project limits.
- o Revised survey base file for Dietz Creek channel improvements, including updated surface.

Base Services Fee Schedule

1. Topographic Survey – **\$88,500.00**
2. Detailed Tree Survey – **\$29,700.00**
3. Obtain Geotechnical Information with Supporting Files – **\$5,800.00**
4. Obtain SUE Information with Supporting Files – **\$8,500.00**
5. Project Control Sheet – **\$4,800.00**
6. Easement Strip Map – **\$5,200.00**
7. Plat and Field Notes – **\$20,900 (\$1,100 per plat and field note set).**
8. Dietz Creek Channel Improvements re-survey. - **\$6,300.00**

Total Base Services = **\$169,700**

Supplemental Services Fee Schedule

1. Plat and Field Notes (3 EA) – **\$3,300 (\$1,100 per plat and field note set).**
2. Survey trip to obtain additional Geotech – **\$3,500.00 (one mobilization)**
3. Survey trip to obtain additional SUE – **\$3,800.00 (one mobilization)**
4. Survey trip for additional Environmental Phase II Sampling – **\$3,500.00 (one mobilization)**
5. Additional one (1) day survey trip to obtain miscellaneous survey – **\$2,500.00 (one mobilization)**

Total Supplemental Services = **\$16,600**

Any additional reimbursable expenses that may be accrued through the course of this project such as excessive plotting, faxes or other reasonable expenses shall be billed at cost plus 15%. All invoices for reimbursable expenses shall be accompanied with copies of invoices/receipts as needed.

Availability

Sherwood currently has sufficient man-power available to begin the project within 7-10 business days from notice to proceed, if awarded. We will of course make every effort to meet your needs and expectations. Additionally, due to the current situation with COVID, response times may be slower and cannot be guaranteed during these uncertain times. Sherwood Surveying will, however, monitor the situation closely and work hard to keep the project moving in a timely fashion.

Validity

This lump sum proposal is valid for 30 days from the date of the letter. Sherwood is fully insured and will provide proof of same if needed.

Invoicing

Partial, monthly with progress report, invoicing will be mailed to your attention throughout the course of the project. Invoices will be uploaded to Kimley-Horn SMP and emailed to: Stephen.aniol@kimley-horn.com and Rebekah.cramblitt@kimley-horn.com.

We use Levelset to help manage our payment paperwork such as notices, waivers, and pay apps. These documents notify you that our company is providing labor or materials to help ensure everyone is in the loop. Sending these documents is often legally required because they help create visibility so payment problems can be spotted and addressed. It is our hope to maintain transparency and open communication to ensure this and every job goes smoothly.

We appreciate your consideration of Sherwood for this project. If there is anything that you would like to discuss about this proposal or additional information that you require, please do not hesitate to contact us. Should you find this proposal and terms acceptable, please indicate so by signing and dating this document below and return.

Sincerely,



Rico Laijas
Department Manager
Sherwood Surveying & S.U.E., LLC

Re: Schertz Dedicated Transmission Main Project

Approved _____ Date _____

Name (print) _____ Title _____

***PROPOSAL TO CONDUCT A CULTURAL RESOURCES ASSESSMENT
OF THE SCHERTZ DEDICATED TRANSMISSION MAIN PROJECT,
GUADALUPE COUNTY, TEXAS***

Proposal Date: March 15, 2021

PREPARED BY:
Todd McMakin
Stone Point Services, LLC
11827 County Road 41
Tyler, TX 75706
903-881-3103



INTRODUCTION

Thank you for the opportunity to provide a scope and fee for this project. Stone Point Services, LLC is a small, woman-owned business with extensive experience working with projects of this nature. We have the personnel available to ensure that this project is conducted in an efficient and timely manner. Our goal is to provide Kimley-Horn with a cultural resources survey that will meet or exceed the requirements of the Texas Historical Commission (THC) and any federal agency with review authority. Our Principal Investigator and Senior Archaeologist, Todd McMakin, has worked directly with the THC on numerous projects. Likewise, Mr. McMakin has worked in the field of archaeology for over 30-years. Our supporting staff includes GIS specialists, senior level archaeologists, architectural historians, and archeological field technicians. Stone Point Services is fully insured for your protection, and we have detailed safety training and protocols to ensure that this project can be completed safely.

Based on our understanding of the proposed project, current site conditions, and our estimate of time and expenses, we can perform the scope of services for the following **lump sum** fees:

Desktop Analysis: **\$350**

Cultural resources survey: **\$13,750**

Mechanical (deep) testing for archeological sites: **\$19,780**

BACKGROUND INFORMATION

Stone Point Services was contacted on March 3, 2021 to provide a scope and fee for this project by Sierra Gibbons of Kimley-Horn via e-mail communication. A linear utility line totaling approximately 3.7-miles is to be surveyed for cultural resources. The purpose of this survey is to identify cultural resources (archaeological and historic) that may be impacted by the proposed construction.

Stone Point Services is providing this proposal to outline the requirements of the THC and how the proposed survey scope will meet these requirements. This proposal includes a cost estimate to conduct a desktop analysis, a pedestrian archaeological survey, and deep testing for archeological materials. The desktop analysis will provide background information about the project area and will be in report format. The archeological survey will include the excavation of shovel test units

in areas where buried cultural resources may be encountered as well as surface inspections, meeting THC standards. The deep testing, a requirement of THC, will include mechanical excavations of trenches to identify deeply buried sites, if present. For each of these options, we will conduct background research for the area which will provide a basic historical overview of the region. Historic aerial maps will be used, along with standard archeological survey techniques, to identify any historic or archeological sites that may be present within the Subject Property.

SCOPE OF SERVICES

Immediately upon receiving notice to proceed, we will begin gathering background information about the project area. This will include reviews of available data on existing archaeological and historic resources in the area as well as research into the history of this part of Guadalupe County. At the completion of background research, we will have crews in the field to complete the survey.

Option 1: Desktop review only

The client may request a desktop analysis of the project area is the preferred first action. The desktop analysis will be conducted by a professional archeologist and will not include a field visit. The desktop analysis will be in report format and will include information about previously recorded archeological sites and historic resources (historic standing structures) within one mile of the project area. The desktop analysis will also include information about potential soil types, underlying geology, and high and low potential areas within the proposed action. We will examine readily available data pertinent to the history, prehistory, ethnography, and environment of the study area, including but not necessarily limited to the Texas Archeological Sites Atlas and the TNRIS. The purpose of this research is to develop a general understanding of the study area and how it may have changed through time, to identify previously recorded historic resources, and to generate the information and perspectives needed to predict the likely presence or absence of resources and the likely character of potential impacts. The records examined will include a review of online data containing information about previously recorded archaeological and historic resources in the vicinity of the project area. The results of the literature review will be a compilation of previously recorded cultural resources that are in or near the project area, and also will serve to provide an historical context for the study area.

The background research will also include information about standing historic structures and known cemeteries located within one mile of the survey area. As noted above, the purpose of the background research is to inform the client of potentially important cultural resources that have been previously identified near the survey area. Using data from the background research, our researchers can pinpoint those areas that are more likely to include archaeological sites. The background research will likewise help to identify historic resources, such as historic buildings and cemeteries that are located within, or close to, the survey area.

Option 2: Cultural Resources survey and Deep Testing

Task 1: Mobilization and Background Research

Because this project is located on public property, SPS will begin the paperwork for a Texas Antiquities Permit immediately upon award of the project. Once the appropriate signatures are obtained, the permit will be submitted to THC for assignment of a permit. This process can take up to one month, but usually is no more than one week. As with the Desktop Analysis, we will examine readily available data pertinent to the history, prehistory, ethnography, and environment of the study area, including but not necessarily limited to the Texas Archeological Sites Atlas and the TNRIS. The purpose of this research is to develop a general understanding of the study area and how it may have changed through time, to identify previously recorded historic resources, and to generate the information and perspectives needed to predict the likely presence or absence of resources and the likely character of potential impacts. The records examined will include a review of online data containing information about previously recorded archaeological and historic resources in the vicinity of the project area. The results of the literature review will be a compilation of previously recorded cultural resources that are in or near the project area, and also will serve to provide an historical context for the study area.

The background research will also include information about standing historic structures and known cemeteries located within one mile of the survey area. As noted above, the purpose of the background research is to inform the Stone Point Services crew of potentially important cultural resources that have been previously identified near the survey area. Using data from the background research, our researchers can pinpoint those areas that are more likely to include archaeological sites.

The background research will likewise act as an early warning of potential problems. Stone Point Services personnel will notify our contact at Kimley-Horn of any potential issues identified during the background research. By having this information early in the process, Kimley-Horn will be better prepared to address potential concerns.

Stone Point Services will begin preparing for field investigations during the background research.

Task 2: Field Investigations

Once necessary research and field preparation are complete, Stone Point Services will be able to start the archaeological survey. The procedures outlined below meet state guidelines for archaeological surveys in Texas. No survey will be conducted until a Texas Antiquities Permit has been awarded for this project.

Cultural Resources investigations of the project area will include an intensive archaeological survey using both pedestrian (surface) survey and shovel testing techniques. A pedestrian survey will be used to locate cemeteries, chimneys, earthworks and other above ground features, as well as artifacts lying on the ground surface. In addition to the pedestrian survey, shovel tests will be excavated along a single transect near the center of the proposed utility line. Given the width of the utility line (50-feet), only a single transect is warranted. Shovel tests will be placed at 30-meter, 50-meter, or 100-meter intervals, depending on the probability of encountering sites. High

potential areas will be excavated at the reduced 30-meter intervals, where highly disturbed or low potential areas will be surveyed with shovel testing at 50-meter or 100-meter intervals. All survey methods will meet the requirements of the THC as stipulated in the Archeological Survey Standards of Texas for Projects of 200 Acres or Less and for linear projects (as modified in 2020).

Shovel tests will be at least 30-centimeters in diameter and excavated to sterile subsoil or at least 80-centimeters below ground surface, whichever is encountered first. Each shovel test will be excavated in no greater than 20-centimeter levels. The location of each shovel test will be recorded with a hand-held GPS and plotted on project maps. Soil from the shovel tests will be screened through 0.25-inch wire mesh screen. All shovel tests will be backfilled for safety upon completion. If artifacts are found, additional shovel tests will be excavated at 10-meter or closer intervals in cardinal directions to delineate site boundaries. Sites will be recorded using a hand-held GPS and plotted on USGS 7.5-minute topographic maps and aerial photography.

All resources will be mapped using a GPS and ArcGIS. Shapefiles of all project related activities and resources, will be available to our contact at Kimley-Horn during the project and will be submitted to the client at the completion of the project. Maps will be prepared in ArcGIS and can be provided to the client as a .JPG (or similar) or .PDF file.

Temporally diagnostic artifacts recovered during the survey may be bagged by site and relative provenience within each site if field analysis is not possible. Non-diagnostic artifacts will be field analyzed and returned to their original provenience. Each site will be photographed with high resolution digital color images (three megapixels or higher) and documented using Texas archaeological site forms that will be submitted to the Texas Archaeological Research Laboratory (TARL) upon conclusion of the fieldwork. The Project Archaeologist will maintain detailed notes on survey methods, sites identified during the survey, and relevant environmental factors associated with each site. This information will be thoroughly documented in the technical report.

Deep Testing

The depositional environment along East Dietz Creek is conducive for deeply-buried archaeological deposits as the result of gradual accumulation of alluvial clay. While shallow sites situated on terraces may be discovered and securely delineated through standard shovel testing methods, archaeological sites located within the floodplain may be positioned below thick alluvium. Deeply-stratified archaeological sites would be below the reach of standard shovel testing capabilities and would require the use of mechanical trenching to discover and/or delineate. The Tinn series soil, which is present along approximately 2.4-kilometers (1.5-miles) of the East Dietz Creek floodplain, has the highest probability of containing buried soil horizons and archaeological materials. The Tinn series consists of very deep, moderately well drained, very slowly permeable soils that formed in calcareous clayey alluvium. These soils are on the floodplain of dissected plains that drain the Blackland Prairies. To address the possibility for deeply-buried archaeological sites, mechanical prospection methods should focus on portions of the proposed transmission line that contain Tinn series soils within the floodplain.

Stone Point Services will complete between ten and fourteen mechanically-excavated trenches to provide sufficient coverage of the survey area. As these soils contain complex stratigraphy across a wide area, trenching operations will employ a qualified professional geoarchaeologist with previous experience in regional allostratigraphic units and geomorphic processes. Upon

completion of the mechanical excavations, trench walls will be examined for cultural materials, and the soil stratigraphy assessed and recorded. Documentation of the soil-stratigraphy will consist of photographs and the completion of a soil-stratigraphic profile form noting the depth and thickness, Munsell color (moist), consistence (moist), texture (using USDA soil texture nomenclature) soil structure and ped surface features, redoximorphic features, bioturbation features, and lower boundary characteristics for each zone delineated within each trench profile. Stratigraphic, pedogenic, and geochronological interpretations of these profiles will be made after completion of the field work making use of the profile descriptions and available geologic, soils, topographic, and archeological data.

Backhoe trenching will follow the mechanical prospection standards and best practices for survey level mechanical prospection, as described in the Intensive Terrestrial Survey Guidelines set forth by the Standards and Guidelines Committee of the CTA (2020). Trenches will be a minimum of 24 inches (60-centimeter) wide and at least 4-meters long to the depth of the proposed action. Trenches will be excavated by slowly peeling off thin (5-centimeter or less) sub-horizontal layers under close monitoring using a smooth-bladed bucket, with subsequent hand cleaning and inspection of the walls and monitoring and inspection of spoil. All positive trenches will be delineated within the limits of the project ROW. All mechanical excavation and documentation will be performed in a safe manner in full compliance with all applicable OSHA regulations.

The Project Archaeologist will be available by cellular telephone during the investigations (depending on cellular service availability) and can answer any questions that may arise. Likewise, updates can be provided to our client contact at any time during the survey via e-mail or telephone. We wish to ensure that Kimley-Horn is updated regularly, or at any interval requested by the client.

Immediately after field investigations are concluded, Stone Point Services will begin the final phases of the investigations: analysis, report preparation, and curation.

Task 3: Analysis, Report Preparation, and Curation

Immediately upon completion of the fieldwork, Stone Point Services will prepare a management summary of the background and field investigations and submit this report to Kimley-Horn for review.

The artifacts, notes, photographs, maps, and other project-related materials will be returned to the Stone Point Services office for processing. Artifacts will be washed, accessioned, analyzed, and temporarily housed at Stone Point Services.

Stone Point Services will prepare a draft report of the investigations to be reviewed by Kimley-Horn. We will submit a draft report that will describe the methods used, results, and National Register of Historic Places (NRHP) recommendations for each identified site. We will also include recommendations for additional work that may be necessary under pertinent federal and/or state laws. Once the draft report has been reviewed by the client, Stone Point Services will address these comments in a final technical report. Copies of the final report will be submitted to the client.

After acceptance of the report, Stone Point Services will transfer the artifacts and relevant notes to a curation facility that meets the federal curation standards outlined in 36 CFR Part 79 and accredited by the State of Texas.

PROPOSED SCHEDULE

Proposed Timeline for the Investigations

Stone Point Services will begin gathering background data for this survey immediately upon receipt of notice-to-proceed. It is anticipated that fieldwork will begin within three weeks of receipt of notice to proceed (weather and Covid-19 restrictions permitting). We anticipate the survey will take no more than three weeks, weather permitting. Stone Point Services will work with Kimley-Horn on deep testing timing. This timing will be dependent upon the availability of the geoarcheologist and may be affected by weather or other restrictions. A draft report will be available within three weeks of fieldwork completion.

FEES AND AUTHORIZATION

It is our understanding that this project will begin upon receipt of a task order, work order, or signed contract from Kimley-Horn. The lump sum estimate provided below is based on the assumption that the total project area has been accurately described in the bid package and outlined in this document under Background Information. If this information is not correct, please let us know as soon as possible and our estimate will be adjusted accordingly. Small changes to the project area will not require a cost adjustment.

Based on our understanding of the proposed project, current site conditions, and our estimate of time and expenses, we can perform the scope of services for the following **lump sum** fees:

Desktop Analysis: **\$350**

Cultural resources survey: **\$13,750**

Mechanical (deep) testing for archeological sites: **\$19,780**

CLOSING

Stone Point Services appreciates the opportunity to provide you with this proposal and budget. If you have any questions about our proposal or need any additional information, please do not hesitate to contact Todd McMakin at 903-881-3103 or at 903-952-3819 (cell).

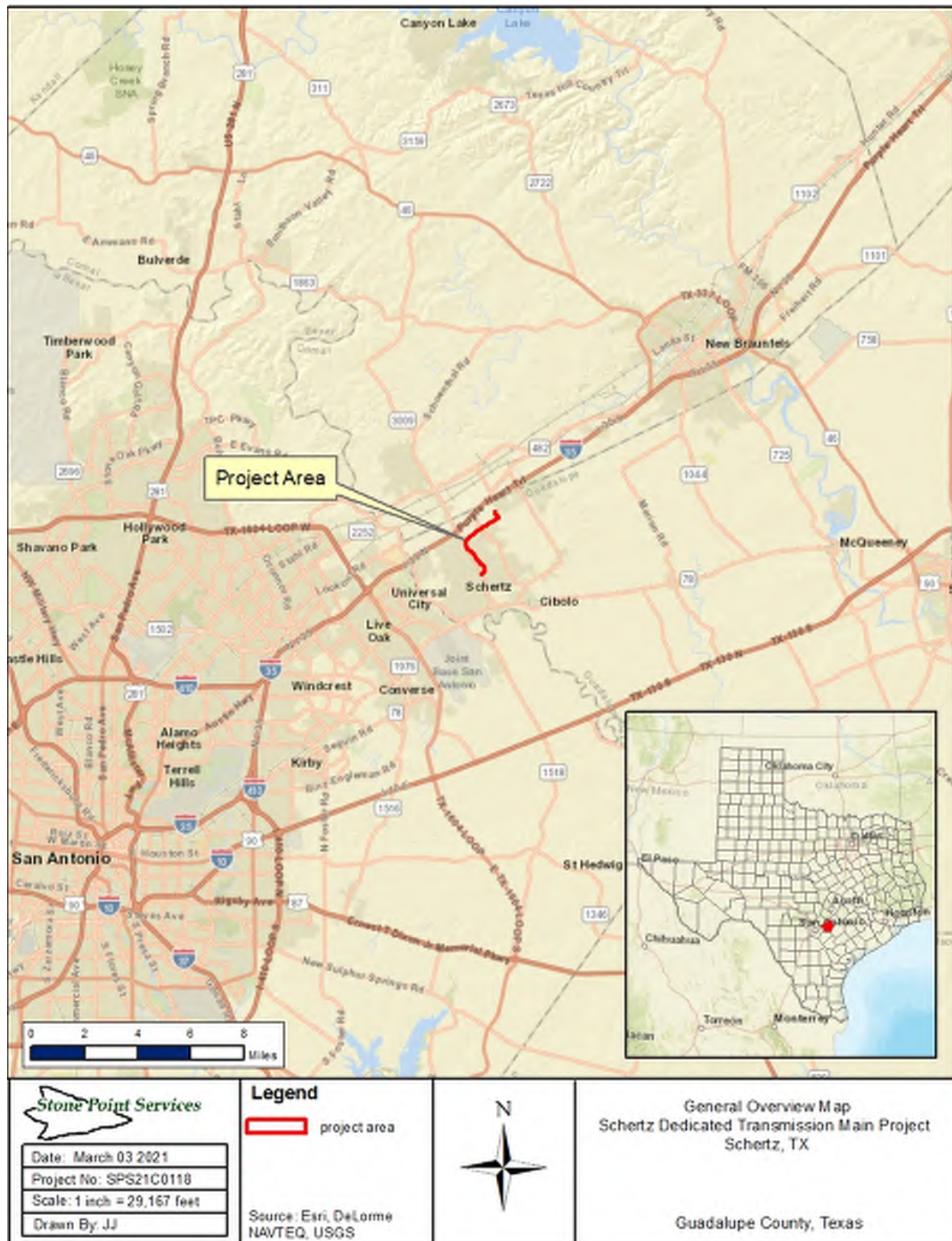


Figure 1: General location map

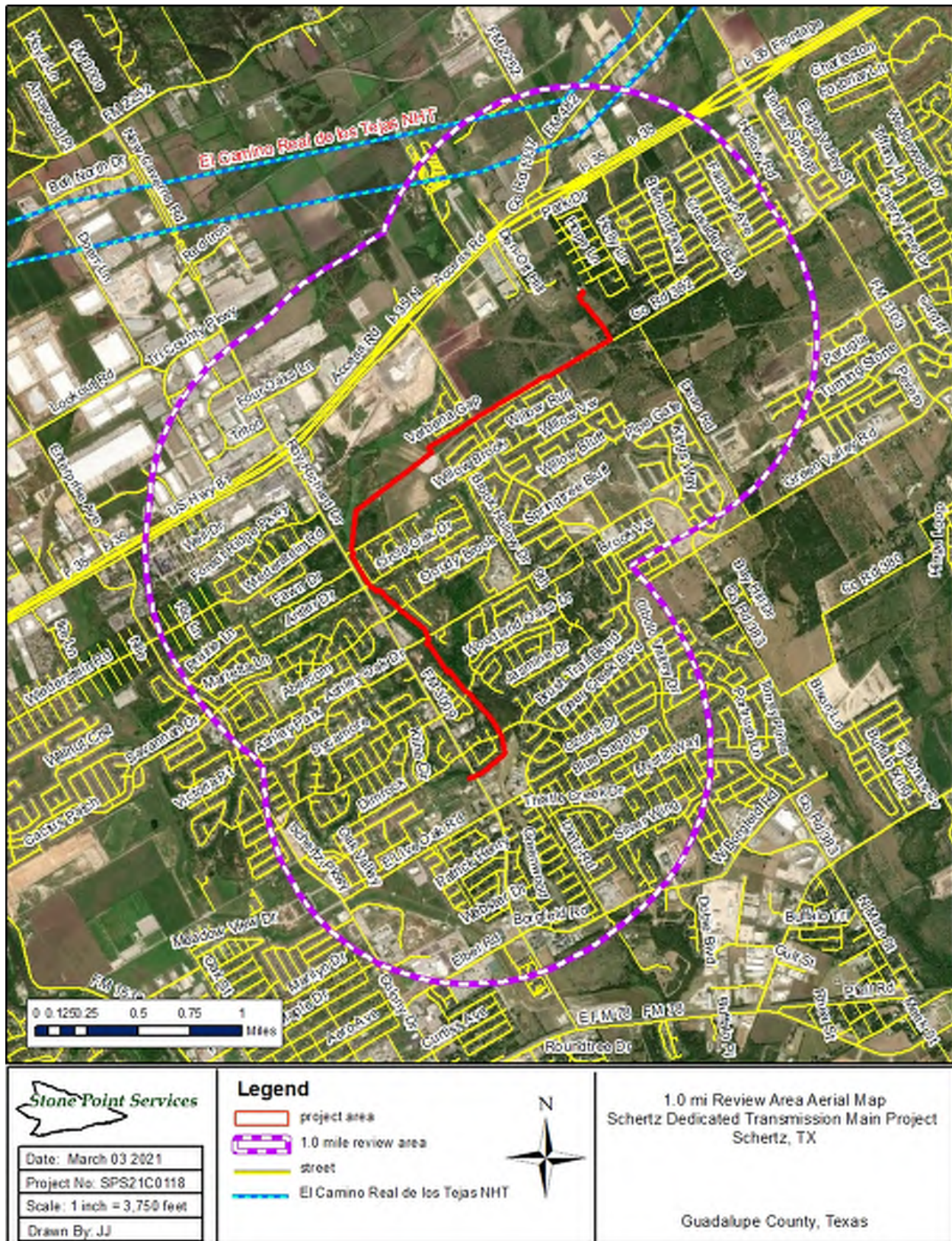


Figure 2: Aerial image showing the project boundaries and the one mile background study area

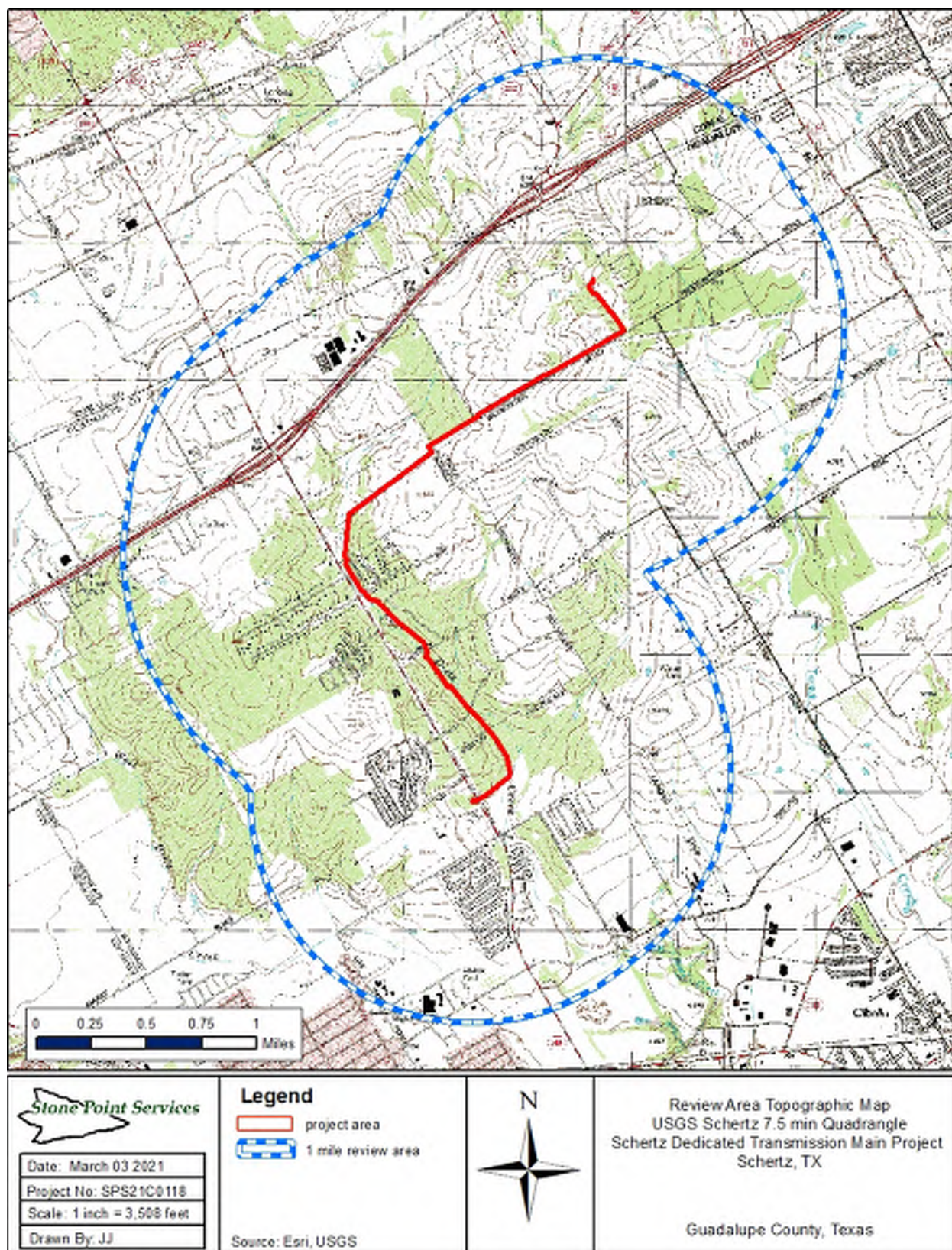


Figure 3: USGS Schertz quadrangle map showing the project boundaries

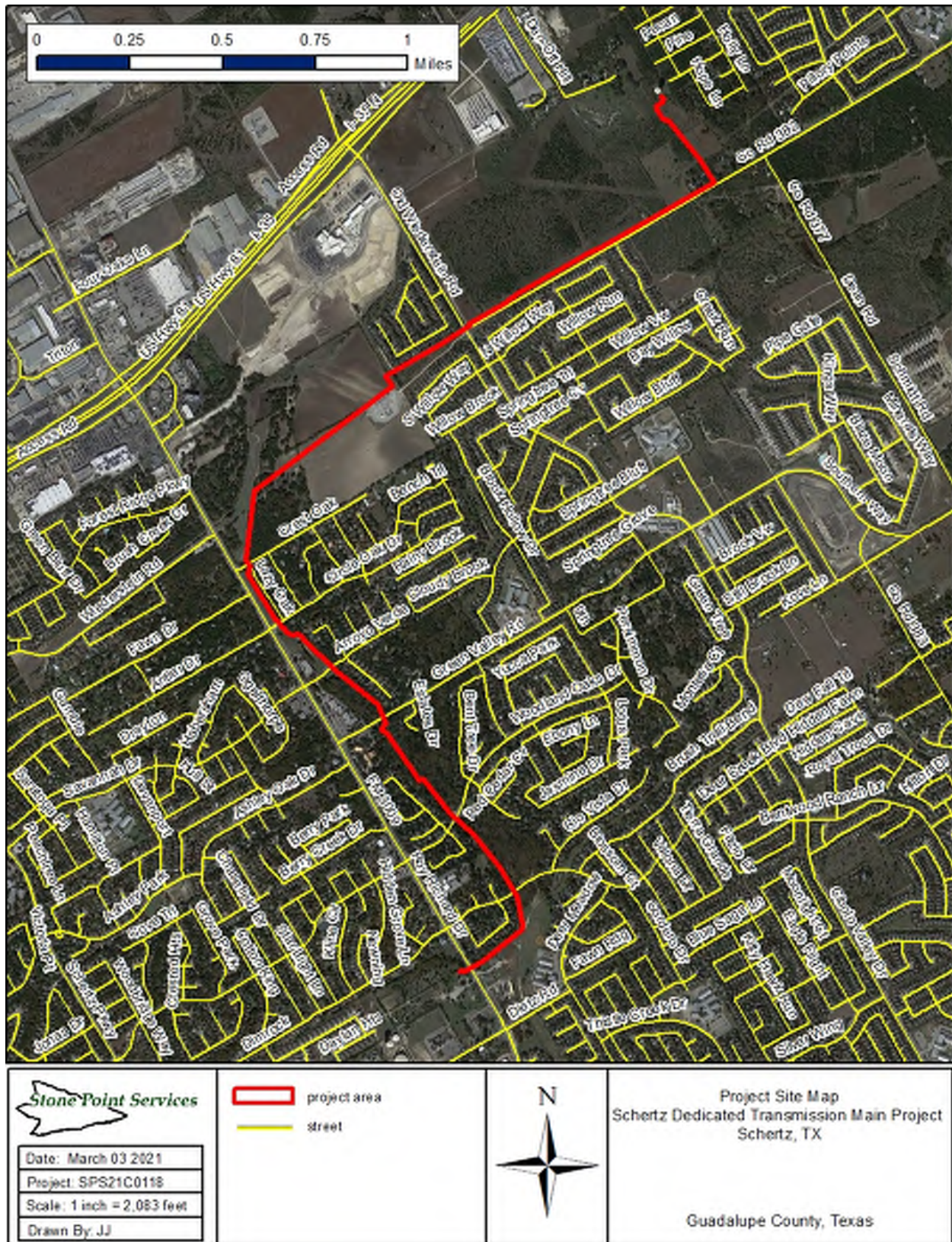


Figure 4: Detailed aerial view of the proposed project area

CITY COUNCIL MEMORANDUM

City Council Meeting: May 25, 2021
Department: Information Technology
Subject: Resolution No. 21-R-46 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing a revision of the Not To Exceed Amount of an approved contract with DAC, Inc of New Braunfels, Texas, increasing the total amount from \$175,000 to \$178,000. (B. James/M. Clauser)

BACKGROUND

The City approved an agreement with DAC, Inc of New Braunfels Texas to upgrade the city-wide access control system. This was approved in Council resolution 20 – R – 78 in the August 11th regular session. The original agreement specified that the contract total amount would not exceed \$175,000 without Council approval. During deployment several additional items were identified that required replacement or upgrade but were within the scope of the original agreement. These items were approved by staff through change orders, bringing the total amount of the contract to approximately \$174,000. During the final walkthrough, an additional location was identified that required replacing hardware in the PD. This item, if approved and estimated at approximately \$2,700, would then push the total agreement amount beyond the “not-to-exceed” amount of \$175,000 as specified in the resolution.

GOAL

This action will allow the City to complete phase one of the City-wide access physical and network security review and upgrades.

COMMUNITY BENEFIT

Completing this final item as identified as part of the original scope would allow the City to move forward with additional work related to increasing the physical security of the City’s facilities.

SUMMARY OF RECOMMENDED ACTION

Staff recommends that Council authorize the revision of the agreement approved in Council Resolution 20 – R – 78, increasing the total “not-to-exceed” amount from \$175,000 to \$178,000.

FISCAL IMPACT

No additional financial impact anticipated. This amount is covered as part of the overall funding source as identified in Resolution 20 – R - 78.

RECOMMENDATION

Staff recommends that Council authorize the revision of the agreement approved in Council Resolution 20 – R – 78, increasing the total “not-to-exceed” amount from \$175,000 to \$178,000.

Attachments

Resolution 21-R-46

DAC Contract Add

CCM 20-R-78

Resolution 20-R-78

RESOLUTION NO. 21-R-46

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A REVISION TO THE AGREEMENT WITH DAC, INC OF NEW BRAUNFELS TEXAS, AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City staff of the City of Schertz (the “City”) has recommended that the City enter into a revised agreement with DAC, Inc. of New Braunfels, Texas relating to Access Control Upgrade Project as approved in Council Resolution 20 – R – 78, increasing the “Not To Exceed” amount from \$175,000 to \$178,000; and

WHEREAS, the City Council has determined that it is in the best interest of the City to revise the existing contract with DAC, Inc. of New Braunfels, Texas pursuant to the Council Resolution 20 – R -78 approved on August 8th, 2020, increasing the “Not To Exceed” amount from \$175,000 to \$178,000.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

The City Council hereby authorizes the City Manager to revise the agreement with DAC, Inc. of New Braunfels, Texas as approved in Council Resolution 20 – R – 78, increasing the “Not To Exceed” amount from \$175,000 to \$178,000.

Section 1. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 2. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 4. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 5. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 6. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this _____ day of _____, 2021.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

EXHIBIT A

_____AGREEMENT

City of Schertz

City of Schertz
PD Weight room Door
4-6-2021

February 5th, 2020
Mr. Myles Clauser, CPM, CGCIO



City of Schertz

Dear Mr. Clauser,

I am pleased to present DAC's proposal for the City of Schertz. After having the opportunity to walk and review the existing site and having continued conversation with your responsive staff we would like to offer you this quote for our services. Our entire team is enthusiastic about the prospect of serving as your integrated solutions provider. We look forward to enhancing our relationship through participation in this project. We are committed to integrity and quality, and we are proud of our record and reputation.

Selecting the right team to help you recognize and address your business challenges is vital to creating value and delivering a project on time, on budget and to the high standards of quality you expect. I personally select our team leaders to ensure they have the experience and personal attributes needed to serve you with distinction and dedication throughout the course of your program.

A smooth project is, of course, of great importance to you and DAC. We have a wealth of experience in providing innovative solutions and look forward to delivering them to the City of Schertz. Our team has the requisite experience to manage any program efficiently and to deliver solutions that meet the highest levels of sustainability and feasibility.

You strive for quality and reliability for the City of Schertz and providing those attributes is critical to your continued success. DAC is the firm chosen by project teams when quality and reputation are of the utmost importance. We anticipate teaming with you to meet the needs of this program and look forward to meeting soon as part of the contract team.

Thank you for your consideration. We are committed to exceeding your expectations.

Respectfully,

Roy Charbonneau
Manager Central Texas
DAC, Inc.

Quote

ASSUMPTIONS

We are pleased to provide the City of Schertz DAC's quote for the above referenced Access control installation. This proposal is based on installing new door hardware, power supplies and panel enclosures. This proposal includes all material and labor necessary for the installation of Open Options access control on the weight room door.

Building 06 Police – PD Weight Room Rear Entrance

- 1 Doors of Access Control
- 1 Electric Strikes
- 1 HID RP40 card readers
- Misc. power supplies and materials necessary for the installation.
- Sales tax is not included.

PRICING SUMMARY

Project Cost

DAC is please to provide all material and labor to installation of access control on the PD weight room door.

TOTAL INVESTMENT **\$ 2,671.65**

CITY OF SCHERTZ - PD WEIGHT ROOM					
Device	Manufacturer	Part Number	Qty Bid	Price Ea	Total Price
ACCESS CONTROL					
Subcontroller	Open Options	RSC-1AP	1	\$345.65	\$345.65
Card Reader	HID	RP40, 920PHRNEK00006	1	\$274.33	\$274.33
Electrified Strike	Hess	5000C	1	\$271.25	\$271.25
Recessed Door Contact	Sentrol	1078C	1	\$10.08	\$10.08
Rex Motion	Bosch	DS150i	1	\$82.13	\$82.13
Misc. Material		Misc. Material,Conduit, Fittings, Etc...	1	\$155.00	\$155.00
Wire		CAT6E	0.5	\$383.36	\$191.68
Wire		Composite (Southwire #H916021A)	0.25	\$964.10	\$241.03
Material Totals					\$1,571.15
Labor Totals					\$1,100.50
Building Total					\$2,671.65

Roy Charbonneau
 Manager Central Texas
 DAC, Inc.
 Cell: 281 507-7014
 Email: rcharbonneau@dac-inc.com

PROJECT TEAM

LOCAL EXECUTION

DAC employs approximately 120 people in the State of Texas, of which more than 85% are dedicated to engineering, project management, technology and installation. We are prepared to execute the City of Schertz access control upgrade project and have resources ready to allocate to this project immediately.

DAC understands the complexity of your project and the rigors of maintaining a functional Access Control System during transition to a new platform. Our team members represent an efficient model of delivering a project under these requirements. We've been diligent in allocating resource loads across all phases of construction and technology migration to ensure the project is well designed, executed with precision, fully commissioned and turned over to the City of Schertz for a long-term operation.

INSTALLATION

To maintain an agreed installation schedule, DAC will structure our installation team(s) to work in tandem in various areas of the project if required. Our team(s) will be responsible for specific areas of the project with a Project Foreman assigned to the responsibilities of completing the work efficiently. Using our own installation forces allows DAC to better control the project schedule, effectively load manpower when necessary, coordinate with onsite trades, and control cost and quality.

Project Team:

Operations Manager:

ROY CHARBONNEAU | Security Operations Manager
DAC, Inc. | 2090 North IH 35 Suite 5115 | New Braunfels,
TX 78130
o 210.988.60126 | m 281 507-7014 | rcharbonneau@dac-inc.com

Senior Project Manager:

TERRY E. VANN | Senior Project Manager - Central Texas Branch
DAC, Inc. | 2090 North IH 35 Suite 5115 | New Braunfels,
TX 78130
o 210.988.6012 | m 210.380.0436 | tvann@dac-inc.com

System Specialist:

David Lewis | System Specialist Central Texas Branch
DAC, Inc. | 2090 North IH 35 Suite 5115 | New Braunfels,
TX 78130
o 210.988.6012 | m 210.847-4230 | dlewis@dac-inc.com

SIGNATURE PAGE

PROPOSAL ACCEPTANCE

This proposal is hereby accepted and DAC, Inc. is authorized to proceed with the scope of work described herein. This document serves as a notice to proceed. DAC payment terms are Net 30 days.

City of Schertz

DAC, Inc.

Signature

Signature

Name

Name

Title

Title

Date

Date

TERMS + CONDITIONS

LIMITED WARRANTY; EXCLUSIONS + DISCLAIMERS

1. To the extent not otherwise warranted pursuant to an applicable manufacturer's warranty, DAC, Inc. warrants all Equipment and installation labor rendered as part of the Work against defects in materials and labor for a period of twelve (12) months (the 'Warranty Period') from the date of substantial completion of the installation; provided, however, no warranty is made as to, and there is specifically excluded from the warranty, any and all expendable supplies, equipment and parts, or any portions of the Work which have been misused, abused, not used in the manner intended, neglected, or damaged by an act of God or altered, modified, or manipulated in any manner by Customer or a third party. Any defect in the installation during the Warranty Period will be repaired or replaced at the option of DAC, Inc. Any shipping charges in connection with a repair or replacement shall be the responsibility of Customer. The repair or replacement shall constitute Customer's sole remedy against DAC, Inc.
2. DAC, Inc. MAKES NO OTHER OR FURTHER WARRANTY WITH RESPECT TO INSTALLATION LABOR, MATERIALS AND EQUIPMENT OR ANY OTHER PORTION OF THE WORK OTHER THAN THE FOREGOING WARRANTY AND SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
3. IN NO EVENT SHALL DAC, Inc. BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OR FOR LOST PROFITS, LOST SALES, INJURY TO PERSON OR PROPERTY OR ANY OTHER CAUSE AS A RESULT OF A DEFECT IN LABOR, EQUIPMENT OR OTHER SUPPLIES OR MATERIALS WITH RESPECT TO ANY ITEM FURNISHED UNDER THE AGREEMENT, MALFUNCTION OR NONFUNCTION OF ANY SYSTEM, WRONGFUL PERFORMANCE OF OR FAILURE TO PERFORM ANY ACTS INCLUDED IN THE WORK, TRANSPORTATION DELAYS OR BREACH OF WARRANTY.
4. Customer acknowledges that no warranty, representation, or statement by any representative of DAC, Inc. not stated herein shall be binding. This writing, and the document or documents attached hereto or of which this writing is a part, if any, constitutes the final expression of the parties' agreement and is a complete and exclusive statement of the terms of the Agreement.

LIMITATION OF LIABILITY

5. The parties understand and agree that: (a) the Work is intended to constitute or be part of a security system designed to reduce risk of loss for the Customer; (b) Customer has selected, accepted and approved the Scope of Work after considering and balancing the levels of protection afforded by various types of systems and services available to it and the related costs of them; (c) neither DAC, Inc. nor any person engaged by DAC, Inc. to perform any portion of the Work shall be construed to be an insurer of the person or property of Customer, its employees, agents, contractors, assigns, customers, invitees or any other person at the location(s) where the work is performed (the "Location(s)"); (d) the Price and Payment Terms are based solely on the cost and value of DAC, Inc. providing the Work and are unrelated to the value of property of Customer or others located at the Location(s); (e) the Price and Payment Terms do not contemplate any payment being made or consideration being given to DAC, Inc. for any guarantee, warranty or insuring agreement by any one or more of them to Customer with respect to the person or property of anyone; (f) DAC, Inc. MAKES NO GUARANTEE OR WARRANTY OF ANY KIND THAT THE WORK (INCLUDING ANY MATERIALS AND EQUIPMENT SUPPLIED AS PART OF THE WORK) WILL AVERT OR PREVENT OCCURRENCES OR CONSEQUENCES THEREFROM WHICH THE WORK IS DESIGNED TO DETECT OR AVERT.
6. Notwithstanding the foregoing provisions of this Section or for whatever reason, DAC, Inc. should be found liable for personal injury or property loss or damage caused by a failure to perform by DAC, Inc. or the failure of any materials or equipment in any respect whatsoever or a court of proper jurisdiction determines the limitations on warranties are inapplicable, Customer agrees that the aggregate liability of DAC, Inc. under or with respect to the Agreement, the Work to be performed under, and any warranty provided pursuant to, the Agreement, shall be limited to a sum equal to the lesser of (i) one-tenth (1/10) of the total Price to be paid by Customer under the Agreement, (ii) if the Price is to be paid in monthly payments or installments (other than progress payments), an amount equal to six (6) monthly payments, or (iii) Five Hundred Dollars (\$500.00), and this liability shall be exclusive, and that the provisions of this subsection shall apply if loss or damage, irrespective of cause or origin, results directly or indirectly to persons or property, from performance or nonperformance of the Work, from breach of warranty, or from negligence, active or otherwise of DAC, Inc..

INDEMNIFICATION

7. When Customer ordinarily has the property of others in its custody, or the Work extends to the protection of the person or property of others, Customer shall indemnify, save, defend and hold harmless DAC, Inc. from and against all claims brought by parties other than the parties to the Agreement. This provision shall apply to all claims regardless of cause, including the performance or failure to perform by DAC, Inc., and including without limitation, defects in products or system design, installation, repair service, monitoring, operation or non-operation of materials or equipment, whether based upon negligence, active or passive, express or implied contract or warranty, contribution or indemnification or strict or product liability; provided, however, Customer shall have no duty to indemnify in the case of gross negligence or willful misconduct by DAC, Inc., its employees, agents or assigns. Customer agrees to indemnify DAC, Inc. against, and to defend and hold DAC, Inc. harmless from any action for subrogation which may be brought against DAC, Inc. by any insurer or insurance company or its agents or assigns including the payment of all damages, expenses, costs and reasonable attorney's fees. Design Development, Programming, Drawings, Ownership, and Software License(s)
8. Design Development. Customer and DAC, Inc. have together developed or will develop the design and specifications for the Work. When Customer has accepted or approved the design and specifications, the sole and final responsibility for the design and specifications shall be Customer's. DAC, Inc. shall have no liability to Customer for any loss or damage claimed against or incurred by Customer or any employee, agent or licensee of Customer because of any defect or alleged defect in the design or specifications or the failure of the equipment or the Work to perform as desired or anticipated by Customer.
9. Programming. Security system programming is an essential element of the systems operation and performance. Customer acknowledges and agrees that security system programming is an ever-changing process, and in significant part subject to Customer's day-to-day and other business operations and parameters and the changes or modifications to them. To the extent required by the design and specifications of the Work, DAC, Inc. shall: (i) Load a configuration program that will allow Customer's security system to perform basic access control operation, door timers, lock timers, and basic alarm functions; and (ii) Provide a total number of hours of personnel training regarding Customer's security system as specified in the Agreement; if a number of hours is not specified, the total number of hours of training shall not exceed fifteen (15). Personnel training may include training of operators, administrators, or other personnel designated by Customer. Training subjects shall be dictated by Work specifications but may include password configuration, door identification, timers, alarms and reports. Additional training, programming or related consulting services provided by DAC, Inc. at Customer's request shall be provided at an above contract cost.
10. Drawings:
 - a. To the extent required by the design and specifications of the Work, DAC, Inc. shall provide reasonable descriptions of the functional operation of the system(s) being provided by the Work by furnishing riser diagram drawings.
 - b. DAC, Inc. may provide, at Customer's request and at an above contract cost, detail drawings utilizing industry standard electronic floor plans.
11. Ownership. Prior to completion of the Work, any drawings, specifications and equipment lists developed in connection with the design for the Work shall remain the property of DAC, Inc. whether the Work for which they were made is executed or not. Drawings, specifications and equipment lists shall be returned to DAC, Inc. on demand at any time prior to substantial completion of the Work. Prior to substantial completion of the Work, any drawings, specifications and equipment lists: (a) shall be considered confidential information and trade secrets of DAC, Inc. unless they constitute information which is exempted or excluded by law from confidential and trade secret status; (b) shall not be used by Customer on other projects or extensions of a project included within the Work, or to obtain other bids, except by agreement in writing and with appropriate compensation to DAC, Inc. ; and (c) are not to be reproduced in whole or in part without prior written consent of DAC, Inc.. Upon substantial completion of the Work and final payment in full by Customer, ownership of drawings, specifications and equipment lists shall become Customer's.
12. Software License(s). Software required to operate systems are governed by the License Agreement provided by the system manufacturer(s).

INSTALLATION

13. All required installation documents are included.
14. Installation of all required equipment and materials with on-site supervision of project is included.
15. Labor quoted assumes normal eight (8) hour working days, excluding weekends, holidays and overtime.
16. Idle time incurred by DAC, Inc. employees and their subcontractors due to escorts, clearances, inability to enter workspace, and other factors beyond our control, will be invoiced at our current labor rates.
17. This proposal includes travel to and from the site to perform our stated scope of work. Additional or duplicate site visits required due to factors beyond our control, will be invoiced at our current labor rates.
18. Client to coordinate with local DAC, Inc. staff to provide safe and timely right-of-passage in the work area during cable run and system installation.
19. Client to provide and coordinate 110 VAC electrical service where needed.
20. All LAN/WAN connections, addressing and network functionality are the responsibility of the Client.
21. Any telephone lines or LAN/WAN connections must be installed and operational prior to DAC, Inc. commencing work. The local DAC, Inc. representative will verify the availability and functionality of all connections prior to starting work.

CHANGES IN SCOPE OF WORK

22. Any changes in the understood scope of work will be communicated and approved in writing (by an authorized Client representative), prior to commencing work.

PERMITS/BONDING/SEALED ENGINEERED DRAWINGS

23. Permits, bonds, and other requirements by any government agency are not included.

MISCELLANEOUS

24. The bold headings and numbered paragraphs are for convenience only, have no legal significance, and shall not be deemed to alter or effect any provision of this Agreement.
25. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
26. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of non-liability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.
27. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this agreement, but this agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

CITY COUNCIL MEMORANDUM

City Council Meeting: August 11, 2020
Department: Information Technology
Subject: Resolution No. 20-R-78 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, for the authorizing of an agreement with DAC, Inc. of New Braunfels, Texas, for the city-wide access control systems upgrade project. (B. James/M. Clauser)

BACKGROUND

Currently, physical access to City facilities by employees and other authorized personnel is managed through one of two different badge access control systems. Both systems have been in place for at least 15 years and are now completely obsolete. Parts are no longer available from the manufacturers for routine maintenance, and when an entry point fails it can take weeks for the vendor to find replacements on the secondary market. Three years ago a stakeholder group was created that included staff members from the Police Department, Facilities, and IT and others to review options for consolidating and replacing the current access control systems into a single centrally managed system.

Input from various departments was solicited and the team identified a series of requirements. The major requirements included:

- The new system had to be backwards-compatible with the existing locking hardware used by the City.
- Next, the system had to have an interface with the City's centralized security camera management system from Ocularis.
- The new system also had to allow the use of existing employee badges, as well as be able to accommodate newer badge technologies such as chip-cards, RFID, etc.
- The system had to provide advanced report capabilities to allow audit trails, custom and recurring reports, etc.
- The system had to allow tenants of City buildings to manage their sites directly while retaining overall oversight by the City.
- Another requirement was to allow staff managing certain venues the ability to issue time-limited access cards to renters that would reduce the need for staff to be available at all times to open a venue in advance of the event and stay to lock the doors once the event is over.
- Another requirement included the need to be able to integrate employee badges into the login process to ensure compliance with federal mandates for 2-factor authentication into the secure data network.

The team reviewed multiple systems on the market and eventually recommended that the City upgrade the existing system from Open Options currently in use by PD. Open Options is a registered vendor with the state DIR Buy Board, and their representatives provided contact information for 2 vendors in Central Texas that were qualified to support their product. After reviewing documentation and presentations from both vendors the team decided to contract with DAC, Inc. of New Braunfels, Texas to manage the upgrade.

The overall project is expected to be completed in three phases. Phase one as presented here will focus

on replacing the software, back-end hardware, wiring (as needed), and door control systems in each City facility that already has an access control system in place. The vendor will also provide integration into our camera management system. Phases two and three will add new facilities, replace outdated door lock hardware as needed and add access control management to outlying facilities such as pump stations, water towers, etc. Once those phases are complete the City will continue to expand the use of the system to include integrating badge access to sensitive data, security management systems, etc.

GOAL

This upgrade to the existing access control system currently in use in PD will consolidate all City facility access into a single system. This will increase efficiency by providing a single centrally-managed system and will allow for the use of industry-standard access control hardware moving forward. This upgrade will also provide enhancements that will allow tenants such as the YMCA to better manage access to their individual sites. This system will provide the necessary foundation for integrating security camera monitoring and for upgrading network management by integrating security badge access to our network infrastructure.

COMMUNITY BENEFIT

As the City continues to grow a centrally managed flexible access control system provides many opportunities to enhance efficiency and improve Public Safety response. By integrating the system into our existing security camera management system, for example, this system will allow our dispatchers to see and hear alerts presented by the access control monitoring system and view the nearest security camera on a large screen in the dispatch area. Dispatchers can then provide the appropriate response to the alert as opposed to always sending an officer.

Another benefit of this upgrade will be that sponsors of events can be issued time-limited access cards to venues such as the Civic Center, the Northcliffe Center and the meeting room in Fire Station 3 to allow them to get into the venue for their events. This will reduce the effort needed by staff to personally manage access to these sites and improve the City's ability to provide quality service for events while reducing the need for overtime.

SUMMARY OF RECOMMENDED ACTION

Staff recommends that Council approves the contract with DAC, Inc. of New Braunfels in the amount of \$166,956.19 with not to exceed amount of \$175,000 for phase one of the City-wide Access Control Upgrade Project.

FISCAL IMPACT

In 2018 Certificates of Obligation in the form of bonds were issued in the amount of \$300,000 to fund this project. Phase One, as presented here will allocate \$164,415.41 and allowing a contingency to a total not to exceed amount of \$175,000. The remaining funds will be used for subsequent phases.

RECOMMENDATION

Staff recommends that Council approves the contract with DAC, Inc. of New Braunfels in the amount of \$164,415.41 with a not to exceed amount of \$175,000 for phase one of the City-wide Access Control Upgrade Project.

Attachments

RESOLUTION NO. 20-R-78

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AN AGREEMENT WITH DAC, INC OF NEW BRAUNFELS, TEXAS FOR THE CITY-WIDE ACCESS CONTROL SYSTEMS UPGRADE PROJECT , AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City staff of the City of Schertz (the “City”) has recommended that the City enter into an agreement with DAC, Inc of New Braunfels Texas for the purpose of implementing phase one of the City-Wide Access Control System Upgrade project; and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into an agreement with DAC, Inc of New Braunfels Texas for the purpose of implementing phase one of the City-Wide Access Control System Upgrade project, in the amount of \$164,414.41 with a not-to-exceed value of \$175,000 to cover contingencies.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to enter into an agreement with DAC, Inc of New Braunfels Texas for the purpose of implementing phase one of the City-Wide Access Control System Upgrade project in the amount of \$164,414.41, with a not to exceed value in the amount of \$175,000 to cover contingencies.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 11TH day August, 2020.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

CITY COUNCIL MEMORANDUM

City Council Meeting: May 25, 2021
Department: Engineering
Subject: Ordinance No. 21-T-23 - Consideration and/or action approving an Ordinance by the City Council of Schertz, Texas authorizing an adjustment to the Fiscal Year 2021 Budget to provide for construction of the Elbel Storm Drain and Overlay Project, repealing all ordinances or parts of ordinances in conflict with this ordinance and providing an effective date. *First Reading*

BACKGROUND

Previously Council authorized a Professional Engineering Services Agreement and an amendment to the original agreement with Ford Engineering, Inc., to design the Elbel Storm Drain and Overlay project. The project includes storm drain extensions in Elbel to address drainage issues; installation of a traffic signal at the Westchester and Elbel intersection; and a mill and overlay of the street surface. The project design is nearly fully complete, making the project ready to go out to bid once construction funding was identified.

Due to the various COVID related cost reimbursements the City of Schertz has received, some excess General Funds are now available for construction of the project. Additionally, this year the City of Schertz received additional "Veterans Exemption Funds." The budget contained an anticipated \$500,000 of "veterans Exemption Funds" being received, but the City actually received \$1,000,000. This provides \$500,000 more excess General Fund Reserves in the budget.

The proposed budget amendment uses \$1,400,000 of excess General Fund Reserves associated with the COVID cost reimbursements and \$250,000 of excess General Fund Reserves associated with the additional "Veterans Exemption Funds," for a total of \$1,650,000. In order for funding to be made available for construction, Council must approve a budget amendment ordinance.

Proposed ordinance 21-T-23 allocates \$1,650,000 for construction of the Elbel Storm Drain and Overlay project. After the project is bid, if additional funding is needed, an additional budget amendment request will be made to Council. Funding that is not used for construction of the project will be returned to the General Fund and be available for other expenditures.

GOAL

To amend the fiscal year 2020-2021 budget to provide funding for the construction of the Elbel Storm Drain and Overlay Project.

COMMUNITY BENEFIT

The budget amendment allows the project to be completed sooner than originally identified in the SPAM 5-year Capital Improvement Plan. It also provides a different funding source for the project than SPAM funding, allowing the SPAM funding to continue to fund projects identified earlier in the 5-year plan. Construction of the project helps minimize existing drainage issues on Elbel, which helps increase pavement longevity; provides a new driving surface; and provides a traffic sign that improves pedestrian and vehicular safety at the Elbel/Westchester Intersection.

SUMMARY OF RECOMMENDED ACTION

Approval of Ordinance 21-T-23 authorizing the budget adjustment to provide construction funding for the Elbel Storm Drain and Overlay project.

FISCAL IMPACT

Funding for the proposed construction would come from excess General Fund reserves realized by COVID-related reimbursements and excess "Veterans Exception Funds" received.

RECOMMENDATION

Staff recommends approval of Ordinance 21-T-23, providing construction funding for the Elbel Storm Drain and Overlay project.

Attachments

Ordinance 21-T-23

ORDINANCE NO. 21-T-23

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AN ADJUSTMENT TO THE FISCAL YEAR 2021 BUDGET TO PROVIDE FUNDING FOR CONSTRUCTION OF THE ELBEL STORM DRAIN AND OVERLAY PROJECT, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, pursuant to Ordinance 20-T-23, the City Council of Schertz, Texas, (the “City”) adopted the budget for the City for the fiscal year 2020-2021 (the “Budget”), which provides funding for the City’s operations throughout the 2020-2021 fiscal year; and

WHEREAS, the City needs to authorize a budget amount of \$1,650,000 for the purpose of construction and other associated expenses related to the Elbel Storm Drain and Overlay Project; and

WHEREAS, City staff recommends that the City Council of the City adjust the Budget and approve the ordinance; and

WHEREAS, the City Council of the City has determined that it is in the best interest of the City to adjust the Budget and approve the budget transfer for the Elbel Storm Drain and Overlay Project, as more fully set forth in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS:

Section 1. The City shall transfer a budget of \$1,650,000 from the General Fund Reserves to the Elbel Storm Drain and Overlay Project.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 3. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 4. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter

of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 7. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

PASSED ON FIRST READING, the 25th day of May, 2021.

PASSED, APPROVED and ADOPTED ON SECOND READING, the 1st day of June, 2021.

CITY OF SCHERTZ, TEXAS

Mayor

ATTEST:

City Secretary

(CITY SEAL)

CITY COUNCIL MEMORANDUM

City Council Meeting: May 25, 2021
Department: Parks, Recreation & Community Service
Subject: Resolution No. 21-R-35 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing the City Manager to amend the existing License and Management Agreements with the YMCA, by canceling the Management of the Wendy Swan Memorial Park Pool. (B. James/L. Shrum)

BACKGROUND

The Wendy Swan Memorial Park Pool was formerly an HOA-owned pool in the Northcliffe subdivision and as such was only designed to serve a small amount of people at one time. The capacity of the pool area is 50 people, but the pool rarely reaches capacity. Its small size does not afford a lot of opportunities for activities, so it is not as in demand as our other pools. When the pandemic hit in March 2020 there were capacity limits placed on facilities including outdoor pools, and the 25% capacity allowed at the start of the summer would have only allowed 12 people to enter the pool. City staff and YMCA staff (who are contracted to manage the outdoor pools) deemed it not feasible to open Wendy Swan Memorial Park Pool at that time.

City staff began researching the idea of converting the small residential-sized pool into a splash pad utilizing the existing filtration equipment which is in fairly good condition. The proposed small splash pad will fit into the existing footprint of the old pool, will utilize the existing restrooms and covered porch area, and the fence will come down for access. Currently, the pool is only open from Memorial Day Weekend through the start of the school year in August. Converting to a splash pad would eliminate the need for the facility to have lifeguards and thus allow for an extended season of March - October.

In February 2021 Texas experienced Winter Storm Uri and many facilities suffered damage from freezing pipes, including the Wendy Swan Memorial Park Pool House and Restroom Facility. Bidding is complete and the repairs are extensive at the pool house, so City staff is pausing to combine the repairs into the larger splash pad project to convert the restrooms to continuous public access like at other parks, and to ensure the restrooms are fully accessible.

GOAL

At this time, the goal is to amend the contract to cancel the management of Wendy Swan Memorial Park Pool and keep the pool closed for now. The next step will be to host a public meeting in the neighborhood to gather feedback from residents on the proposal to close the pool permanently and convert the pool into a small splash pad. If the neighborhood is supportive of the conversion, city staff will come back to council with the budget amendment and contract to construct the splash pad.

COMMUNITY BENEFIT

The community will benefit from this conversion by having a new splash pad that has open public access and an extended public season. The only splash pad that is currently in the city is integrated with the Recreation Center and Aquatic Center and there is currently a fee associated with accessing that splash pad. Instead of the existing facility only being utilized May – August from 12-7 pm, this new facility will be open March – October from 10-8 pm (may vary based on Daylight Savings Time.) In addition, non-swimmers can utilize this facility, so many families with young children will benefit from this facility conversion. The small splash pad would utilize the existing filtration equipment and incorporate the existing restroom facility and porch overhang for potential birthday party rentals. There is also an existing picnic pavilion behind the restrooms that would be more desirable for party rentals if the pool was converted to a splash pad.

SUMMARY OF RECOMMENDED ACTION

Approve Resolution 21-R-35

FISCAL IMPACT

Preliminary estimates for this conversion are approximately \$250,000 - \$300,000. The goal is to cancel the management agreement for the Wendy Swan Memorial Park Pool which costs the city \$89,939 per year (half of the total outdoor pools management fee of \$179,878.) After some discussion with the vendor it has been determined that between 60-80% of the vendors costs are spent on managing Pickrell Pool, thus city staff is proposing to renegotiate the contract and pay 60% of the original contract price to operate Pickrell Pool going forward (\$107,926.) The annual savings to the city would be \$71,952 per year. The city would construct the splash pad utilizing reserve funds (after coming back to council for authorization to proceed with construction) and the savings from the cancellation of the management contract, would pay back the reserve fund in 4 years.

RECOMMENDATION

Approve Resolution 21-R-35 to amend the existing license and management agreements with the YMCA by canceling the management of the Wendy Swan Memorial Park Pool.

Attachments

Outdoor Pool Amendment
Resolution 21-R-35

**AMENDMENT ONE TO THE RECREATION CENTER LICENSE
AGREEMENT AND OUTDOOR POOLS MANAGEMENT AGREEMENT**

This Amendment is made to that **RECREATION CENTER LICENSE AGREEMENT AND OUTDOOR POOLS MANAGEMENT AGREEMENT** previously executed by and between the CITY OF SCHERTZ, TEXAS ("City") and Young Men's Christian Association of Greater San Antonio, a Texas non-profit organization (the "YMCA").

It is mutually understood and agreed by and between the undersigned contracting parties to terminate the management of the Wendy Swan Pool, located at 4601 Cherry Tree Dr, Schertz, TX 78108 as allowed for in section 11(f) of the original agreement and amend that previously executed agreement such as follows to account for the management of the Pickrell Park Pool, located at 703 Oak St, Schertz, TX 78154:

Section 11. General Terms of Operation, Use and Maintenance of the Outdoor Pool(s)

- (a) Cost: The total maximum cost payable to the YMCA for the YMCA's management of the Pickrell Pool for each year of this Agreement shall be One Hundred Seven Thousand Nine Hundred Twenty Six and No/100 Dollars (\$107,926.00), which shall be paid in two (2) payments of Fifty three thousand nine hundred sixty three and No/100 Dollars (\$53,963.00) by Schertz to the YMCA on or before June 1 of each year and July 1 of each year of this Agreement, with a final payment of Fifty three thousand nine hundred sixty three and No/100 Dollars (\$53,963.00) paid on or before August 1 of each year of this Agreement.
- (b) Revenues from the Outdoor Pools: Schertz shall receive and retain all revenues from gate receipts, season pass receipts, and concession receipts. The YMCA shall receive and retain all revenues from YMCA programs, including swimming lessons and aquatic programs, and all receipts for the Outdoor Pools rentals and pool parties. YMCA will not charge swimming teams for reserved lanes for swim practice.
- (c) Scope of Work: The YMCA shall perform all work for the operational management of the Outdoor Pools as shown in Exhibit H, attached hereto and incorporated herein for all purposes.
- (d) Active Terms: The provisions of this Agreement with respect to the management of the Outdoor Pools shall be applicable for a three-month period of approximately May 24 through August 24 during each calendar year of this Agreement (each an "Active Term"). The precise Active Term for each calendar year will be provided by Schertz to the YMCA at least sixty (60) days prior to the beginning of each year's three-month Active Term.

- (e) YMCA Obligation and Rights: YMCA shall, at its expense, for each Active Term of this Agreement, obtain all permits, certifications, and licenses, and pay all related fees and taxes, necessary for the performance of its work and services under this Agreement, and will comply with all laws, ordinances, rules and regulations governing YMCA's performance of this Agreement, including all environmental laws and regulations, whether state or federal. Schertz will waive all fees for City-required permits, licenses, and inspections related to the Outdoor Pools. All work shall be done in strict conformity with this Agreement. YMCA shall have exclusive control of the day-to-day operations of the Outdoor Pools, subject to the right of Schertz to inspect the Outdoor Pools to ensure that YMCA is properly carrying out the terms of this Agreement. YMCA agrees that all of its employees shall be fully qualified and competent to do the work required under the terms of this Agreement. All minor detail of the work not specifically mentioned in this Agreement but obviously necessary for the proper completion of the work shall be considered as incident to and a part of the work for which payment is made to the YMCA under this Agreement. YMCA will not be entitled to any additional compensation therefor unless specifically stated otherwise in this Agreement
- (f) Termination of the Outdoor Pool(s) Management: Schertz may terminate the management of the Outdoor Pool(s) at will for no or any reason upon giving at least ninety (90) days advance written notice to YMCA. The parties to this Agreement understand and agree that it is in Schertz's reasonable discretion to terminate the provisions of this Agreement with respect to Outdoor Pool without penalty to Schertz or the YMCA. YMCA has no expectation and has received no guarantees that the provisions of this Agreement set forth in this **Section 11** with respect to Outdoor Pool will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of this termination option upon tender of the requisite notice at any time during the term of this Agreement. Upon termination, all equipment, furniture, fixtures, and supplies purchased, provided, owned, or brought into the Outdoor Pools by YMCA will remain the property of the YMCA and will be removed from the applicable Outdoor Pool(s) at the end of the ninety (90) day notice period. Upon termination, all equipment, furniture, fixtures, and supplies purchased, provided, owned, or brought into the applicable Outdoor Pool(s) by Schertz will remain the property of Schertz. All work and services under this Agreement and all payments hereunder for work and services after the date of termination shall be terminated in accordance with **Section 11(g)** upon termination of the provisions of this Agreement set forth in this **Section 11** with respect to the Outdoor Pool(s).
- (g) Payment: As full consideration for the services which the YMCA shall provide to Schertz with respect to the Outdoor Pool(s), the YMCA shall receive the total sum described in Section 11(a). Any sums due and payable hereunder which are not paid within ten (10) days of the due date shall bear interest at the rate as set by the State of Texas, from the date due until the date of payment. In the event the provisions of this Agreement set forth in this Section 11 with respect to the

Outdoor Pool(s) are terminated pursuant to Section II(f), the payments due to YMCA hereunder shall be prorated on a daily basis of Nine Hundred Ninety-Nine and 32/100 Dollars (\$999.32) for one Outdoor Pool, as applicable, and YMCA shall rebate to Schertz or Schertz shall pay the YMCA, as applicable, such amount as shall be necessary to reflect the pro rata portion of the total amount payable to YMCA under Section II(a) through the effective date of such termination.

All other requirements, terms, and conditions that are not hereby amended are to remain in full force and effect.

EXECUTED on this the _____ day of _____, 20__.

CITY:

CONTRACTOR:

By: _____
Name: Dr. Mark Browne
Title: City Manager

By: _____
Name: _____
Title: _____

ADDRESS FOR NOTICE:

CITY:

CONTRACTOR:

City of Schertz
Attn: Mark Browne, City Manager
1400 Schertz Parkway
Schertz, Texas 78154

Name
Address
City, State Zip
Number

RESOLUTION NO. 21-R-35

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE CITY MANAGER TO AMEND THE EXISTING LICENSE AND MANAGEMENT AGREEMENTS WITH THE YMCA, BY CANCELLING THE MANAGEMENT OF THE WENDY SWAN MEMORIAL PARK POOL .

WHEREAS, the agreement between the YMCA and City of Schertz authorized in 2016 by Resolution 16-R-41 in Section 11(f) allows for the cancellation of management of one or both pools; and

WHEREAS, the City has determined it's in the best interest to close Wendy Swan Memorial Park Pool for a future conversion to a splashpad; and

WHEREAS, the City Council grants the City Manager authorization to amend the contract.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to amend the existing license and management agreements with the YMCA set forth as Exhibit A, by cancelling the management of the Wendy Swan Memorial Park Pool.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 25th day of May, 2021.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

EXHIBIT A

**LICENSE AND MANAGEMENT AGREEMENTS WITH THE YMCA FOR THE
MANAGEMENT AND OPERATIONS OF THE RECREATION, CENTER, OUTDOOR
POOLS, SPLASH PAD, ENCLOSED COMMUNITY SWIMMING POOL OF
COMPETITION QUALITY AND INDOOR RECREATION POOL**

CITY COUNCIL MEMORANDUM

City Council Meeting: May 25, 2021
Department: Finance
Subject: Pilot Program - Introduction of a Pilot Program for Residential Irrigation Meters. (B. James/J. Walters)

BACKGROUND

Currently, residential buildings come with one standard meter for both in home use and irrigation purposes. Water use is tracked by the meter and sewer charges are estimated using a technique called Winter Averaging. The City pays a treatment provider to clean up the wastewater and those charges are shown on the utility bill as a sewer charge based on the winter average.

If there is only one meter on the property, there is no easy way to determine how much of the water goes into the yard and what goes to be treated at a treatment plant. A common method to estimate the wastewater that goes down the drain to a treatment plant is called Winter Averaging. During the winter months, it is assumed that residents will not water their yards so all of their water usage would be inside the house and go down the drain. The City takes the lowest 3 months of water usage from October through February and comes up with an average use to calculate a monthly sewer rate.

That rate is set for each residential customer for the next year until a new winter average is calculated. New residents without a historical estimate are given a rate based on the citywide average sewer rate until the next winter averaging cycle.

The Winter Average isn't a perfect system but it is widely used by water utility providers. In Schertz, notices are posted on bills, the website, on social media, and in the magazine notifying customers how sewer averaging works and to encourage them to reduce water usage to get a low sewer rate for the upcoming year. However, Staff has been seeing more residents that want to continue to water during the winter and maintain their yards in the region's, mostly, mild winters. This practice causes much higher sewer bills which could be as low as \$38 if water is conserved but could reach over \$100 per month instead.

Some residents are fine with having higher monthly bills if it means they can water through the winter, while others wish for a different calculation method that more accurately reflects sewer use.

Staff has been reviewing options and is proposing to test a new service that will install a second water meter to irrigation lines. Using the information provided by the second meter, staff will be able to tell how much water goes into the yard and will not need to be treated and how much goes into the house and down the drain. This would remove the need to estimate sewer use and provide actual usage information for billing.

The cost for the installation would be on the homeowner. The meter would be \$250 plus a permit fee of \$60 and an additional \$50 for a floodplain permit if applicable. A total charge to the City of \$360 in the floodplain. Based on billing information of residential properties that have high sewer averages, this second meter would pay for itself in 6 months or less and then continue to save customers going forward. After the initial cost of installation, any repairs and meter replacements due to normal wear and

tear would be on the City, just like the original meter.

Staff is proposing a trial period to test the application and billing process before opening it up to the community as a whole. Feedback will be collected from the pilot group to judge how successful this practice will be in Schertz.

Having a second irrigation meter for residential homes is emerging as an alternate to solution to winter averaging used by other utility providers. New Braunfels Utilities as an example has a similar program.

Attached is a copy of the application and program description that would be made available to customers interest in the initial program.

Attachments

Residential Meter Permit Requirements

Residential Meter Application Form

City of Schertz
Planning & Community Development
Residential Irrigation Deduct Meter Permit Requirements
for existing irrigation systems

This optional additional meter will separate irrigation usage from home water usage. Using this information, the City will be able to accurately assess sewer charges rather than estimating sewer charges through winter averaging. A plumbing/irrigation building permit is required for an irrigation deduct meter installation. The following information was compiled to assist residents who wish to install a new irrigation deduct meter. Currently this pilot program is open to the first 25 customers. Per Section 90-46 (6) of the Code of Ordinances of the City of Schertz, the City has the right to enter private property to observe, repair or remove the meter.

Permit Submittal Requirements are as follows:

- Plumbing/Irrigation Permit Application (\$60 permit fee + \$50 floodplain permit if applicable) to be submitted by a licensed plumber. Installation must include a deduct system similar to what is shown below in the illustrations.
- Site survey showing easements, property lines and setbacks with proposed area noted by highlighting, cross hatch, or shading drawn to scale. Provide distances between proposed structure and all property lines, and between main and any other buildings/structures. Show location of the current back-flow prevention device, and the proposed location of the irrigation meter.
- Floodplain Permit Application (if applicable).

Permit Fees:

- See Permit Fee Schedule at <http://schertz.com/538/Building-Permits>

Inspections Requirements:

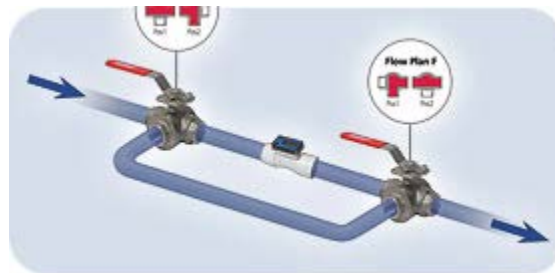
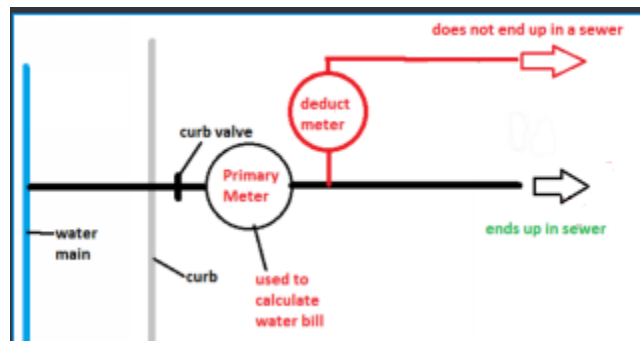
- Open trench/ Final inspection will be done at the same time.
- The system will be under pressure to allow for the leak test.
- The trench will be left open so Inspector can verify proper pipe burial depth.
- The meter box will be in place to confirm proper placement.

To request an inspection, please visit Schertz.com and under the “How do I” tab select “Request an Inspection”. Inspection requests received by 6:00 a.m. will be inspected the same business day. Any request received after 6:00 a.m. will be performed the next business day.

If you have any questions regarding these requirements, please contact the Inspections Division at 210-619-1750 during our regular business hours. Monday through Friday from 8:00 a.m. to 5:00 p.m.

City of Schertz
Planning & Community Development
Residential Irrigation Deduct Meter Permit Requirements
for existing irrigation systems

Illustrations





1400 Schertz Pkwy, Schertz, TX 78154
210-619-1100
schertz.com

Office use Only:

Account Number: _____

Today's Date: _____

Did you: Send Welcome Packet: _____

Request Trash and/or Recycle Bin: _____

Property Manager: Water and Drainage Only: ____ Yes ____ No

Start Date: _____ **Deposit Date & Amount:** _____

Name: _____ **Phone:** _____

Service Address: _____

Mailing Address: _____ **(Circle one) Print Bill OR Email Bill**

Email Address: _____

I hereby agree to the following conditions (Please Initial):

1. ____ Turn on hours are from 8 am to 5 pm, a resident is not required to be present at the home for turn on.
2. ____ I agree to notify the Schertz Utility Billing Office, at least one business day, before ending service.
3. ____ I understand the deposit will be applied to my bill after 2 years of good payment history, or applied to my final bill if service is less than two years.
4. ____ I further agree that if I do not receive my bill, it is my responsibility to contact the Schertz Utility Billing office for the amount due. Failure to receive a bill does not entitle payment without penalty.
5. ____ Any alteration to the meter from its original state, as installed by city personnel, will constitute forfeiture of deposit and may result in theft of service charges.
6. ____ I understand and acknowledge if a sprinkler system is present on my property, it is my responsibility to adjust and maintain the settings to avoid high consumption which may result in a large bill.
7. ____ I agree to keep the Schertz Utility Billing Office informed of any changes in contact information, the Schertz. Utility Billing Office will not be responsible for any problem that may arise by not being able to contact the account holder.
8. ____ **(OPTIONAL)** I hereby request the account records at the Schertz Utility Billing Office be kept confidential, as permitted by the Texas Open Records Act, defined by House Bill 859 (effective 9-1-93).
9. ____ **(OPTIONAL) Residential Irrigation Deduction Meter (cost \$250.00).** I understand per section 90-46 6 of the Code of Ordinances of the City of Schertz, the City has the right to enter private property to observe, repair or remove the meter. Note: This is a trial period and can be canceled at anytime.

Account Holder Information:

Name: _____

Phone Number: _____ Alt. Phone Number: _____ D/L Number: _____

Employer: _____ Phone: _____

Secondary Account Holder Information:

Name: _____

Phone Number: _____ Alt. Phone Number: _____ D/L Number: _____

Employer: _____ Phone: _____

Secondary Account Holder is authorized to make decisions/changes and may have financial obligations to account balances.

Emergency Contact: _____ Phone: _____

APPLICANT SIGNATURE & Date: _____

CITY STAFF SIGNATURE & Date: _____

Water Service Deposits:

Residential: \$125 inside & \$150 outside city limits

Utility Bill includes: Water, Drainage, Trash, Recycle, and Sewer Services

CITY COUNCIL MEMORANDUM

City Council Meeting: May 25, 2021
Department: Fire Department
Subject: COVID-19 UPDATE - Bi-Weekly COVID-19 Update.(C. Kelm/
K.Long/S.Hall)

BACKGROUND

Emergency Management Coordinator Summer Hall has provided the COVID-19 Update as requested by City Council.

Attachments

COVID update

COVID-19 Update

**Summer Hall
Emergency Management Coordinator**

May 20, 2021

Vaccination Update

City of Schertz – Vaccination Clinics

- Vaccination Clinics began - Week of January 4th

Type Administered	Quantity
Pfizer Dose 1 Administered	10,322
Pfizer Dose 2 Administered	13,460
Moderna Dose 1 Administered	4,698
Moderna Dose 2 Administered	2,064
J&J Doses Administered	1,445
TOTAL DOSES ADMINISTERED:	31,989

Vaccination Update

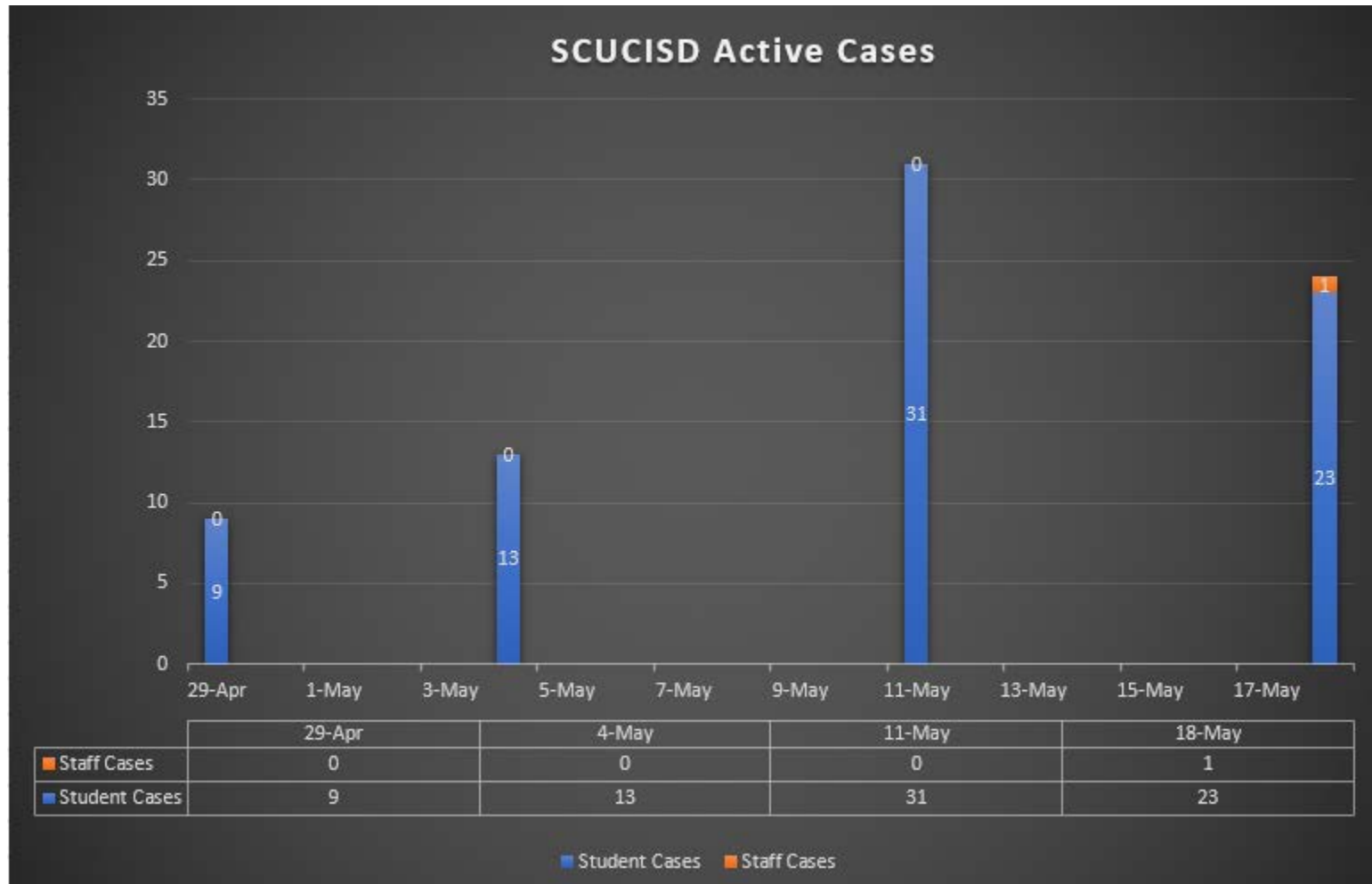
DSHS Vaccine Dashboard Link: [Workbook: COVID-19 Vaccine in Texas \(Dashboard\)](#)

County	Population	Percentage
Guadalupe	12 + with at least one dose	43.22%
Comal	12 + with at least one dose	49.71%
Bexar	12 + with at least one dose	50.19%
Guadalupe	12 + fully vaccinated	35.26%
Comal	12 + fully vaccinated	39.14%
Bexar	12 + fully vaccinated	40.01%
Guadalupe	65 + vaccinated with at least one dose	69.16%
Comal	65 + vaccinated with at least one dose	79.53%
Bexar	65 + vaccinated with at least one dose	74.21%
Guadalupe	65 + fully vaccinated	60.02%
Comal	65 + fully vaccinated	67.02%
Bexar	65 + fully vaccinated	63.27%

Current Numbers

Guadalupe Co.	Comal Co.	Bexar Co.
Confirmed Cases: 11,079	Confirmed Cases: 5,683	Confirmed Cases: 182,467
Probable Cases: 3,807	Probable Cases: 4,951	Probable Cases: 38,150
Fatalities: 212	Fatalities: 296	Fatalities: 3,536
Active Cases: 206	Active Cases: 305	Active Cases: 3,983
Recovered Cases: 14,442	Recovered Cases: 10,033	Recovered Cases: 213,098

SCUCISD Active Case Count

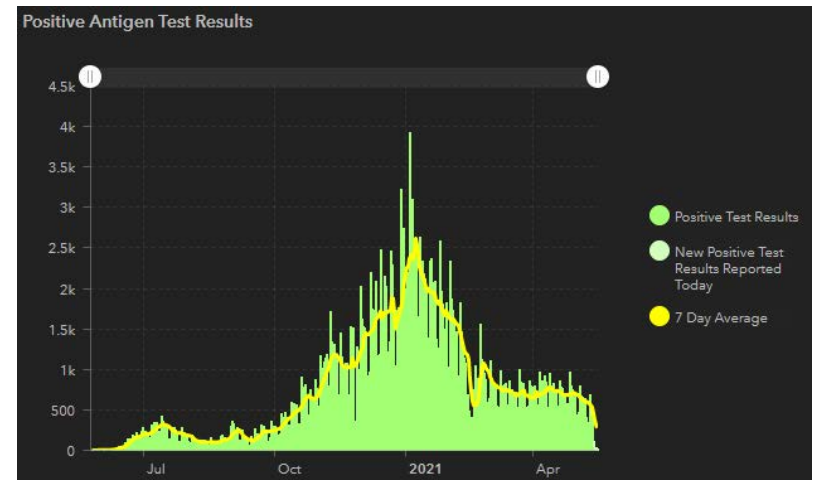
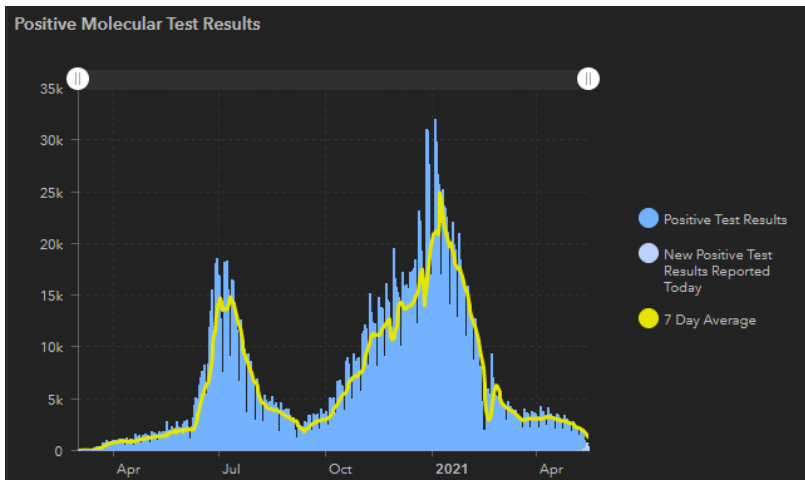


Testing Positivity Rates

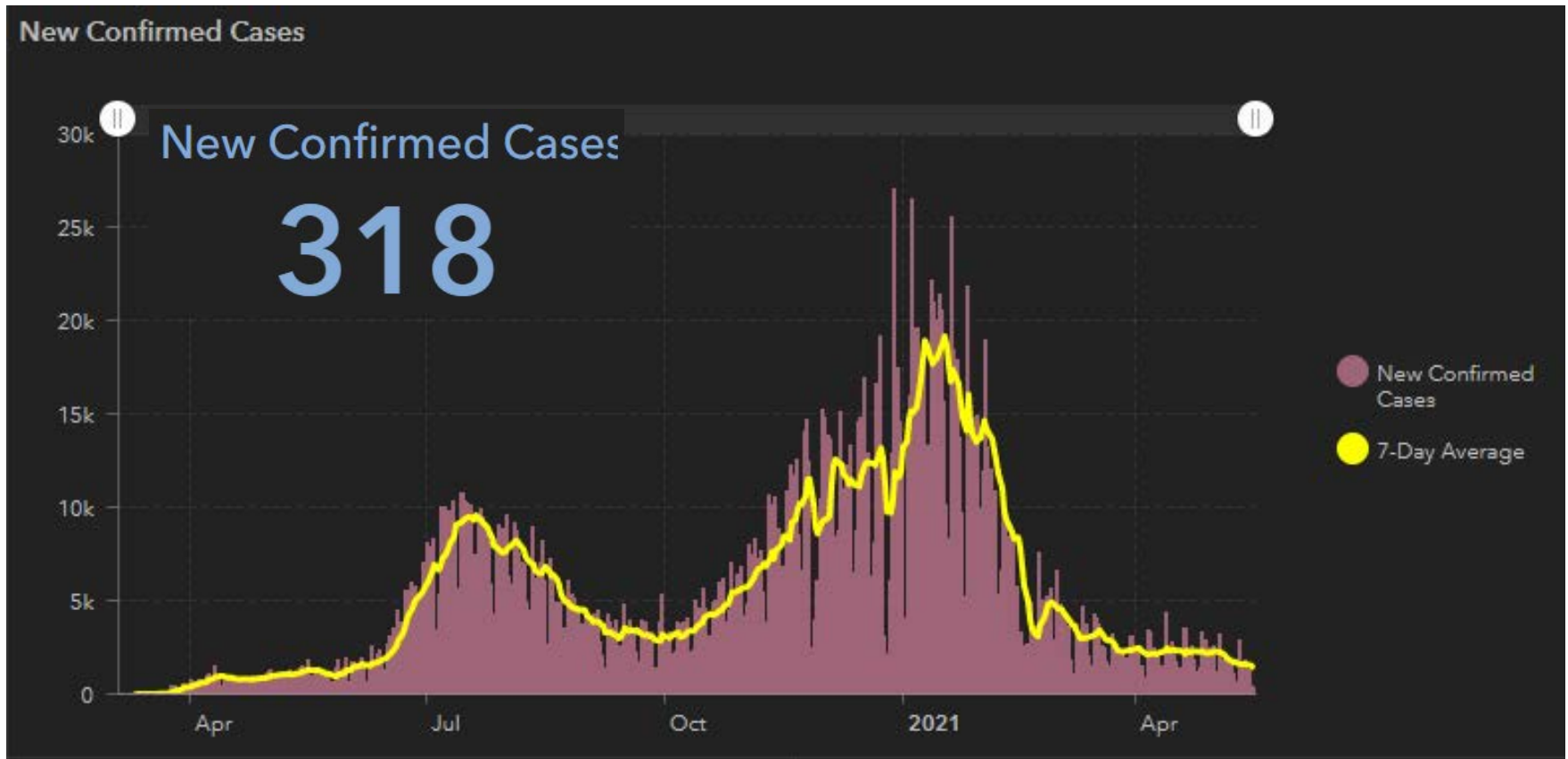
State of Texas

3.74% - Molecular

2.3% - Antigen

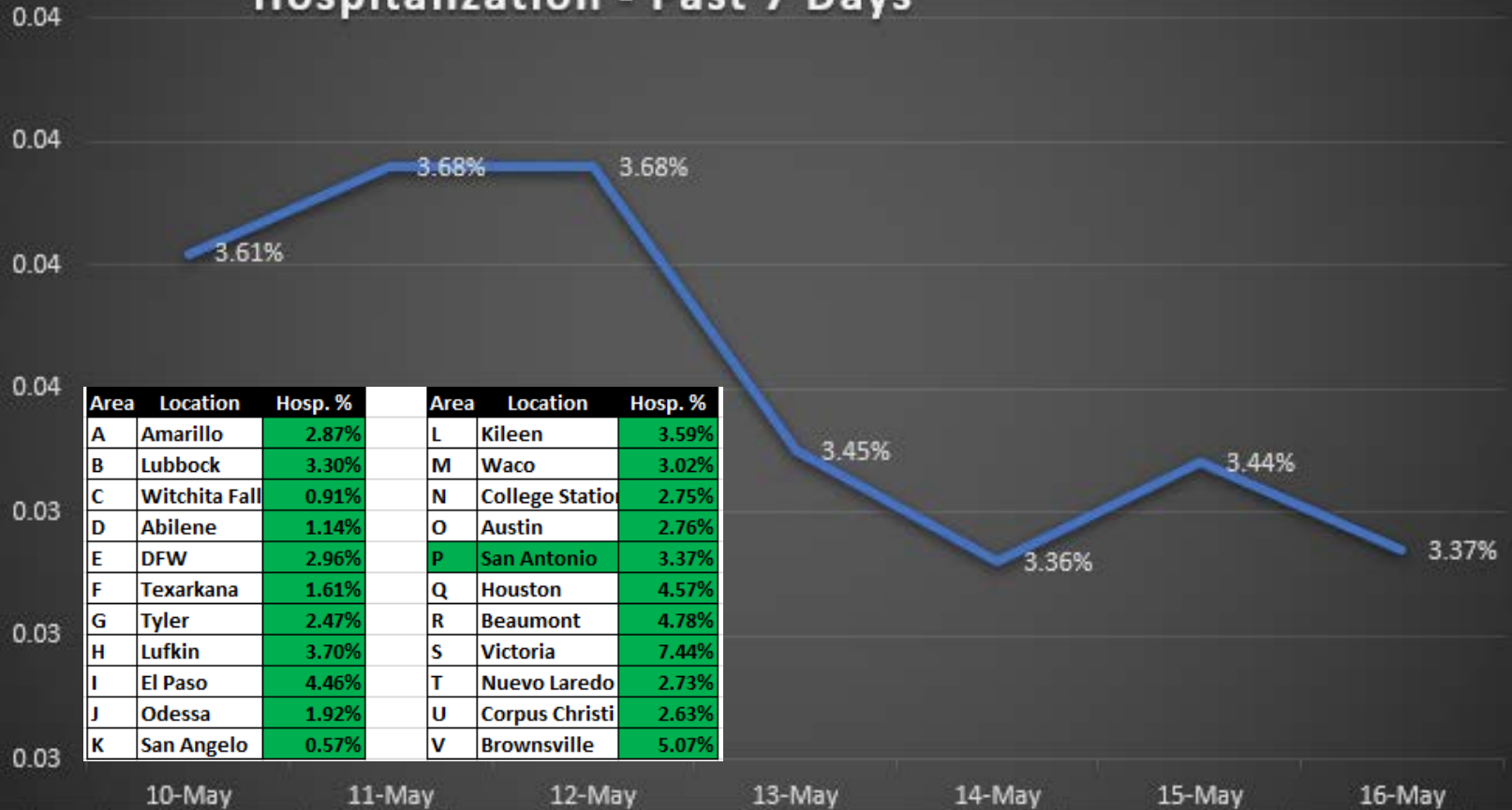


Daily New Cases - State



Hospitalization Rates

Trauma Area - P (San Antonio) : % of Hospitalization - Past 7 Days



Hospitalizations – Bexar County

DATE	Patients	Patients in ICU	Patients on Ventilation
5/4/2021	223	71	42
5/11/2021	210	68	34
5/17/2021	171	52	26
5/19/2021	164	52	25

QUESTIONS?