

CITY OF SCHERTZ

PROJECT AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is entered into in the City of Schertz, Texas, between the **City of Schertz**, a Texas municipal corporation, hereinafter called "CITY" and/or "OWNER", and **Lockwood, Andrews & Newnam, Inc.** hereinafter called "CONSULTANT".

Engineer(s), duly licensed, and practicing under the laws of the State of Texas, hereinafter called "CONSULTANT", this Agreement being executed by City pursuant to appropriate action by the City Council of CITY and by CONSULTANT, for engineering services hereinafter set forth in connection with the above designated Project for CITY.

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ARTICLE 1: DEFINITIONS

AS USED IN THIS AGREEMENT, THE FOLLOWING TERMS SHALL HAVE MEANINGS AS SET OUT BELOW:

Agreement means this Master Agreement between CITY and CONSULTANT that establishes the terms and conditions for all Projects to be carried out under this Agreement.

Application for Compensation means the form CONSULTANT uses to make a request to be paid for completed services.

Application for Payment means the form CONSTRUCTION CONTRACTOR uses to make a request to be paid for completed work.

Certificate for Payment means the form CONSULTANT uses to make recommendations on CONSTRUCTION CONTRACTOR'S Application for Payment.

CITY means the City of Schertz, Texas.

Claim means a demand or assertion by one of the parties seeking, as a matter of right, adjustment, or interpretation of the terms of this Agreement, payment of money, extension of time, or other relief with respect to the terms of this Agreement. The term "claim" also includes other disputes and matters in question between the OWNER and CONSULTANT arising out of or relating to this Agreement.

Compensation means amounts paid by CITY to CONSULTANT for completed services under this Agreement.

CONSTRUCTION CONTRACTOR means the firm hired by CITY to construct the Project.

Construction Contract Documents means the contract between the CITY and the firm contracted by CITY to construct the Project and all documents therein.

CONSULTANT means the entity named on the cover page of this Agreement and its officers, partners, employees, agents, and representatives, and all its subconsultants, if any, and all other persons or entities for which CONSULTANT is legally responsible.

ENGINEER means CITY's City Engineer.

Final Compensation means the final amounts paid by CITY to CONSULTANT for completed services under this Agreement.

Final Payment means the final amounts paid by CITY to CONSTRUCTION CONTRACTOR for completed work under the construction contract.

Opinion of Probable Construction Cost means CONSULTANT'S estimate of probable construction cost for a Project based on its experience and qualifications as a practitioner of its profession and the current costs in the local area.

OWNER means the City of Schertz, Texas.

Payment means amount paid by CITY to CONSTRUCTION CONTRACTOR for work performed under the Construction Contract Documents.

Plans and Specifications means the construction documents.

Project means the capital improvement/construction development undertaking of CITY for which CONSULTANT'S services, as stated in the Scope of Services, and to be provided pursuant to this Agreement.

Proposal means CONSULTANT'S proposal to provide services for the Project.

Schedule of Values means the fees allocated to services, reimbursable and/or various portions of the services or Work, prepared in such form, and supported by such data to substantiate its accuracy as OWNER may require.

Scope of Services means the services described in Article 4, Scope of Services.

Services means professional services performed by CONSULTANT.

Total Compensation means the amount paid to CONSULTANT under Article 2, Compensation for Basic Services, of this Agreement.

Work means the labor and materials required to complete a Project by CONSTRUCTION CONTRACTOR in accordance with the Construction Contract Documents.

ARTICLE 2: SCOPE OF SERVICES

- 2.1 CONSULTANT shall not commence work until being thoroughly briefed on the scope of the Project and being notified in writing to proceed. The scope of the Project and CONSULTANT'S Services required shall be reduced by CONSULTANT to a written summary of the scope meeting. That Scope of Services and associated cost, once approved by CITY, will be included as a part of this Agreement as Attachments 1 and 2 herein. Should the scope subsequently change, either CONSULTANT or CITY may request a review of the anticipated services, with an appropriate adjustment in compensation.
- 2.2 Communications by and with CONSULTANT'S subconsultants shall be through CONSULTANT. Communications by and with subcontractors and material suppliers shall be through CONSTRUCTION CONTRACTOR.

- 2.3 CONSULTANT, in consideration for the Compensation herein provided, shall render the professional Services described in this Section that are necessary for the development of the Project, including plans and specifications, construction management services, any special and general conditions, and instructions to bidders as acceptable to the Engineer, or his or her duly authorized representative.
- 2.4 CONSULTANT shall complete a Project in accordance with the phases in CONSULTANT'S Scope of Services attached and incorporated herein as Attachments 1 and 2.
- 2.5 Upon acceptance and approval of the plans, reports or other deliverables required for a Phase of work, as set forth in the Scope of Services, Engineer shall authorize CONSULTANT, in writing, to proceed with the next phase of Work.
- 2.6 During Design Phases CONSULTANT shall:
 - 2.6.1 Coordinate and meet with City staff and Project stakeholders as appropriate throughout the Project. Assist staff at meetings with stakeholders, workshops, and presentations to advisory commissions and City Council.
 - 2.6.2 Provide the necessary field survey services to determine the existing field conditions, including all utilities and surface features to the maximum extent possible.
 - 2.6.3 CONSULTANT shall make every effort to minimize utility adjustments, where possible.
 - 2.6.4 In the event electrical, communication, gas or other facilities are encountered, CONSULTANT shall identify and incorporate those facilities at the completion of each Project Phase in order to determine the magnitude of any potential adjustment.
 - 2.6.5 Perform the necessary testing to determine the existing site conditions and proper design for construction and methods of any necessary demolition.
 - 2.6.6 Follow and comply with the requirements for the Design Phases listed in this Agreement, CITY'S Unified Development Code, if applicable, and CITY'S Design Guidance Manual, both of which are incorporated by reference herein.
 - 2.6.7 In case of conflicts, follow and comply with the most stringent requirements for the Design Phases.
 - 2.6.8 Prepare documents for, and coordinate with other utilities and associated local, state, and federal agencies (including TCEQ, EPA, TxDOT, ACOE, etc.) as required for the approval of all necessary permits (determined during scoping for each individual project).

- 2.6.9 Provide detailed plans and specifications for the Project at appropriate progress intervals in requested formats (may include hard copy, .pdf, and .dwg).
- 2.6.10 Provide Opinion of Probably Construction Cost.
- 2.7 During Bid Phase CONSULTANT shall:
 - 2.7.1 Provide unit price bid quantities in City bid form format for use in bid documents.
 - 2.7.2 Provide bid sets of contract, technical specifications, plans, and any other necessary documents in hard copy and digital format.
 - 2.7.3 Attend pre-bid conference and prepare responses to questions and addenda as necessary.
 - 2.7.4 Research qualifications and references of apparent low bidder(s) and provide a letter of recommendation for contract award.
- 2.8 During Construction Phase:
 - 2.8.1 CONSULTANT shall monitor construction schedule.
 - 2.8.2 CONSULTANT will make a minimum of two visits per month to the Project Site at intervals appropriate to the Phases to (1) become generally familiar with and to keep CITY informed about the progress and quality of the portion of the Work completed, and (2) endeavor to guard CITY against defects in Work. However, CONSULTANT will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.
 - 2.8.3 CONSULTANT will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work since these are solely CONSTRUCTION CONTRACTOR'S rights and responsibilities under the Contract Documents. CONSULTANT'S efforts will be directed toward providing for CITY a greater degree of confidence that the completed Work will generally conform to the Contract Documents.
 - 2.8.4 CONSULTANT will not be responsible for CONSTRUCTION CONTRACTOR'S failure to perform the Work in accordance with the requirements of the Contract Documents. CONSULTANT will not have control over or charge of and will not be responsible for acts or omissions of CONSTRUCTION CONTRACTOR, subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.
 - 2.8.5 CONSULTANT and CITY have authority to reject Work that does not conform to the Contract Documents. Whenever CONSULTANT or CITY considers it necessary or advisable, either CITY or CONSULTANT may require inspection or testing of the Work whether or not such Work is fabricated, installed or

completed. However, neither this authority of CONSULTANT or CITY, nor a decision made by either, in good faith, to require or not require an inspection shall give rise to a duty or responsibility of CONSULTANT or CITY to CONSTRUCTION CONTRACTOR, subcontractors, material and equipment suppliers, agents or employees, or other persons or entities performing portions of the Work.

- 2.8.6 CONSULTANT will review and approve or take other appropriate action upon CONSTRUCTION CONTRACTOR'S submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. CONSULTANT will respond to submittals such as Shop Drawings, Product Data, and Samples pursuant to the procedures set forth in the Project specifications. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of CONSTRUCTION CONTRACTOR as required by the Contract Documents. CONSULTANT'S review of CONSTRUCTION CONTRACTOR'S submittals shall not relieve CONSTRUCTION CONTRACTOR of its obligations. CONSULTANT'S review shall not constitute approval of safety precautions or any construction means, methods, techniques, sequences or procedures unless otherwise specifically stated by CONSULTANT. CONSULTANT'S approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.8.7 CONSULTANT will, within three work days after receipt of CONSTRUCTION CONTRACTOR'S Application for Payment review the Application for Payment and either issue to OWNER and/or the affected utility a Certificate for Payment for such amount as CONSULTANT determines is properly due, or notify OWNER, any affected utility, and CONSTRUCTION CONTRACTOR in writing of CONSULTANT'S reasons for withholding recommendation of approval in whole or in part.
- 2.8.8 CONSULTANT'S issuance of a Certificate for Payment will constitute a representation by CONSULTANT to OWNER, based on CONSULTANT'S evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of CONSULTANT'S knowledge, information and belief, the quality of the work is in accordance with the design agreement documents or Construction Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the design agreement documents, to results of subsequent tests and inspections, to correction of minor deviations from the design agreement documents prior to completion, and to any specific qualifications expressed by CONSULTANT. The issuance of a Certificate for Payment based on the CONSTRUCTION CONTRACTOR'S Application for Payment will further constitute a representation that CONSTRUCTION CONTRACTOR is entitled to payment in accordance with the Schedule of Values. The issuance of Certificate for Payment will not be a representation that

CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by OWNER to substantiate Construction Contractor's right to payment, or (4) made any examination to ascertain how or for what purpose CONSTRUCTION CONTRACTOR has used money previously paid on account of the Application for Payment sum.

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

- 2.8.9.1 defective Work not remedied;
- 2.8.9.2 third party claims filed or reasonable evidence indicating probable filing of such claims for which CONSTRUCTION CONTRACTOR is responsible hereunder unless security acceptable to OWNER and the affected utility is provided by CONSTRUCTION CONTRACTOR;
- 2.8.9.3 failure of CONSTRUCTION CONTRACTOR to make payments properly to the subcontractors and/or material providers;
- 2.8.9.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the agreement sum and CONSTRUCTION CONTRACTOR has failed to provide OWNER and the affected utility adequate assurance of its continued performance within a reasonable time after demand;
- 2.8.9.5 damage to OWNER or another contractor;
- 2.8.9.6 reasonable evidence that the Work will not be completed within the agreement time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

- 2.8.9.7 persistent failure by CONSTRUCTION CONTRACTOR to carry out the Work in accordance with the Construction Contract Documents.
- 2.8.10 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld. OWNER shall not be deemed in default by CONSULTANT by reason of withholding payment as provided herein.
- 2.8.11 CONSULTANT will prepare Change Orders and Field Work Directives, and, with concurrence of OWNER, OWNER'S designated representative will have authority to order minor changes in the Work not involving an adjustment in the Total Compensation or an extension of the time for construction. Such changes shall be effected by written order, which CONSTRUCTION CONTRACTOR shall carry out promptly and record on the as-built plan.
- 2.8.12 Upon written request of CITY or CONSTRUCTION CONTRACTOR, CONSULTANT will issue its interpretation of the requirements of the Plans and Specifications. CONSULTANT'S response to such requests will be made in writing within any agreed time limits or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required by CONSULTANT shall be furnished in compliance with Article IV, then delay shall not be recognized on account of failure by CONSULTANT to furnish such interpretations until 15 days after written request is made for CONSULTANT'S interpretation.
- 2.8.13 Interpretations of CONSULTANT will be consistent with the intent of and reasonably inferable from the Construction Contract Documents and will be in writing or in the form of drawings.
- 2.8.14 CONSULTANT will advise and consult with CITY. CITY'S instructions to CONSTRUCTION CONTRACTOR may be issued through CONSULTANT, but CITY reserves the right to issue instructions directly to CONSTRUCTION CONTRACTOR through inspectors or other designated CITY representatives.
- 2.8.15 CONSULTANT and CITY will conduct observations to determine the date of substantial completion of the Work. CONSULTANT shall provide to CITY a written recommendation of consideration of substantial completion of the Project.
- 2.8.16 CONSULTANT and CITY will conduct observations to determine the date of final completion. CONSULTANT will receive and forward to CITY, for CITY'S review and records, written warranties and related documents required by the Construction Contract Documents and assembled by CONSTRUCTION CONTRACTOR, and will issue a final Approval for Payment upon compliance with the requirements of the Construction Contract Documents. Such final Approval will be accompanied by a signed and sealed statement from the CONSULTANT'S Engineer of Record that certifies to CITY that the project was constructed in accordance with the approved plans and specifications.

- 2.8.17 CONSULTANT shall prepare record drawings from information submitted by CONSTRUCTION CONTRACTOR and from CONSULTANT'S own observations in accordance with City standards. CONSULTANT shall provide record drawings in hard copy, .pdf, and .dwg formats to CITY.

ARTICLE 3: COMPENSATION FOR SERVICES

3.1 Basic Services

- 3.1.1 Compensation for all Services included in this Agreement will be on a time and expense not-to-exceed basis in accordance with the negotiated, approved schedule of billing rates as set forth in Attachment 3. Not-to-exceed compensation amounts, to the extent they have been negotiated shall be reflected in Attachment 3. A Proposal including a not-to-exceed cost will be provided by CONSULTANT along with a Scope of Services for each Project (Attachments 1 and 2). The amount to be paid to CONSULTANT, including authorized adjustments, is the total amount payable by OWNER to CONSULTANT for performance of the Services for the Project under this Agreement. It is agreed and understood that such amount will constitute full compensation to CONSULTANT for Services included in the Scope of Services and shall meet all requirements of CITY'S design guidelines applicable to the Project. Unless and until CITY makes further appropriations for any Services not included in the Scope of Services of this Agreement, the obligation of CITY to CONSULTANT for Compensation in connection with this Agreement cannot and will not exceed the sum described in this Section without further amendment to this Agreement.
- 3.1.2 No billing rate changes from those approved as Attachment 3 of this Agreement shall be made during the term of this Agreement without the prior written approval of CITY.
- 3.1.3 CONSULTANT shall submit monthly invoices to CITY describing the Services performed the preceding month. CONSULTANT'S invoices shall include the name of the person who performed the Service, a brief description of the Service performed and the Phase of the Project to which the Service relates, the date(s) the Service was performed, the number of hours spent on all Services billed on an hourly basis, and a description of any subconsultant fees and/or reimbursable expenditures.
- 3.1.4 CITY shall reimburse CONSULTANT only for those costs or expenses specifically approved in this Agreement, or specifically approved in advance by CITY. Unless otherwise approved, such costs shall be limited and include nothing more than the following costs incurred by CONSULTANT:
- 3.1.4.1 Approved reproduction charges,

- 3.1.4.2 Actual costs of subconsultant(s) for performance of any of the Services that CONSULTANT agrees to provide pursuant to this Agreement, which have been approved in advance by CITY and awarded in accordance with this Agreement.
- 3.1.4.3 Actual costs and/or other costs and/or payments specifically authorized in advance by the CITY in writing and incurred by CONSULTANT in the performance of this Agreement.
- 3.1.5 CONSULTANT shall complete the Project in accordance with the phases in Scope of work. For the purpose of establishing portions of compensation for separate phases, more particularly described in the Scope of Services, Attachment 2 shall apply.
- 3.1.6 CONSULTANT shall, within 10 days following receipt of Compensation from OWNER, pay all bills for Services performed and furnished hereunder by subconsultant(s) of CONSULTANT in connection with the Project and the performance of services and shall, if requested, provide OWNER with evidence of such payment. CONSULTANT'S failure to make payments within such time shall constitute a material breach of this Agreement unless CONSULTANT is able to demonstrate to OWNER bona fide disputes associated with the Services of the unpaid subconsultant and its services. CONSULTANT shall include a provision in each of its sub agreements imposing the same payment obligations on its subconsultants as are applicable to CONSULTANT hereunder, and if OWNER so requests, shall provide evidence of such payments by CONSULTANT to OWNER. If CONSULTANT has failed to make payment promptly to the subconsultant for undisputed Services for which OWNER has made payment to CONSULTANT, OWNER shall be entitled to withhold future payment to CONSULTANT to the extent remaining unpaid by CONSULTANT necessary to protect OWNER.
- 3.1.7 CONSULTANT warrants that title to all deliverables produced in the performance of Services covered by an Application for Compensation will pass to OWNER no later than the time of payment. CONSULTANT further warrants that upon submittal of an Application for Compensation, all Services for which Applications for Compensation have been previously issued and payments received from OWNER shall, to the best of CONSULTANT'S knowledge, information and belief be free and clear of liens, claims, security interests or encumbrance in favor of CONSULTANT, or other persons or entities under contract with CONSULTANT making a claim by reason of having provided labor or services relating to CONSULTANT'S Services. CONSULTANT SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY OWNER TO CONSULTANT.

3.2 Additional Services

- 3.2.1 CONSULTANT shall not receive any compensation for additional Services without prior written authorization of CITY. Compensation for duly authorized additional Services shall be paid in accordance with the approved schedule of billing rates as set forth in Attachment 3.
- 3.2.2 Examples of additional Services (not all inclusive)
 - 3.2.2.1 Assistance to CITY as an expert witness in any litigation with third parties arising from the development of construction of a Project including the preparation of engineering data and reports.
 - 3.2.2.2 Preparation of plats and field notes for acquisition of property.
 - 3.2.2.3 Preparation of applications and supporting documents for governmental grants, loans, or advances in connection with a Project; preparation of review of environmental assessment and impact statements; review and evaluation of the effect on the design requirements of a Project of any such statements and documents prepared by others; and assistance in obtaining approval of authorities having jurisdiction over the anticipated environmental impact of a Project.
 - 3.2.2.4 Making revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents or are due to other causes not solely within the control of CONSULTANT.
 - 3.2.2.5 Making revisions to drawings or specifications occasioned by acceptance of substitutions proposed by CONSTRUCTION CONTRACTOR; and Services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by CONSTRUCTION CONTRACTOR.
 - 3.2.2.6 Preparing drawings, specifications, and supporting data and providing other Services in connection with change order requests to the extent that the adjustment in the basic compensation resulting from the adjusted construction cost is not commensurate with the Services required of CONSULTANT, provided such change order requests are required by causes not solely within the control of CONSULTANT; or in connection with change orders requiring significant engineering effort to compute and document the Work effort reflected by the Change Order.

- 3.2.2.7 Investigations, surveys, valuations, inventories, or detailed appraisals of facilities, construction and/or services not required by Project scope.
- 3.2.2.8 Investigations, surveys, audit, or inventories required in connection with construction performed by CITY.
- 3.2.2.9 Additional Services during construction made necessary by:
 - 3.2.2.9.1 Work damaged by fire or other cause during construction.
 - 3.2.2.9.2 A significant amount of defective or neglected work of CONSTRUCTION CONTRACTOR.
 - 3.2.2.9.3 Failure of performance of CONSTRUCTION CONTRACTOR.
 - 3.2.2.9.4 Acceleration of the progress schedule required by CITY involving Services beyond normal working hours.
 - 3.2.2.9.5 Default by CONSTRUCTION CONTRACTOR.
- 3.2.2.10 Providing extensive assistance in the use of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 3.2.2.11 Providing Services relative to future facilities, systems, and equipment which are not intended to be constructed during the Construction Phase.
- 3.2.2.12 Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed deficiencies under guarantee called for in any contract for a Project.
- 3.2.2.13 Providing Services of geotechnical engineering firm to perform test borings and other soil or foundation investigations and related analysis not included in original Scope of Services for a Project.
- 3.2.2.14 Additional copies of Construction Contract Documents, review documents, bidding documents, reports, and or drawings over the number specified in the original Scope of Services for a Project.
- 3.2.2.15 Preparation of all documents dealing with 404 permits and railroad agreements.
- 3.2.2.16 Providing photographs, renderings, or models for CITY use.
- 3.2.2.17 Providing aerial mapping Services.

3.2.2.18 Providing consulting engineering Services not related to a particular design or construction Project.

3.3 All Applications for Compensation shall be submitted through Engineer's office.

ARTICLE 4: METHOD OF PAYMENT

4.1 Compensation may be made to CONSULTANT as appropriately indicated on monthly Applications for Compensation prepared based on hourly rates, not to exceed amounts estimated for each phase, as described in Article 2 and Attachments 1 and 2 hereof.

4.2 Project Close Out and Final Payment –

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

4.2.2 Final Compensation – The final compensation to be made by CITY to CONSULTANT will be payable upon submission of the "Record Drawings". CONSULTANT agrees to submit "Record Drawings: in print media, electronic format (.pdf and .dwg formats) and final billing within 45 days of final acceptance of construction. Additionally, CONSULTANT agrees to submit a statement of release with the final billing notifying CITY that there is no further compensation owed to CONSULTANT by CITY beyond the final bill. Final billing shall indicate "Final Bill – no additional compensation is due to CONSULTANT".

4.3 OWNER may withhold compensation to such extent as may be necessary, in OWNER'S opinion, to protect OWNER from damage or loss for which CONSULTANT is responsible, because of,

4.3.1 delays in the performance of CONSULTANT'S services;

4.3.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to OWNER is provided by CONSULTANT;

4.3.3 failure of CONSULTANT to make payments properly to subconsultants or vendors for labor, materials or equipment;

4.3.4 reasonable evidence that CONSULTANT'S work cannot be completed for the amount unpaid under this Agreement;

4.3.5 damage to OWNER or CONSTRUCTION CONTRACTOR; or

- 4.3.6 persistent failure by CONSULTANT to carry out the performance of its Services in accordance with this Agreement.
- 4.4 When the above reasons for withholding are removed or remedied by CONSULTANT, compensation of the amount withheld will be made within a reasonable time. OWNER shall not be deemed in default by reason of withholding compensation as provided for in this Article.
- 4.5 In the event of any dispute(s) between the parties regarding the amount properly payable for any Phase or as final Compensation, or regarding any amount that may be withheld by OWNER, CONSULTANT shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the event CONSULTANT does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.
- 4.6 OWNER shall make final compensation for all sums due CONSULTANT not more than 30 days after CONSULTANT'S final Application for Compensation.
- 4.7 Acceptance of final compensation by CONSULTANT shall constitute a waiver of claims except those previously made in writing and identified by CONSULTANT as unsettled at the time of final Application for Compensation.
- 4.8 CONSULTANT agrees to maintain adequate books, payrolls and records satisfactory to OWNER and all applicable utility providers in connection with any and all Services performed hereunder. CONSULTANT agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four years after completion of Work. At all reasonable times, OWNER and all applicable utility providers and their duly authorized representatives shall have access to all personnel of CONSULTANT and all such books, payrolls and records, and shall have the right to audit same.

ARTICLE 5: TIME, SCHEDULE, AND PERIOD OF SERVICE

- 5.1 Prior to commencement, CONSULTANT shall provide CITY with a schedule of Project Design Phases, Attachment 2.
- 5.2 Time is of the essence of this Agreement. CONSULTANT shall perform and complete its obligations for the various Phases of a Project under Section 4, Scope of Services, of this Agreement in a prompt and continuous manner so as to not delay the development of the design Services and so as to not delay the construction of the work for the Project in accordance with the schedules approved by CITY with CONSTRUCTION CONTRACTOR. Upon review of phase Services, if corrections, modifications, alterations, or additions are required of CONSULTANT, these items shall be completed by CONSULTANT before that Phase is approved.

- 5.3 CONSULTANT shall not proceed with the next appropriate Phase of Services without written authorization from the Engineer. CITY may elect to discontinue CONSULTANT'S Services at the end of any Phase for any reason. Notwithstanding any other provisions of this Agreement, if circumstance dictates, the Engineer may make adjustments to the scope of CONSULTANT'S obligations at any time to achieve the required design.
- 5.4 CONSULTANT shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations, or any other causes beyond CONSULTANT'S reasonable control. Within 21 days from the occurrence of any event for which time for performance by CONSULTANT will be significantly extended under this provision, CONSULTANT shall give written notice thereof to CITY stating the reason for such extension and the actual or estimated time thereof. If CITY determines that CONSULTANT is responsible for the need for extended time, CITY shall have the right to make a Claim as provided in this Agreement.
- 5.5 Term of Agreement shall be as follows:
- 5.5.1 This Agreement shall become effective upon the date below and shall remain in effect until satisfactory completion of the Project unless terminated as provided for in this Agreement.

ARTICLE 6: COORDINATION WITH CITY

- 6.1 CONSULTANT shall hold periodic conferences with the Engineer or his or her representatives to the end that the Project as developed shall have the full benefit of CITY'S experience and knowledge of existing needs and facilities, and be consistent with its current policies and standards. To assist CONSULTANT in this coordination, CITY shall make available for CONSULTANT'S use in planning and designing the Project all existing plans, maps, statistics, computations and other data in its possession relative to existing facilities and to this particular Project, at no cost to CONSULTANT. However, any and all such information shall remain the property of CITY and shall be returned by CONSULTANT upon termination or completion of the Project or if instructed to do so by the Engineer.
- 6.2 The Engineer will act on behalf of CITY with respect to the Services to be performed under this Agreement. The Engineer shall have complete authority to transmit instructions, receive information, interpret and define CITY'S policies and decisions with respect to materials, equipment, elements and systems pertinent to CONSULTANT'S services.
- 6.3 CITY will give prompt written notice to CONSULTANT whenever CITY observes or otherwise become aware of any defect in CONSULTANT'S Services, in the work of CONSTRUCTION CONTRACTOR, or any development that affects the scope or timing of CONSULTANT'S Services.

- 6.4 All appraisals, notices, and permits shall be furnished by CONSULTANT under the Scope of Services unless otherwise assigned to CITY in the Scope of Services, Approvals and permits assigned to CITY shall be obtained from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for the completion of the Project. CONSULTANT will provide CITY reasonable assistance in connection with such approvals and permits such as the furnishing of data compiled by CONSULTANT pursuant to other provisions of this Agreement, but CONSULTANT shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefore under other provisions of this Agreement.

ARTICLE 7: REVISIONS TO DRAWINGS AND SPECIFICATIONS

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

ARTICLE 8: OWNERSHIP OF DOCUMENTS

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

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

delivering the Services hereunder, and any know-how, methodologies, or processes used by CONSULTANT to provide the services or protect deliverables to CITY, including without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto shall remain the sole and exclusive property of CONSULTANT or its suppliers.

ARTICLE 9: TERMINATION AND/OR SUSPENSION OF WORK

9.1 Right of Either Party to Terminate for Default

9.1.1 This Agreement may be terminated by either party for substantial failure by the other party to perform (through no fault of the terminating party) in accordance with the terms of this Agreement and a failure to cure as provided in this Article 9.

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

9.2 Right of CITY to Terminate

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

9.3 Right of CITY to Suspend Giving Rise to Right of CONSULTANT to Terminate

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

9.3.1.1 CONSULTANT is hereby given the right to terminate this Agreement in the event such suspension extends for a period in excess of 120 days. CONSULTANT may exercise this right to terminate by issuing a signed, written notice of termination (citing this paragraph) to CITY after the expiration of 120 days from the effective date of the

suspension. Termination (under this paragraph) shall become effective immediately upon receipt of said written notice by CITY.

9.4 Procedures CONSULTANT Shall Follow upon Receipt of Notice of Termination

- 9.4.1 Upon receipt of a notice of termination and prior to the effective date of termination, unless the notice otherwise directs or CONSULTANT immediately takes action to cure a failure to perform under the cure period set out in this Article. CONSULTANT shall immediately begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within 30 days after receipt of such notice of termination (unless CONSULTANT has successfully cured a failure to perform) CONSULTANT shall submit a statement showing in detail the Services performed under this Agreement prior to the effective date of termination. CITY shall have the option to grant an extension to the time period for submittal of such statement.
- 9.4.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and attachments prepared under this Agreement prior to the effective date of termination shall be delivered to CITY, in the form requested by CITY as a precondition to final payment. These documents shall be subject to the restrictions and conditions set forth in Article IX above.
- 9.4.3 Upon the above conditions being met, CITY shall promptly pay CONSULTANT that proportion of the prescribed Compensation which the Services actually performed under this Agreement bear to the total Services called for under this Agreement, less previous payments of the Compensation.
- 9.4.4 CITY, as a public entity, has a duty to document the expenditure of public funds. CONSULTANT acknowledges this duty on the part of CITY. To this end, CONSULTANT understands that failure of CONSULTANT to comply with the submittal of the statement and documents as required above shall constitute a waiver by CONSULTANT of any and all rights or claims for compensation for services performed under this Agreement by CONSULTANT.
- 9.4.5 Failure of CONSULTANT to comply with the submittal of the statement and documents as required above shall constitute a waiver by CONSULTANT of any and all rights or claims to collect monies that CONSULTANT may otherwise be entitled to for services performed under this Agreement.

9.5 Procedures CONSULTANT Shall Follow upon Receipt of Notice of Suspension

- 9.5.1 Upon receipt of written notice of suspension, which date shall also be the effective date of the suspension, CONSULTANT shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly

suspend all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

- 9.5.2 CONSULTANT shall prepare a statement showing in detail the Services performed under this Agreement prior to the effective date of suspension.
- 9.5.3 Copies of all completed or partially completed designs, plans, and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to CITY but shall be retained by CONSULTANT until such time as CONSULTANT may exercise the right to terminate.
- 9.5.4 In the event that CONSULTANT exercises the right to terminate 120 days after the effective suspension date, within 30 days after receipt by CITY of CONSULTANT'S notice of termination, CONSULTANT shall promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement and shall submit the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension.
- 9.5.5 Any documents prepared in association with this Agreement shall be delivered to CITY as a precondition to final payment.
- 9.5.6 Upon the above conditions being met, CITY shall pay CONSULTANT that proportion of the prescribed Compensation which the Services actually performed under this Agreement bear to the total Services called for under this Agreement, less previous payments of Compensation.
- 9.5.7 CITY, as a public entity, has a duty to document the expenditure of public funds. CONSULTANT acknowledges this duty on the part of CITY. To this end, CONSULTANT understands that failure of Consultant to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by CONSULTANT of any portion of the Compensation for which CONSULTANT did not supply such necessary statements and/or documents.

ARTICLE 10: CONSULTANT'S WARRANTY

- 10.1 CONSULTANT warrants that it has not employed or retained any company or person other than a bona fide employee working solely for CONSULTANT to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, CITY shall have the right to terminate this Agreement under the provisions of Article 9 above.

ARTICLE 11: ASSSIGNMENT OR TRANSFER OF INTEREST

- 11.1 CONSULTANT shall not assign or transfer its interest in this Agreement without the prior written consent of CITY.

ARTICLE 12: INSURANCE REQUIREMENTS

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

INSURANCE REQUIREMENTS

Worker's Compensation*	Statutory
Employer's Liability	\$1,000,000/\$1,000,000/\$1,000,000
Commercial General (Public) Liability insurance to include coverage for the following:	For Bodily Injury and Property Damage of \$1,000,000 per occurrence.
a. Premises Operations	\$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
b. Independent Contractors**	
c. Products/Completed Operations	
d. Personal Injury	
e. Contractual Liability	
Business Automobile Liability	Combined Single Limit for Bodily Injury and property Damage of \$1,000,000 per occurrence
a. Owned/Leased Vehicles	
b. Non-owned Vehicles	
c. Hired Vehicles	
Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums, which the insured shall become legally obligated to pay as damages to the extent caused by any negligent act, error, or omission in the performance of professional services.

*Alternate Plans must be approved by CITY'S Risk Manager

**If applicable

- 12.4 CITY may request and without expense to CITY, to inspect copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by CITY, and may request the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). CONSULTANT shall attempt to comply with any such requests, subject to the policy terms and conditions, and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within 10 days of the requested change, in the event the respective insurance companies approve the requested change(s). CONSULTANT shall pay any costs incurred resulting from said changes.

City of Schertz
Attn: City Engineer
10 Commercial Place
Schertz, TX 78154

- 12.5 CONSULTANT agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:
- 12.5.1 Name CITY and its officers, officials, employees, and elected representatives as additional insured's by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies;
 - 12.5.2 Provide for an endorsement that the "other insurance" clause shall not apply to the CITY where CITY is an additional insured shown on the policy if such endorsement is permitted by law and regulations;
 - 12.5.3 Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of CITY; and
 - 12.5.4 Provide 30 calendar days advance written notice directly to CITY of any suspension, cancellation or non-renewal or material change in coverage, and not less than 10 calendar days advance written notice for nonpayment of premium.
- 12.6 Within five calendar days after a suspension, cancellation or non-renewal of coverage, CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT'S performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 12.7 If CONSULTANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have and is not the exclusive remedy for failure of CONSULTANT to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon CONSULTANT'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONSULTANT to stop performing services hereunder and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.
- 12.8 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT'S or its subconsultant's performance of the Services covered under this Agreement.
- 12.9 It is agreed that CONSULTANT'S insurance shall be deemed primary with respect to any insurance or self insurance carried by CITY for liability arising out of operations under this Agreement.

- 12.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement as respects additional insured's.

ARTICLE 13: INDEMNIFICATION

- 13.1 **CONSULTANT, WHOSE WORK PRODUCT AND SERVICES ARE THE SUBJECT OF THIS AGREEMENT FOR PROFESSIONAL SERVICES, AGREES TO INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS, AND EMPLOYEES HARMLESS AGAINST ANY AND ALL CLAIMS BY THIRD PARTIES, LAWSUITS, JUDGMENTS, COST, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED OR CAUSED BY A NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, ENGINEER, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, ENGINEERS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE SERVICES, RIGHTS OR DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 13.2 CONSULTANT shall advise CITY in writing within 24 hours of any claim or demand against CITY or CONSULTANT, known to CONSULTANT, related to or arising out of CONSULTANT'S activities under this Agreement.
- 13.3 The provisions of Article 13 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.
- 13.4 Acceptance of the final plans by CITY shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents and Work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, work

drawings, Plans and Specifications or other documents and Work prepared by CONSULTANT, its employees, subconsultants, and agents.

ARTICLE 14: CLAIMS AND DISPUTES

- 14.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of this Agreement's terms, payment of money, and extension of time or other relief with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between OWNER and CONSULTANT arising out of or relating to this Agreement. Claims must be initiated by written notice. Every Claim of CONSULTANT, whether for additional Compensation, additional time, or other relief, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind CONSULTANT by signature) of CONSULTANT, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 14.2 Time Limit on Claims. Claims by CONSULTANT or by OWNER must be initiated within 30 calendar days after occurrence of the event giving rise to such Claim. Claims by CONSULTANT must be initiated by written notice to OWNER. Claims by the OWNER must be initiated by written notice to CONSULTANT.
- 14.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing, CONSULTANT shall proceed diligently with performance of this Agreement and OWNER shall continue to make payments in accordance with this Agreement.
- 14.4 Claims for Additional Time. If CONSULTANT wishes to make Claim for an increase in the time for performance, written notice as provided in this Article 14 shall be given. CONSULTANT'S Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.
- 14.5 Claims for Consequential Damages. Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply both to claims by CONSULTANT and to claims by OWNER:
- 14.5.1 No consequential damages will be allowed.
 - 14.5.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible.
 - 14.5.3 No profit will be allowed on any damage claim.

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

ARTICLE 15: SEVERABILITY

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

ARTICLE 16: ESTIMATES OF COST

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

ARTICLE 17: INTEREST IN CITY CONTRACTS PROHIBITED

- 17.1 No officer or employee of CITY shall have a financial interest, directly or indirectly, in any contract with CITY, or shall be financially interested, directly or indirectly, in the sale to CITY of any land, materials, supplies or service, except on behalf of CITY as an officer or employee. This prohibition extends to other CITY boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on CITY projects.
- 17.2 CONSULTANT acknowledges that it is informed that the Charter of CITY prohibits a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency.
- 17.3 CONSULTANT warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of CITY. CONSULTANT further warrants and certifies that it has tendered to CITY a Discretionary Contracts Disclosure Statement.

ARTICLE 18: CONFLICTS OF INTEREST DISCLOSURE

- 18.1 All consultants must disclose if it is associated in any manner with a CITY official or employee in a business venture or business dealings. To be "associated" in a business

venture or business dealings includes being in a partnership or joint venture with the officer or employee, having a contract with the officer or employee, being joint owners of a business, owning at least 10% of the stock in a corporation in which a CITY officer or employee also owns at least 10%, or having an established business relationship as client or customer.

ARTICLE 19: STANDARD OF CARE

- 19.1 Services provided by CONSULTANT under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- 19.2 CONSULTANT shall be represented by a registered professional engineer licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings, pre-bid meetings, and preconstruction meetings.
- 19.3 The Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723 has jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.
- 19.4 Acceptance of the final plans by CITY shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents, or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents and Work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, work drawings, Plans and Specifications or other documents and Work prepared by CONSULTANT, its employees, subconsultants, and agents.

ARTICLE 20: RIGHT OF REVIEW AND AUDIT

- 20.1 CONSULTANT agrees that CITY may review any and all of the work performed by CONSULTANT UNDER THIS Agreement. CITY is granted the right to audit, at CITY'S election, all of CONSULTANT'S records and billings related to performance of this Agreement. CONSULTANT agrees to retain such records for a minimum of four years following completion of this Agreement. Any payment, settlement, satisfaction, or release provided under this Agreement shall be subject to CITY'S rights as may be disclosed by such audit.

ARTICLE 21: ENTIRE AGREEMENT

- 21.1 This Agreement, together with Attachments 1, 2, 3, and 4, represents the entire and integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both CITY and CONSULTANT.

ARTICLE 22: VENUE

22.1 The obligations of the parties to this Agreement shall be performable in the City of Schertz or its Extra Territorial Jurisdiction, located in Bexar, Comal, and Guadalupe Counties, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Guadalupe County, Texas.

ARTICLE 23: NOTICES

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

If intended for **CITY**, to:

City of Schertz
Engineering Department
10 Commercial Place
Schertz, Texas 78154

If intended for **CONSULTANT**, to:

The address listed on the first page of this Agreement.

ARTICLE 24: INDEPENDENT CONTRACTOR

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

ARTICLE 25: CAPTIONS

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

IN WITNESS WHEREOF, the parties to this Agreement hereby execute this Agreement effective as of March 7, 2018 (the "Effective Date").

CITY OF SCHERTZ



CITY MANAGER

CONSULTANT



Consultant Name

Vice President

TITLE

ATTACHMENT 1

PROJECT SCOPE OF SERVICES

Project Description

Consultant will provide civil engineering professional consulting services for the City for design, bid and construction services for various drainage projects as detailed below.

Locations

Various City locations as defined in the specific location Scopes of Services for:

- COLONIES DITCH
- HIDDEN GROVE
- DIETZ ROAD
- CASTLE HILLS
- SCHAEFER ROAD
- OSAGE AVENUE

BASIC SERVICES SCOPE OF WORK FOR ALL LOCATIONS:

CONSULTANT shall:

1. Attend one (1) kick-off meeting, one (1) draft final review meeting, and one (1) final review meeting prior to procurement.
2. Utilize City of Schertz specifications except where elements of work or complexity of construction require other specifications.
3. Where applicable, utilize Texas Department of Transportation (TxDOT) Standard Construction Specifications (2014) or City of San Antonio Standard Construction Specifications (2007) in order of preference;
4. Aid in the bidding process including answering contractor questions and issuing of addendums.
5. Provide a representative for pre-bid and bid opening meetings with the City of Schertz.
6. Upon receipt of bid proposals, CONSULTANT shall:
 - a. Provide a tabulation of bid,
 - b. call three references of the recommended respondent and
 - c. provide a letter of recommendation.
7. Attend an on-site pre-construction meeting, one in-progress construction site visit, one walk-through at completion of construction, and one warranty walk-through at the end of the warranty period. Each will be documented for CONSULTANT and City benefit and a copy of the meeting minutes and any deficient items identified will be forwarded to the City.
8. Identify required submittals and review and comment only on those required submittals.
9. Perform internal quality control reviews of all project deliverables using CONSULTANT'S own policies and procedures;

Project Services Assumptions:

1. CONSULTANT assumes sub-consultant attendance at meetings is not required.
2. CONSULTANT for the purposes of pre-submittal meetings, assumes that addenda will be issued in written word only and revised or conformed drawings are not required.
3. CONSULTANT assumes that any bid alternates proposed will consist of complete project areas only. Bid alternates within each project area are not included.
4. CONSULTANT assumes full-time construction inspection will be provided by the City.

SITE SPECIFIC SCOPES:

COLONIES DITCH

Site Specific Description and Assumptions:

The project is located downstream of Schertz Parkway generally near the intersection with Buffalo Drive and extends 275-feet downstream of Schertz Parkway along an unnamed vegetated ditch. The existing vegetated trapezoidal ditch has developed rills as a result of the steep slopes of the banks. Additionally, the bottom of the channel has begun to stabilize after years of inundation. The current condition does not allow for maintenance to preserve channel capacity. Further, long-term stability of the right bank may cause failure that would intrude into nearby utilities and the rear yards of adjacent residential lots.

The City of Schertz has proposed the replacement of the existing vegetated channel with a concrete section. The construction budget for this project has been set by the City of Schertz at \$30,775.

This project is located within a FEMA Zone 'AE' floodplain as demonstrated in Attachment 'B'. CONSULTANT assumes the City of Schertz will provide the Effective hydraulic model for use in the analysis. The results of the analysis will be documented in a technical memorandum submitted to the City of Schertz Engineering Department for review, concurrence, and issuance of a floodplain development permit.

Both the City and CONSULTANT agree to the assumption that no Conditional Letter of Map Revision (CLOMR) nor Letter of Map Revision (LOMR) are required.

Site Specific Scope:

In addition to the General Scope of services, CONSULTANT shall:

1. Obtain a topographic survey of the area shown in Attachment 'A'. The survey shall include visible evidence of utilities and the collection of paint markings from using the Statewide One-Call;
2. Complete the initial contact with utilities suspected to be in the project area and request maps, redlines, records, etc. as necessary to identify potential conflicts. The CONSULTANT and City agree to the assumption that if potential or known conflicts are identified, that the City will coordinate with the utilities to clear the conflict. Where analysis demonstrates that conflicts exist, a separate proposal will be provided to complete the coordination once the extent of conflicts are determined.

3. Evaluate the hydraulic capacity of the channel in existing and proposed conditions to identify impacts to adjacent landowners, if any.
4. Obtain a US Army Corps of Engineers Ordinary High-Water Mark (OHWM) and Jurisdictional Determination (JD) for the area shown in Attachment 'A.' Recommendations for the available permits and additional scope required to obtain them will be made based on the results of limits of the OHWM and the proposed disturbance thereof.
5. Obtain a pedestrian cultural resources survey of the area shown in Attachment 'A'. A Texas Historical Commission (THC) Antiquities permit will be obtained for the project area and incorporate the requirements of the permit obtained into the construction documents.
6. Prepare a single 11'x17' plan sheet defining the limits of work, estimated quantities, and OHWM utilizing standard construction details with the assumption that no modified or special details are required;
7. Prepare an estimate based on the construction plans utilizing best available data;

Deliverables:

1. H&H Technical Memorandum
2. Draft Final Construction Plans and Estimate
3. Final Construction Plans and Estimate
4. Meeting Minutes

HIDDEN GROVE

Site Specific Description and Assumptions:

The existing culvert crossing of Hidden Grove features a drop inlet into three 36-inch Corrugated Metal Pipes (CMPs) which daylight into a vegetated trapezoidal channel downstream. The vegetated channel has a number of grade-control structures which have been undermined upstream and downstream. The banks of the channel have rills that have formed as the banks become steeper as the channel thalweg has lowered over time.

The City of Schertz has proposed the replacement of the existing vegetated channel with underground storm drainage. The construction budget for this project has been set by the City of Schertz at \$136,800.

This project is not located within a FEMA floodplain, see Attachment 'D'.

Both the City and the CONSULTANT agree to the assumption that analysis and determination of downstream impacts from the loss of channel storage is not required.

Both the City and CONSULTANT agree to the assumption that no Conditional Letter of Map Revision (CLOMR) nor Letter of Map Revision (LOMR) are required.

Site Specific Scope:**In addition to the General Scope of services, CONSULTANT shall:**

1. Prepare a topographic survey of the area shown in Attachment 'C'. The survey shall include visible evidence of utilities and the collection of paint markings from using the Statewide One-Call;
2. Complete the initial contact with utilities suspected to be in the project area and request maps, redlines, records, etc. as necessary to identify potential conflicts. The CONSULTANT and City agree to the assumption that if potential or known conflicts are identified, that the City will coordinate with the utilities to clear the conflict. Where analysis demonstrates that conflicts exist, a separate proposal will be provided to complete the coordination once the extent of conflicts are determined.
3. Evaluate the hydraulic capacity of the channel in existing and proposed conditions to identify impacts to adjacent landowners, if any.
4. Design the underground storm drainage with a 25-year capacity flowing under pressure. An overflow section above the storm drainage will be provided to convey the 100-year event;
5. The CONSULTANT and City agree to the assumption that the storm drainage will daylight upstream of the Dimrock Street headwall to avoid the need for a cast-in-place structure to connect the cross culvert and the proposed storm drain. Where analysis demonstrates that a structure is necessary, a separate proposal for the design of the structure shall be provided to the City by the CONSULTANT.
6. Prepare two (2) 11'x17' plan and profile sheets defining the limits of work, estimated quantities, and applicable details.
7. Utilize standard construction details assuming no modified or special details are required;
8. Prepare an estimate based on the construction plans utilizing best available data.

Deliverables:

1. H&H Technical Memorandum
2. Draft Final Construction Plans and Estimate
3. Final Construction Plans and Estimate
4. Meeting Minutes

DIETZ ROAD**Site Specific Description and Assumptions:**

The project is located at the intersection of Borgfeld and Dietz Roads. The existing vegetated swale between the residential lots and Dietz Road is poorly graded and difficult to maintain. Given the close proximity of the swale to residential lots, its unsightly nature, and the difficulty to maintain, the City would like to eliminate the vegetated swale.

The City of Schertz has proposed the replacement of the existing vegetated swale with a concrete lined ditch. The proposed solution is to regrade the ditch on the west side of the road and create a cross culvert at the intersection with Borgfeld. The cross culvert will outfall into the ditch along the east side of the roadway. Doing so would eliminate overflow of the newly constructed

sidewalk return at Borgfeld Road and allow for future extension of the sidewalk along Dietz Road. The construction budget for this project has been set by the City of Schertz at \$26,000.

This project is located within a FEMA Zone 'AE' floodplain, see Attachment 'F'. As the project is not located in or adjacent to the flooding source no detailed floodplain hydraulic analysis is assumed.

Both the City and CONSULTANT agree to the assumption that no Conditional Letter of Map Revision (CLOMR) nor Letter of Map Revision (LOMR) are required.

Both the City and CONSULTANT agree to the assumption that the storm drainage will be daylighted at East Dietz Creek with a conventional TxDOT "CH" type headwall. It is also assumed that scour analysis, energy dissipation/attenuation at outfall are not required.

Site Specific Scope:

In addition to the General Scope of services, CONSULTANT shall:

1. Obtain a topographic survey of the area shown in Attachment 'E'. The survey shall include visible evidence of utilities and the collection of paint markings from using the Statewide One-Call.
2. Complete the initial contact with utilities suspected to be in the project area and request maps, redlines, records, etc. as necessary to identify potential conflicts. The CONSULTANT and City agree to the assumption that if potential or known conflicts are identified, that the City will coordinate with the utilities to clear the conflict. Where analysis demonstrates that conflicts exist, a separate proposal complete the coordination once the extent of conflicts are determined.
3. Document the impact of the project on floodplain conveyance.
4. Document and submit to the City of Schertz Engineering Department for review a technical memorandum for the purpose of obtaining concurrence, and issuance of a floodplain development permit
5. Prepare a two (2) 11'x17' plan and profile sheets defining the limits of work, and estimated quantities utilizing standard construction details. Both the City and CONSULTANT agree to the assumption that no modified or special details are required. Prepare an estimate based on the construction plans utilizing best available data.

Deliverables:

1. H&H Technical Memorandum
2. Draft Final Construction Plans and Estimate
3. Final Construction Plans and Estimate
4. Meeting Minutes

CASTLE HILLS

Site Specific Description and Assumptions:

The project is located downstream of the Fairway Ridge interceptor channel which outfalls into the Northcliffe Golf Course. Existing channel conditions are unstable as a result of the frequent inundation and high velocity runoff from the recently developed subdivisions upstream. As a result of these conditions channel maintenance used to maintain the capacity of the channel is made difficult by the rills and scour within the banks of the channel.

The City of Schertz has proposed the replacement of the existing vegetated channel with a concrete trapezoidal channel. The construction budget for this project has been site by the City of Schertz at \$203,544.

This project is not located within a FEMA floodplain as detailed in Attachment 'H.'

Both the city and CONSULTANT agree to the assumption that City will obtain temporary construction easements and associated survey from the Northcliffe Golf Course. It is also further assumed that City will provide direction on any items affecting the awarded contractor's scope of work or limitations on construction required by the negotiation of the temporary easement.

Both the City and CONSULTANT agree to the assumption that downstream impacts from the loss of channel storage is not required by the City.

Both the City and CONSULTANT agree to the assumption that no Conditional Letter of Map Revision (CLOMR) nor Letter of Map Revision (LOMR) are required.

Site Specific Scope:

In addition to the General Scope of services, CONSULTANT shall:

1. Obtain a topographic survey of the area shown in Attachment 'G'. The survey shall include visible evidence of utilities and the collection of paint markings from using the Statewide One-Call.
2. Complete the initial contact with utilities suspected to be in the project area and request maps, redlines, records, etc. as necessary to identify potential conflicts. The CONSULTANT and City agree to the assumption that if potential or known conflicts are identified, that the City will coordinate with the utilities to clear the conflict. Where analysis demonstrates that conflicts exist, a separate proposal will be provided to complete the coordination once the extent of conflicts are determined.
3. Attend one (1) on-site meeting with Lower Colorado River Authority (LCRA) due to the location of the proposed improvements to a LCRA overhead transmission easement within the project limits.
4. Obtain a Letter of Authority from LCRA to place the concrete channel within their easement and provide time for reasonable coordination related thereto.
5. Attend one (1) meeting with Northcliffe Golf Course for coordination of proposed improvements and their potential effect on golf course operations.
6. Evaluate the hydraulic capacity of the channel in existing and proposed conditions to identify impacts to adjacent landowners, if any. The results of the analysis shall be

documented in a technical memorandum submitted to the City of Schertz Engineering Department for review and concurrence.

7. Document and submit to the City of Schertz Engineering Department for review a technical memorandum for the purpose of obtaining concurrence.
8. Prepare a two (2) 11'x17' plan and profile sheets defining the limits of work, and estimated quantities utilizing standard construction details. Both the City and CONSULTANT agree to the assumption that no modified or special details are required.
9. Prepare an estimate based on the construction plans utilizing best available data.

Deliverables:

1. H&H Technical Memorandum
2. Draft Final Construction Plans and Estimate
3. Final Construction Plans and Estimate
4. Meeting Minutes

SCHAEFER ROAD

Site Specific Description and Assumptions:

The project is located west of the intersection of Schaefer Road and McCoy Woods Street. When the adjacent residential subdivision Laurel Heights was constructed, the developer constructed half of the bar ditch with concrete rip-rap and the other half remained vegetation. Due to the adjustment of the channel slope the vegetated portion is too steep to remain stable.

The City of Schertz has proposed the replacement of the existing vegetation with concrete rip-rap. The construction budget for this project has been set by the City of Schertz at \$13,600.

This project is not located within a FEMA floodplain as detailed in Attachment 'J'.

Both the City and CONSULTANT agree to the assumption that no evaluation of hydraulic capacity is required.

Site Specific Scope:

In addition to the General Scope of services, CONSULTANT shall:

1. Obtain a topographic survey of the area shown in Attachment 'I'. The survey shall include visible evidence of utilities and the collection of paint markings from using the Statewide One-Call.
2. Complete the initial contact with utilities suspected to be in the project area and request maps, redlines, records, etc. as necessary to identify potential conflicts. The CONSULTANT and City agree to the assumption that if potential or known conflicts are identified, that the City will coordinate with the utilities to clear the conflict. Where analysis demonstrates that conflicts exist, a separate proposal complete the coordination once the extent of conflicts are determined.
3. Prepare a single 11'x17' plan and profile sheet defining the limits of work, and estimated quantities utilizing standard construction details. Both the City and CONSULTANT agree to the assumption that no modified or special details are required.

4. Prepare an estimate based on the construction plans utilizing best available data.

Deliverables:

1. Draft Final Construction Plans and Estimate
2. Final Construction Plans and Estimate
3. Meeting Minutes

OSAGE AVENUE

Site Specific Description and Assumptions:

The project is located between Osage Avenue upstream and Jasmine Drive downstream west of Lotus Park. The existing vegetated channel utilizes concrete grade control structures to create stable channel slopes. Due to the frequency of inundation by the urbanized watershed upstream the channel bottom has eroded and is contributing to undermining of the existing grade control structures.

The City of Schertz has proposed the replacement of the existing vegetated channel with a concrete trapezoidal channel. The construction budget for this project has been set by the City of Schertz at \$143,111.00.

This project is not located within a FEMA floodplain as detailed in Attachment 'L'.

Both the city and CONSULTANT agree to the assumption that City will obtain temporary construction easements and associated survey from the Northcliffe Golf Course. It is also further assumed that City will provide direction on any items affecting the awarded contractor's scope of work or limitations on construction required by the negotiation of the temporary easement.

Both the City and CONSULTANT agree to the assumption that downstream impacts from the loss of channel storage is not required by the City.

Both the City and CONSULTANT agree to the assumption that no Conditional Letter of Map Revision (CLOMR) nor Letter of Map Revision (LOMR) are required.

Site Specific Scope:

In addition to the General Scope of services, CONSULTANT shall:

1. Obtain a topographic survey of the area shown in Attachment 'K'. The survey shall include visible evidence of utilities and the collection of paint markings from using the Statewide One-Call.
2. Complete the initial contact with utilities suspected to be in the project area and request maps, redlines, records, etc. as necessary to identify potential conflicts. The CONSULTANT and City agree to the assumption that if potential or known conflicts are identified, that the City will coordinate with the utilities to clear the conflict. Where analysis demonstrates that conflicts exist, a separate proposal complete the coordination once the extent of conflicts are determined.
3. Evaluate the hydraulic capacity of the channel in existing and proposed conditions to identify impacts to adjacent landowners, if any. The results of the analysis shall be

- documented in a technical memorandum submitted to the City of Schertz Engineering Department for review and concurrence.
4. Document and submit to the City of Schertz Engineering Department for review a technical memorandum for the purpose of obtaining concurrence.
 5. Prepare a three (3) 11'x17' plan and profile sheets defining the limits of work, and estimated quantities utilizing standard construction details. Both the City and CONSULTANT agree to the assumption that no modified or special details are required.
 6. Prepare an estimate based on the construction plans utilizing best available data.

Deliverables:

1. H&H Technical Memorandum
2. Draft Final Construction Plans and Estimate
3. Final Construction Plans and Estimate
4. Meeting Minutes

Related Services not included within the Basic Scope of Services:

The following related tasks are not included with the basic scope of services. These services, not currently deemed necessary, will be if necessary obtained separately by City. Additional City requested work of the CONSULTANT may require an additional task request. Any such requests shall require an amendment to this agreement and may require Council approval for funding and authorization. No additional work may be authorized without written approval to amend the agreement.

1. Right of Way acquisition services.
2. Geotechnical reports.
3. Environmental reports or studies.
4. CLOMR or LOMR submittals or any related study.
5. Utility coordination beyond that already noted.

ATTACHMENT 2

COMPENSATION

LUMP SUM BY PHASE PAYMENT METHOD FOR BASIC SERVICES AND A NOT TO EXCEED AMOUNT FOR SUPPLEMENTAL SERVICES

1.1 Compensation for all fees, costs, expenses and services defined by this Contract shall be compensated at a Not-To-Exceed amount of \$ 137,645.50 – One Hundred Thirty-Seven Thousand Hundred Thirteen Dollars and No Cents, including expenses (the “Contract Price”), and it is agreed and understood that this amount, when earned, will constitute full compensation to the Professional.

1.2 This Contract Price is the sum of the phases as provided for by the Tasks and Expenses as detailed in the following schedule of values:

Projects Task	AMOUNT
Task 1 – Design Phases for various projects	\$ 81,270.00
Task 2 – Bid Phases	\$ 3,090.00
Task 3 – Construction and Closeout Phases	\$ 12,230.00
Miscellaneous Expenses	\$ 530.00
<u>Sub-Consultants</u>	<u>\$ 30,525.50</u>
<u>Total Basic Services</u>	<u>\$127,645.50</u>

1.3 **Basic Design Services**

The portion of the Contract Price allocated for Basic Design Services as provided for in Exhibit A shall be the lump sum amount of **\$ 127,645.50 – One Hundred Twenty-Seven Thousand, Six Hundred Forty-Five Dollars and No Cents**. Of this amount, Thirty Thousand Five Hundred Twenty-Five Dollars and Fifty Cents - \$ 30,525.50, is allocated for Sub-Consultant Fees.

1.4 **Miscellaneous Expenses**

The portion of the Contract Price allocated for Miscellaneous Expenses for Mileage and Reproduction of Plans & Specifications shall be the lump sum amount of **\$ 530.00 – Five Hundred Thirty Dollars and No Cents**.

1.5 **Supplemental Services** (Apart from Basic Services)

An allowance of **\$ 10,000.00 – Ten Thousand Dollars and No Cents** has been allowed for in this Contract Agreement.

1.6 **Rate Table**

For the purpose of establishing costs to the City of Schertz for any negotiated supplemental services payable on an hourly rate basis authorized in writing by the City of Schertz, the Hourly Billing Rate Table in Attachment 3 shall apply.

- 1.7 Professional shall submit monthly Applications for Progress Payment that shall separately itemize the following:
1. The relevant Consulting Fee to date progress payment due for the City approved number of hours for each discipline and in accordance the rate table in Exhibit B.
 2. Separate line item entries which identify all Additional Services which were approved in advance and in writing by City and which were completed during the preceding month. Consultants submittal for these Additional Costs shall include: (a) a copy of Owners prior written approval: and (b) an itemization of all Reimbursable Expenses attributable to each separate item of Additional Service performed and incurred during the preceding month.

ATTACHMENT 3
BILLING RATE SCHEDULE

Discipline	Hourly Rate
Principal QAQC Manager	\$ 220.00
Senior Project Manager	\$ 190.00
Senior Project Engineer	\$ 150.00
Project Engineer	\$ 130.00
Engineer-in-Training III	\$ 125.00
Engineer-in-Training II	\$ 95.00
Construction Field Representative	\$ 95.00
CADD Designer II	\$ 85.00
Administrative	\$ 65.00

ATTACHMENT 4

ADDITIONAL SERVICES AND/OR EXPANDED SCOPE OF SERVICES

To be completed as necessary.

CITY OF SCHERTZ

CONSULTANT



CITY MANAGER





Consultant Name

TITLE

COLONIES DITCH

CITY OF SCHERTZ

Legend

-  COLONIES DITCH
-  Church of Christ Schertz
-  Diamond K Eyecare
-  Feature 1

ATTACHMENT 'A'

PROJECT LOCATION

Garden Cir

Buffalo Dr

Schertz Pkwy

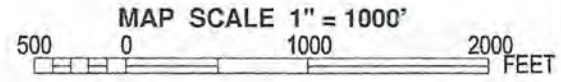
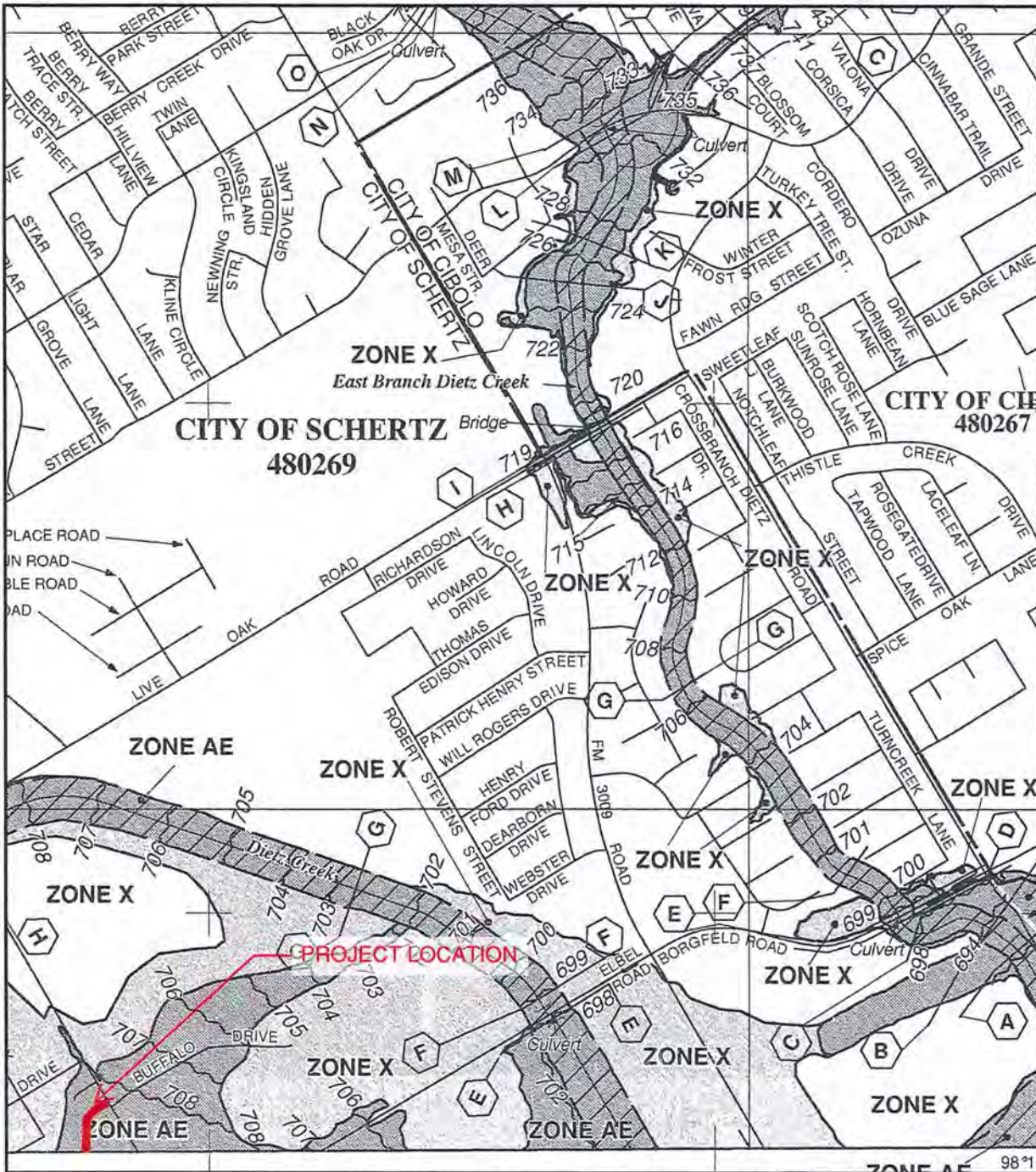
Google earth

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300 ft



ATTACHMENT 'B'



FIRM FLOOD INSURANCE RATE MAP GUADALUPE COUNTY, TEXAS AND INCORPORATED AREAS

PANEL 210 OF 480
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
GUADALUPE COUNTY	480266	0210	F
CIBOLO, CITY OF	480267	0210	F
SCHERTZ, CITY OF	480269	0210	F
SELMA, CITY OF	480046	0210	F

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



MAP NUMBER
48187C0210F
EFFECTIVE DATE
NOVEMBER 2, 2007





Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

HIDDEN GROVE

CITY OF SCHERTZ

Legend

-  COLONIES DITCH
-  Church of Christ Schertz
-  Diamond K Eyecare
-  Feature 1

ATTACHMENT 'C'

PROJECT LOCATION

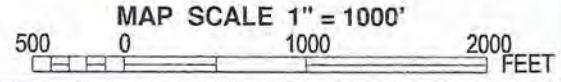
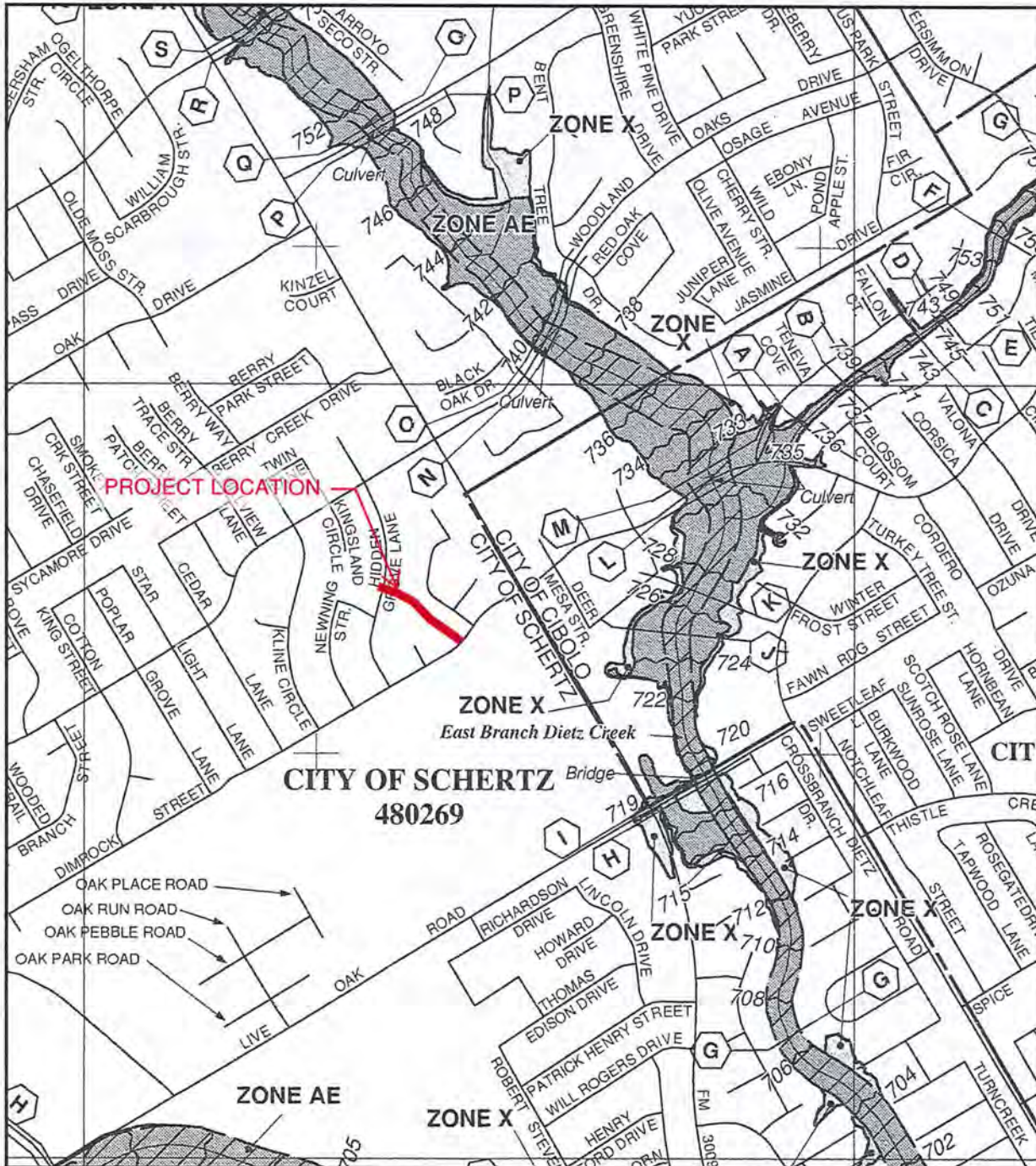


Google earth

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700 ft

ATTACHMENT 'D'



PANEL 0210F

FIRM FLOOD INSURANCE RATE MAP GUADALUPE COUNTY, TEXAS AND INCORPORATED AREAS

PANEL 210 OF 480
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
GUADALUPE COUNTY	480266	0210	F
CIBOLO, CITY OF	480267	0210	F
SCHERTZ, CITY OF	480269	0210	F
SELMA, CITY OF	480046	0210	F

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



MAP NUMBER
48187C0210F
EFFECTIVE DATE
NOVEMBER 2, 2007

Federal Emergency Management Agency

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DIETZ ROAD
CITY OF SCHERTZ

PROJECT LOCATION

ATTACHMENT 'E'

Legend



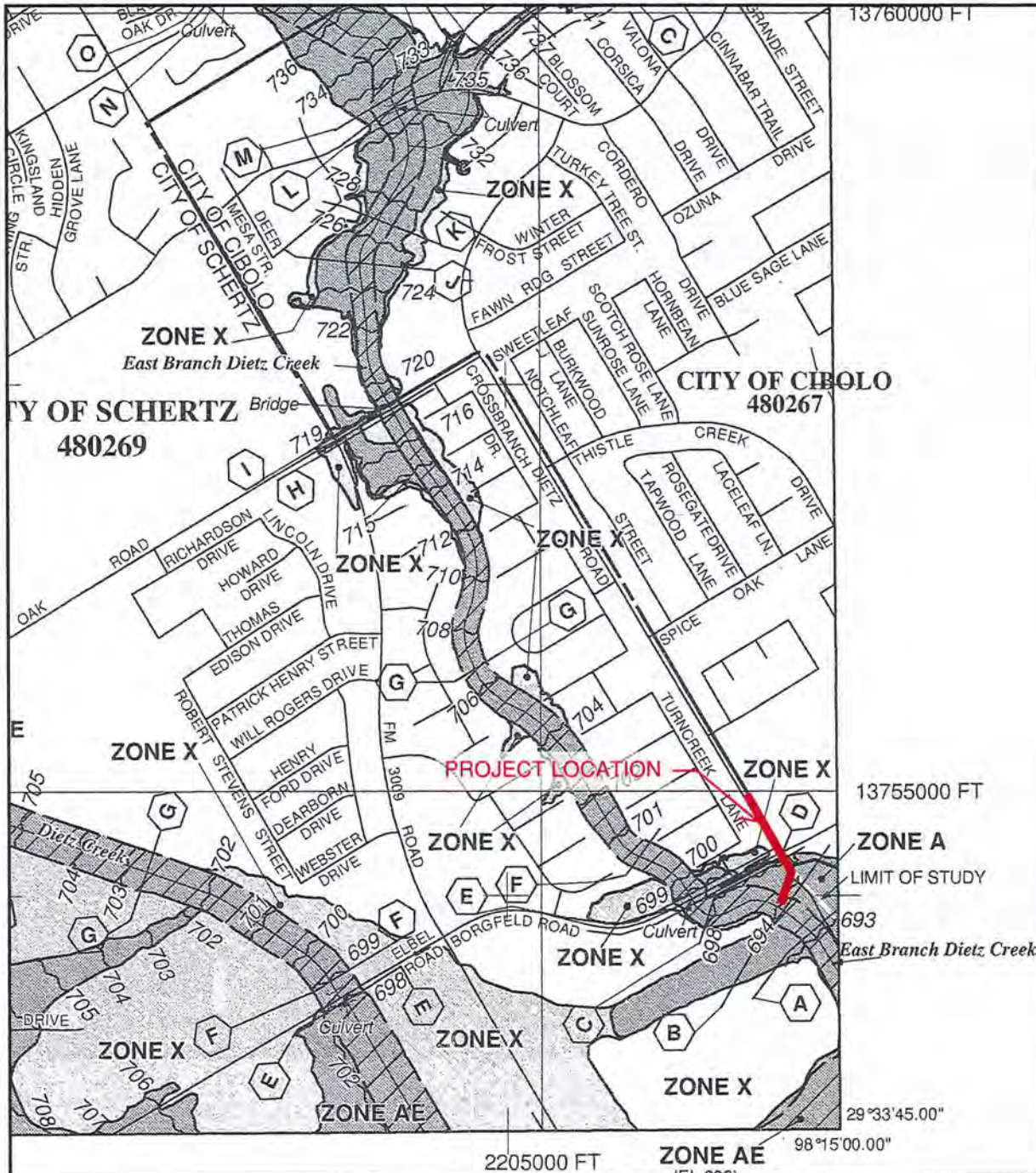
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Google earth

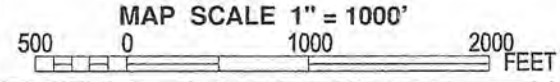
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ATTACHMENT 'F'



13760000 F-1



FIRM FLOOD INSURANCE RATE MAP GUADALUPE COUNTY, TEXAS AND INCORPORATED AREAS

PANEL 210 OF 480
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
GUADALUPE COUNTY	480265	0210	F
CIBOLO, CITY OF	480267	0210	F
SCHERTZ, CITY OF	480269	0210	F
SELMA, CITY OF	480046	0210	F

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



MAP NUMBER
48187C0210F
EFFECTIVE DATE
NOVEMBER 2, 2007





Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

CASTLE HILLS

CITY OF SCHERTZ

Legend

-  COLONIES DITCH
-  Church of Christ Schertz
-  Diamond K Eyecare
-  Feature 1

ATTACHMENT 'F'

PROJECT LOCATION

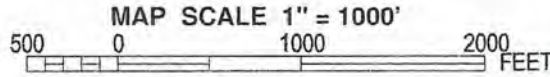
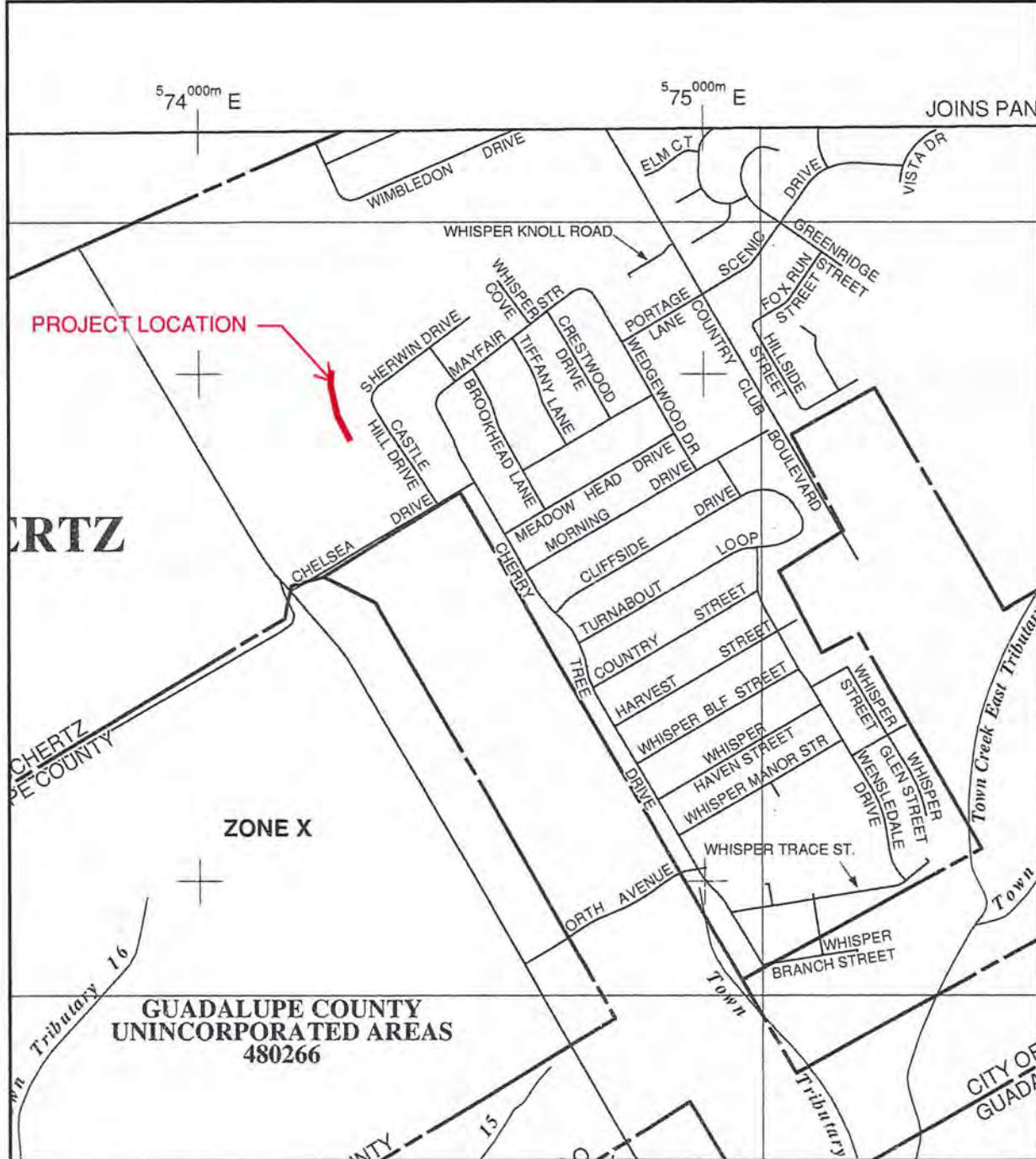
Google earth

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ATTACHMENT 'H'



FIRM FLOOD INSURANCE RATE MAP GUADALUPE COUNTY, TEXAS AND INCORPORATED AREAS

PANEL 230 OF 480
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
GUADALUPE COUNTY	480266	0230	F
CIBOLO, CITY OF	480267	0230	F
SANTA CLARA, CITY OF	480013	0230	F
SCHERTZ, CITY OF	480269	0230	F

Notice to User: The Map Number shown below should be used when placing map orders, the Community Number shown above should be used on insurance applications for the subject community.



MAP NUMBER
48187C0230F
EFFECTIVE DATE
NOVEMBER 2, 2007

Federal Emergency Management Agency

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SCHAEFFER ROAD

CITY OF SCHERTZ

Legend

-  COLONIES DITCH
-  Church of Christ Schertz
-  Diamond K Eyecare
-  Feature 1

ATTACHMENT 'I'

PROJECT LOCATION



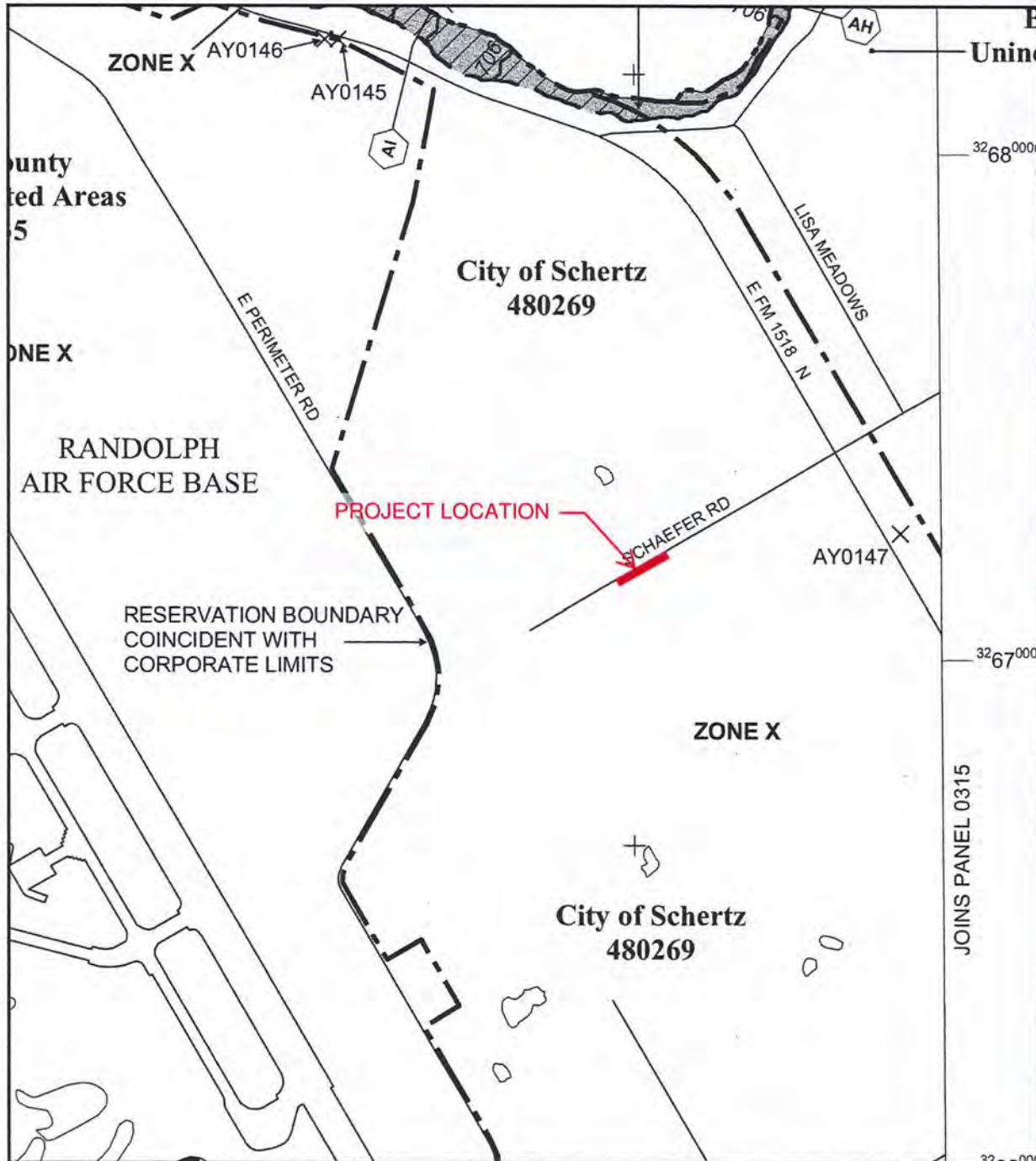
Google earth

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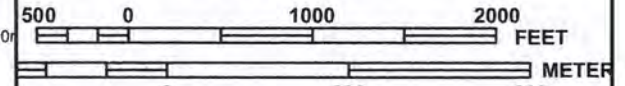
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ATTACHMENT 'J'



MAP SCALE 1" = 1000'



NATIONAL FLOOD INSURANCE PROGRAM
NFIP

PANEL 0295F

FIRM
FLOOD INSURANCE RATE MAP

BEXAR COUNTY, TEXAS
AND INCORPORATED AREAS

PANEL 295 OF 785

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
BEXAR COUNTY	480035	0295	F
CONVERSE, CITY OF	480038	0295	F
SAN ANTONIO, CITY OF	480045	0295	F
SCHERTZ, CITY OF	480269	0295	F
UNIVERSAL CITY, CITY OF	480049	0295	F

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

MAP NUMBER
48029C0295F



MAP REVISED
SEPTEMBER 29, 2010





Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

OSAGE AVENUE

CITY OF SCHERTZ

Legend

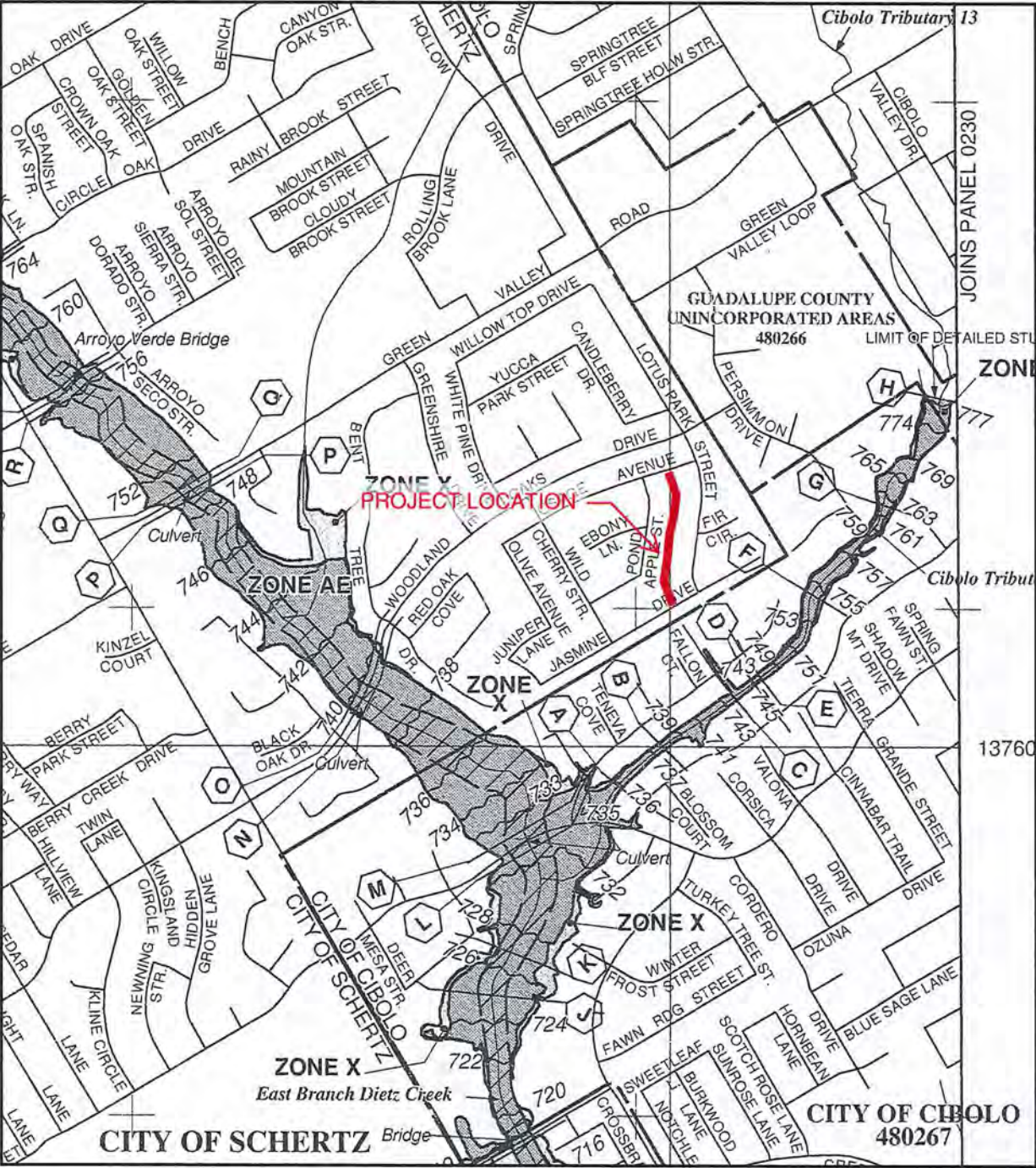
-  COLONIES DITCH
-  Church of Christ Schertz
-  Diamond K Eyecare
-  Feature 1

ATTACHMENT 'K'

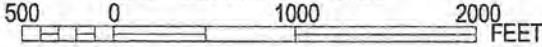
PROJECT LOCATION



ATTACHMENT 'L'



MAP SCALE 1" = 1000'



**FIRM
FLOOD INSURANCE RATE MAP
GUADALUPE COUNTY,
TEXAS
AND INCORPORATED AREAS**

PANEL 210 OF 480
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
GUADALUPE COUNTY	480266	0210	F
CIBOLO, CITY OF	480267	0210	F
SCHERTZ, CITY OF	480269	0210	F
SELMA, CITY OF	480046	0210	F

Notice to User: The Map Number shown below should be used when placing map orders, the Community Number shown above should be used on insurance applications for the subject community.



**MAP NUMBER
48187C0210F
EFFECTIVE DATE
NOVEMBER 2, 2007**

Federal Emergency Management Agency

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