

EXHIBIT "A"

CITY OF SCHERTZ

PROJECT AGREEMENT FOR ENGINEERING 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 Cobb, Fendley & Associates, 1100 NW Loop 410, Suite 350, San Antonio, TX 78213.

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 time schedule, along with 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 following phases and CONSULTANT'S Scope of Services attached and incorporated herein as Attachments 1 and 2.
 - 2.4.1 PROJECT DESIGN PHASES
 - 2.4.2 Preliminary Engineering Report
 - 2.4.3 60% Design
 - 2.4.4 90% Design
 - 2.4.5 Bid Documents and Services
 - 2.4.6 Construction Phase Services
 - 2.4.7 Project Close Out and Final Payment
- 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 following phases. For the purpose of establishing portions of compensation for separate phases, more particularly described in the Scope of Services, Attachment 2 shall apply.

Preliminary Engineering Report
60% Design
90% Design
Bid Documents and Services
Construction Phase Services
Project Close Out and Final Payment

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 execution by CITY 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: ASSIGNMENT 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, AGENTS AND EMPLOYEES HARMLESS AGAINST ANY AND ALL CLAIMS BY THIRD PARTIES, LAWSUITS, JUDGMENTS, COST, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED OR CAUSED BY A NEGLIGENT ACT, ERROR, OR OMISSION OF 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

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.

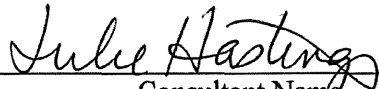
IN WITNESS WHEREOF, the parties to this Agreement hereby execute this Agreement effective as of October, 8th, 20 15 (the "Effective Date").

CITY OF SCHERTZ

CONSULTANT



CITY MANAGER



Consultant Name
Julie Hastings
Department Manager

TITLE

ATTACHMENT 1

PROJECT SCOPE OF SERVICES

PROJECT DESCRIPTION

This project is for to install a gravity wastewater line from the existing lift station at the Sedona/Crossvine Subdivision at FM 1518 near the Woman Hollering Creek (this lift station will be removed), then along said creek, approximately 11,500 feet to the intersection of Woman Hollering Creek and the IH 10 right-of-way (project would stay out of the public right-of-way). A new lift station would be installed at this location and a force main would be installed approximately 6,000 feet to the site of the proposed Cibolo Creek Municipal Authority (CCMA) new wastewater treatment plant. In addition, an approximately 1,500 foot “dog-leg” gravity main is also to be installed along an unnamed tributary and will connect to the 6,000 foot line. The attached sketch gives our general understanding of the intended route for the wastewater lines (approximately 19,000 centerline feet).

Some areas along the proposed wastewater line route are densely vegetated. Field crews will be required to clear brush and possibly small trees to perform survey, environmental, and geotechnical investigations.

It is understand that the wastewater line needs to be in place and operational by as soon as 2017. As such, this proposal encompasses preliminary engineering through construction phase in order to expedite the design process and advertise the project for bids as soon as possible.

SCOPE OF SERVICES

I. Preliminary Engineering Phase

The location of this wastewater line is generally known; however, specifics of the routing along the creek are undetermined. The Preliminary Engineering phase will focus on determining the optimal route for the wastewater interceptor to balance construction, property owner, and environmental concerns. Also, it is our understanding that a Preliminary Engineering Report (PER) was prepared in 2011 and that a “Gateway Planning” study in 2013 modified the land use assumptions made in the original PER. Our efforts will verify the necessary line sizes per the new land use for the Woman Hollering Creek sewershed.

A. Route Analysis

- A1. Gather and analyze data. Download data for route analysis.
 - A1.1 Property owner information
 - A1.2 Aerial information
 - A1.3 Topographical information
 - A1.4 Environmental information
- A2. Assimilate data and prepare preliminary route options.

A2.1 Using ACAD Civil3D, put together preliminary base plan with all data shown.

A2.2 Prepare preliminary route and profile.

A3. Develop a route decision matrix

CobbFendley will determine the best routing option for the wastewater line based on our expertise and experience. We will perform an internal decision analysis, evaluating parameters such as property owners, environmental impacts, construction costs, etc. We will make one alignment recommendation to the City based on this internal analysis. Multiple alignments and decision matrix evaluations are not included in this scope of services.

A4. Prepare Preliminary Engineering Technical Memorandum summarizing analysis and results.

A4.1 Route evaluation. This brief technical memo will summarize the evaluation process and significant decision factors involved in developing the recommended route.

A4.2 Preliminary construction cost estimate.

A4.3 Permitting requirements. CobbFendley will identify required permits and initiate agency coordination.

B. Land Use Assumptions/Pipe Size Verification

B1. Gather and analyze data

B1.1 Original Land Use from PER

B1.2 Updated Info from Gateway Study

B1.3 Verify Calcs and Check Pipe Sizes

B1.4 Analyze Results

B1.5 Prepare Technical Memo

II. Design Phase

During the Design Phase, CobbFendley will prepare contract and easement documents for the construction of the wastewater line. Below is a detailed scope of services.

A Coordination and Project Management

A1. Coordinate ROE discussions with affected property owners

A2. Coordination meetings with the City (assume 3)

A3. Field visits / coordination meetings with surveyor, land acquisition, geotechnical, and environmental teams (assume 2)

- A4. Develop project schedule
- A5. Project Management
- A6. Prepare and submit monthly team invoices and project updates

B. Design Plans

CobbFendley will prepare design plans for submittal to the City at the PER, 60%, 90%, and Bid Document phases. We anticipate the following sheets to be included in our design set:

- B1. Cover Sheet (1 sheet)
- B2. General Notes. Assemble a set of general notes using City of Schertz, TCEQ standards or other standards as needed (assume 2 sheets)
- B3. Wastewater Line P&Ps. Prepare Plan & Profile Sheets for the wastewater line at a scale of 1"=20' on 22"x34" plan sheets (assume 38 sheets)
- B4. Traffic Control Sheets. Traffic control is anticipated to be required for 3 possible roadway crossings (at FM 1518 at Trainer Hale Road - two locations) along the route (assume 1 sheet)
- B5. Erosion and Sedimentation Control/Tree Protection Plan. E&S and Tree Protection plan sheets will be prepared for the alignment at a scale of 1" = 40' (assume 10 sheets)
- B6. Detail Sheets. Prepare detail sheets showing invert details, standard construction details as well as special project-specific details (assume 4 sheets)
- B7. Design calculations - perform design calculations as necessary.
- B8. Easement Map (1 sheet)

C. Design of New Lift Station

It is our understanding that a new sewer lift station will be part of this project. The exact size of this lift station is currently unknown but is currently called out to be 3.6 MGD average daily flow in the Southern Sewershed Master Plan. CobbFendley will size the required lift station (per Item 1 B., Land Use Assumptions/Pipe Size Verification, above) and design the new lift station per the revised data.

- C1. Collect LS Data
- C2. Analyze Data/LS Calculations
- C3. Structural Calculations/Design
- C4. Construction Drawings (assume 5 sheets)
- C5. Coordinate w/ Pump Manufacturer

C6. Coordinate with Electrical Engineer

- C6.1 CobbFendley will coordinate with Cleary Zimmermann Engineers and provide site drawings, review reports, and provide information required for electrical design.
- C6.2 Refer to the subconsultant proposal from Cleary Zimmermann Engineers dated October 27, 2014 for a detailed scope of services.

D. Old Lift Station Demolition/Decommissioning Plans

It is also our understanding that the old lift station at the projects starting point (at the Sedona Subdivision) will need to be demolished and decommissioned. CobbFendley will provide the following services in conjunction with the old lift station:

D1. Collect Old LS Data/As-Builts

D2. Data Verification/LS Calculations

D3. Demolition Drawings (assume 2 sheets)

E. Specifications

CobbFendley will assemble standard technical specifications. A table of contents will be provided with the 60% submittal and a full set of specifications will be included with the 90% and Final submittals. City of Schertz standard contract documents will be used for front end documents, with minor modifications necessary for this project.

F. Quantity Take Off

CobbFendley will perform a quantity take off and prepare a bid form. A quantity take off will be performed at the 60%, 90% and Bid Document submittals.

G. Cost Estimate

CobbFendley will prepare an opinion of probable construction cost for the 60% (+/- 15%), 90% (+/- 10%) and 100% (+/- 5%) submittals.

H. QA/QC

CobbFendley will perform quality control reviews on the plans and specifications prior to each submittal to the City.

I. Prepare submittal packages

CobbFendley will assemble plans and specifications and submit to the City for review. This proposal assumes there will be 60%, 90%, and Bid Document Set submittals. We will provide two (2) sets of full size plans (22" x 34") and specifications for each submittal.

J. Respond to comments

CobbFendley will review comments provided by the City and review agencies and prepare a written response to the comments for inclusion with the subsequent submittal.

K. Coordination/Review meetings

This proposal assumes there will be four (4) coordination meetings with the City during the design phase.

L. Permits

Coordinate with permitting agencies as needed, to obtain required permits for construction. Some of these entities include the City of Schertz, Bexar County, TxDOT, TCEQ, THC and USACE.

M. Surveying Services

M1. Topographic and Boundary Survey

The topographic survey will involve a scope area of approximately 19,000 linear feet of centerline profile data and a width of a maximum of 75 feet along and coincident with the proposed centerline of the Woman Hollering Creek wastewater line. We will locate data points including spot elevations at pertinent grade breaks, any edges of pavement, tops of curb, gutter, road center lines, top bank, centerline and grade breaks of any creeks within the scope area described above based on 75 foot cross sections along the proposed centerline. In addition, the survey will include the location and elevation of visible utility surface features (fire hydrants, manholes, utility poles, down guys, drainage inlets, culverts and other drainage structures, ditches and detention ponds within the cross-sections. This will also include box culverts, drainage structures, bridges, and roadways.

In addition, land records will be researched to determine ownership of all land being crossed by the proposed construction and Primary Survey Control of the Alignment Route will be set. A boundary strip map will be prepared for use in easement determination and acquisition.

M1.1 Topo & Trees (8" and greater) for Gravity Main

M1.2 Topo & Trees (8" and greater) for Force Main

M1.3 Topo & Trees (8" and greater) for Lift Station Site

M1.4 Boundary Survey for both Gravity & Force Main Routes

M1.5 Boundary Strip Map

M1.6 Brush Clearing

M2. Easement Metes & Bounds

Once the design centerline alignment has been finalized, we will produce the required Easement Exhibits which shall include Easements drawings and Legal Descriptions for each Permanent and Temporary Construction Easement (TCE) required from land owners. Each Easement will consist of printed, signed and sealed drawings with accompanying legal description in Metes and Bounds delineation per Texas Statutory requirements. This proposal assumes that twenty-five (25) permanent and temporary easements will be required, for a total of fifty (50) easements and one (1) Metes and Bounds Description for the Lift Station site.

M2.1 Easements - Gravity

Estimated at 21 Permanent + 21 Temporary for a total of 42

M2.2 Easements - Force Main

Estimated at 4 Permanent + 4 Temporary for a total of 8

M3.3 Metes & Bounds – Lift Station Site (1 total)

Survey proposed lift station site and set four (4) corners. Prepare Metes and Bounds for site in preparation for purchase (assumed fee simple purchase and not an easement).

N. Geotechnical Investigation

Arias & Associates, Inc., will perform a geotechnical analysis, drilling soil borings for sampling approximately eight (8) total borings as such: one (1) at the proposed Lift Station site, four (4) at the proposed creek crossings and three (3) at the proposed roadway crossings.

N1. CobbFendley will coordinate with Arias & Associates to determine the appropriate location for eighteen soil borings, survey in the boring locations, and incorporate the soil boring information into the contract documents.

N2. Refer to the revised subconsultant proposal from Arias & Associates, Inc., dated January 6, 2015 for a detailed scope of services.

O. Environmental Investigation

Cox|McLain will perform environmental investigations for the project to include Archeological Resources, Jurisdictional Waters of the U.S. Assessment, Biological Resources, Hazardous Materials Screen and will prepare an Environmental Technical Memorandum summarizing the results and recommendations.

O1. CobbFendley will coordinate with Cox|McLain, provide alignment drawings, review reports, and provide information required for permitting.

O2. Refer to the revised subconsultant proposal from Cox|McLain, dated January 7, 2015 for a detailed scope of services.

III. **Bid Phase**

CobbFendley will assist in the bidding of the project. This proposal assumes that the City will use a bidding assistance center and all contract documents will be distributed through the center. CobbFendley may retain a copy for viewing, if desired, but will not be managing the document distribution. Below is a detailed scope of services for bid phase.

A. Assist the City in preparing the advertisement for bids. This proposal assumes that the City will coordinate with the local newspapers and pay the fee for the advertisement.

B. Attend and conduct a pre-bid conference. Prepare the meeting agenda and meeting minutes.

C. Respond to contractors questions during the bidding process.

D. Prepare addenda (assume 2) to address contractor questions.

- E. Attend and conduct the bid-opening.
- F. Prepare bid tabulation and check calculations.
- G. Check Contractor References.
- H. Prepare Recommendation of Award
- I. Assist the City in obtaining executed contract documents.

IV. Construction Phase

The City proposes to bid this project utilizing the Competitive Sealed Bid method. CobbFendley will provide construction administration and observation assistance the City. This proposal does not include inspection services. This proposal assumes a construction duration of nine (9) months. Below is a detailed scope of services.

- A. Attend and conduct a preconstruction conference. CobbFendley will prepare the agenda, take notes, and prepare the meeting minutes.
- B. Attend periodic progress meetings. Assume monthly progress meetings for a total of nine (9).
- C. Attend periodic site visits. Assume monthly site visits (not coincident with progress meetings) for a total of nine (9).
- D. Review project submittals/shop drawings. CobbFendley will review each submittal twice. If the Contractor requires a third submittal, it will be reviewed as an additional service and at the Contractor's expense, as will be written in the contract documents. This proposal assumes 20 (20) submittals.
- E. Review pay estimates. CobbFendley will coordinate with the City's inspector on accurate quantities and review the pay estimates for accuracy. Assume nine (9).
- F. Respond to Requests for Information (RFI). CobbFendley will coordinate with the City and Contractor on RFIs and respond with clarifications as needed. This proposal assumes ten (10) RFIs.
- G. Change Orders. CobbFendley will assist the City in negotiation and preparation of change order documents, should they be necessary. This proposal assumes three (3) change orders.
- H. Final Walk Through and Punch List. CobbFendley will attend the final walk through and coordinate with the City's inspector on the punch list items.
- I. Project Close Out. CobbFendley will assist the City on closing out the contract, reviewing the final pay application and affidavits, and preparing the Concurrence Letter.
- J. Record Drawings. CobbFendley will prepare a set of record drawings based on the Contractor's redlines in the field.
- K. Construction Materials Testing (CMT) for this project is not been included in this contract.

Easement Acquisition

CobbFendley will provide easement acquisition services on an as needed basis. These services include all activities required to acquire each easement including gathering information concerning each property, meeting with the property owners, negotiating with the property owners, any necessary release of liens and judgments, etc., presenting offers to property owners and negotiating final offer, and taking easement to closing. All negotiations will follow rules and regulations of SB18.

The following services are anticipated in the parcel acquisition and fees for such are shown on the attached exhibit. These services will be charged at an hourly rate and not to exceed the stated fee without prior City Staff approval.

- Right of Entry (ROE) Coordination:
 - Prepare ROE letters for each affected property and send to each landowner by Certified Mail.
 - Compile and maintain a list of affected property owners.
- Coordinate with the land owner, City of Schertz, survey, geotechnical and archeology field crews regarding property visitation schedule.
- Title Commitments
- Easement Acquisition:
 - Prepare a property value, based on the current tax rolls and then send an offer package to each landowner by Certified Mail (as required by law).
 - Attempt to meet in person with each Owner so as to build rapport with them.
 - Be the point of contact for any questions that they have. We will coordinate with the City to obtain the information that they are requesting, but will handle all interactions with the Owners. We will pass on any requests to the City but will continue to be the one that responds to them so as to limit the City's time spent dealing with the Owners.
 - Provide a recommendation to the City for all counters/requests of property owners based on our experience on similar projects/parcels.
 - Coordinate with all conflicting property interest holders to obtain the necessary releases/subordinations. For instance, if there is a mortgage and lien on the property, we will coordinate with the lender to obtain the Subordination of Lien and handle the recordation of that document with the signed Easement.
 - Should we be unable to reach an agreement, then we will coordinate with the Appraiser to get the property appraised and will provide the Owner with a Final Offer by Certified Mail (as required by law).
- Appraisals:
 - Only needed if we are unable to reach an agreement with any property owners using the approach mentioned above.

Should Condemnations be needed, the City may retain CobbFendley for condemnation support at an hourly rate to be determined at that time.

ATTACHMENT 2

PROJECT COST

Task	Fee
<u>Preliminary Engineering</u>	\$23,150.00
<u>Design Phase</u>	
Design Plans	\$300,610.00
Topographic & Boundary Survey	\$111,610.00
Easement Metes and Bounds	\$44,500.00
Geotechnical Investigation	\$28,075.00
Environmental Investigation	\$15,132.00
Total Design Phase	\$499,927.00
<u>Bid Phase</u>	\$13,295.00
<u>Construction Phase</u>	\$46,430.00
<u>Expenses</u>	\$7,045.40
Engineering Services Total	\$589,847.40
<u>Easement Acquisition Services</u>	assuming 26 parcels
Right of Entry Coordination	\$500/parcel (not to exceed) \$13,000.00
Title Commitments	\$750/parcel (not to exceed) \$19,500.00
Easement Acquisition Services	\$4,000/parcel (not to exceed) \$104,000.00
Appraisal (if needed)	\$1,800/parcel (not to exceed) \$46,800.00
Easement Acquisition Services Total (not to exceed)	\$183,300.00
Total Fee (not to exceed)	\$773,147.40

Woman Hollowing Wastewater Line
Fee Estimate Worksheet
05/29/15

Task	Labor Rates											Total Hours	Subconsultant/Expense	Total Fee
	\$250.00 per hour	\$200.00 per hour	\$180.00 per hour	\$145.00 per hour	\$125.00 per hour	\$120.00 per hour	\$125.00 per hour	\$95.00 per hour	\$150.00 per hour	\$110.00 per hour	\$65.00 per hour			
	Principal	Senior Project Manager QA/QC	Project Manager	Project Engineer III	Project Engineer II	Senior Technician	RPLS	SIT	2 Man Survey Crew	ROW Agent	Clerical			
	Sande Khoury	Julie Hastings	Abel Guzman	Travis McCoy	Karen Wang	Rafael Rodriguez	Bud Thompson	Carey Johnson		Arthur West	Peggy Wheeler			
I. Preliminary Engineering Phase														
A. Route Analysis														
A1. Gather and analyze data														
A1.1 Property owner			2	1								3		\$505.00
A1.2 Aerial				1								1		\$145.00
A1.3 Topo				1								1		\$145.00
A1.4 Environmental				1		2						3		\$385.00
A2. Assemble data and prepare routes												0		
A2.1 Preliminary base plan				4		8						12		\$1,540.00
A2.2 Prepare preliminary route and profile			2	4		8						14		\$1,900.00
A3. Develop route recommendation						8				2				\$1,180.00
A3.1 Develop decision criteria			2	4								6		\$940.00
A3.2 Determine criteria values			2	4								6		\$940.00
A3.2a Property owners			2	4								2		\$360.00
A3.2b Easement acquisition costs				4								4		\$580.00
A3.2c Environmental impacts				4								4		\$580.00
A3.2d Preliminary construction costs			2	4		8						14		\$1,200.00
A3.3 Populate matrix				4								4		\$580.00
A3.4 Analyze results		1	2	2								5		\$650.00
A4. Prepare Preliminary Tech Memo		1												
A4.1 Route evaluation discussion and recommendation		1	2	4		8						15		\$2,100.00
A4.2 Prelim construction cost estimate		1	2	2		4						9		\$1,330.00
A4.3 Research Permitting requirements				4								4		\$580.00
B. Land Use Assumptions/Pipe Size Verification														
B1. Gather and analyze data														
B1.1 Original Land Use Data from PER				8								8		\$1,180.00
B1.2 Updated info from Gateway Study				4								4		\$580.00
B1.3 Verify Calls and Check Pipe Sizes				12								12		\$1,740.00
B1.4 Analyze Results		2	2	2								6		\$1,050.00
B1.5 Prepare Technical Memo		1	4	8								13		\$2,080.00
Total - Preliminary Engineering Phase		7	24	82		46				2		160		\$23,160.00
II. Design Phase														
A. Coordination and Project Management														
A1. Coordinate ROE discussions/exhibits				2		8						10		\$1,260.00
A2. Coordination meetings with City (Assume 3)			6	6								12		\$1,960.00
A3. Design Field Visits (Assume 2)			4	4								8		\$1,100.00
A4. Develop project schedule		2	4	4								6		\$1,120.00
A5. Project Management			30	45								75		\$11,925.00
A6. Monthly Invoicing/Project Updates			30									30		\$5,400.00
<i>Note: Assumed project life of 15 months (6 months design + 9 months construction)</i>														
B. Design Plans														
B1. Cover Sheet (1 sheet)				2		8						8		\$1,010.00
B2. General Notes (2 sheets)			2	4		8						14		\$1,960.00
B3. P&Ps (1"-20', 38 sheets)			80	304		608						992		\$131,440.00
B4. Traffic Control Sheets (1 sheet)			2	8		16						26		\$3,440.00
B5. Erosion and Sedimentation Control/Tree Protection Sheets (1" = 40', 10 sheets)			8	50		80						138		\$18,280.00
B6. Detail sheets (4 sheets)				16		32						48		\$6,160.00
B7. Design calculations		2	4	24								30		\$4,000.00
B8. Easement Map (1 sheet)			2			12						14		\$1,800.00
C. Design of New LIR Station														
C1. Collect L/S Data				8								8		\$1,180.00
C2. Analyze Detail S Calculations			4	24		28						28		\$4,200.00
C3. Structural Calculations/Design (in-house)				8	60							68		\$8,960.00
C4. Construction Drawings (5 sheets)				40		120						160		\$20,200.00
C5. Coordinate w Pump Manufacturer				16								16		\$2,320.00
C6. Electrical Design														
C6.1. CF coordination			16									16		\$2,880.00
C6.2. Cleary Zimmermann fee													\$ 44,500.00	\$44,500.00
D. Old LIR Station Demolition/Decommissioning Plans														
D1. Collect Old L/S Data/As-Built				8		16						24		\$3,080.00
D2. Data Verification/L/S Calculations			2	4								6		\$840.00
D3. Demolition Drawings (2 sheets)			2	8		32						42		\$5,360.00
E. Specifications														
E1. 60% Phase		1	2	24								4	31	\$4,300.00

Woman Hollering Wastewater Line
 Fee Estimate Worksheet
 05/29/15

Task	Principal	Senior Project Manager QA/QC	Project Manager	Project Engineer III	Project Engineer II	Senior Technician	RPLS	SIT	2 Man Survey Crew	ROW Agent	Clerical	Total Hours	Subconsultant/Expense	Total Fee
E2. 90% Phase	Sandeep Khoury	Julie Hastings	Abel Guzman	Travis McCoy	Karen Wang	Rafael Rodriguez	Bud Thompson	Carey Johnson		Arthur West	Peggy Wheeler			
E3. Final Bid Set submittal		1	1	8							2	12		\$1,670.00
F. Quantity Take-off														
F1. 60% submittal		0.5	2	8		18						28.5		\$3,540.00
F2. 90% submittal		0.5	1	4		8						13.5		\$1,920.00
F3. Final Bid Set submittal		0.5	1	4		4						9.5		\$1,340.00
G. Cost Estimate														
G1. 60% submittal		0.5	1	8								9.5		\$1,440.00
G2. 90% submittal		0.5	1	4								5.5		\$860.00
G3. Final Bid Set submittal		0.5	1	4								5.5		
H. QA/QC														
H1. 60% submittal		8	16									24		\$4,480.00
H2. 90% submittal		4	8									10		\$1,880.00
H3. Final Bid Set submittal		2	4									6		\$1,120.00
I. Prepare submittal packages														
I1. 60% submittal		0.5	1	2		8						11.5		\$1,630.00
I2. 90% submittal		0.5	1	2		4						7.5		\$1,050.00
I3. Final Bid Set submittal		0.5	1	2		4								\$1,050.00
J. Respond to comments														
J1. 60% submittal		0.5	1	8		8					4	21.5		\$2,660.00
J2. 90% submittal		0.5	1	2		4					4	11.5		\$1,310.00
J3. Final Bid Set submittal		0.5	1	2		4					4	11.5		\$1,310.00
K. Review Meetings														
K1. Review Meetings (Assume 4)			8	8								16		\$0.00
L. Permits														
L1. Permit Coordination/Approvals			4	20								24		\$3,820.00
Subtotal - Design Phase		25	177	638	60	990	0	0	0	0	20	1910		\$300,610.00
M. Surveying Services														
M1. Topographic & Boundary Survey														
M1.1 Topo & Trees for Gravity Main			22				38	112	150			322		\$41,820.00
M1.2 Topo & Trees for Force Main			12				22	56	69			162		\$20,865.00
M1.3 Topo & Trees for LIFT Station Site			3				3	7	10			23		\$3,090.00
M1.4 Boundary Survey for both Gravity & Force Main Routes			18				63	85	100			266		\$34,190.00
M1.5 Boundary Strip Map			2				4	17				23		\$2,475.00
M1.6 Bush Clearing			5				10					18	\$ 7,000.00	\$9,150.00
M2. Easement Metes and Bounds														
M2.1 Easements - Gravity (Estimated at 21 Permanent + 21 Temporary = 42 @ \$850 each)														\$ 35,700.00
M2.2 Easements - Force Main (Estimated at 4 Permanent + 4 Temporary = 8 @ \$850 each)														\$ 6,800.00
M2.3 Metes & Bounds Description - LIFT Station Site (Estimated at 1 @ \$2,000 each plus tax)														\$ 2,000.00
Subtotal - Surveying Services		0	62	0	0	0	140	280	329	0	0	811		\$166,110.00
N. Geotechnical Investigation														
N1. CF coordination			34									34		\$6,120.00
N2. Arise fee													\$21,955.00	\$21,955.00
Subtotal - Geotechnical Investigation														\$28,075.00
O. Environmental Investigation														
O1. CF coordination			12									12		\$2,160.00
O2. Cox McClain fee													\$ 12,975.00	\$12,975.00
Subtotal - Environmental Investigation														\$15,135.00
Subtotal Investigations (Geotechnical and Environmental)														\$43,210.00
Total Design Phase (Design, Surveying + Investigations)														\$499,930.00
III. Bid Phase														
A. Advertisement				2								2		\$200.00
B. Pre-bid			2	4								6		\$940.00
C. Respond to questions			2	4								6		\$940.00
D. Addenda			2	16		8					2	28		\$3,770.00
E. Bid opening			2	2							2	6		\$780.00
F. Bid tab			1	2							1	4		\$730.00
G. Check references/Competitive Sealed Bid Process		4	8	16								28		\$4,660.00

Woman Holiering Wastewater Line
 Fee Estimate Worksheet
 05/29/15

Task	Principal	Senior Project Manager Q/A/C/C	Project Manager	Project Engineer III	Project Engineer II	Senior Technician	RPLS	SIT	2 Man Survey Crew	ROW Agent	Clerical	Total Hours	Subconsultant Expense	Total Fee
H. Recommendation of Award	Sandoe Khoury	Julie Hastings	Abel Guzman	Travis McCoy	Karen Wang	Rafael Rodriguez	Bud Thompson	Carry Johnson		Arthur West	Peggy Wheeler	1		\$145.00
I. Execute contracts		1	2	4								7		\$1,140.00
Bid Phase Subtotal	0	5	19	51	0	8	0	0	0	0	8	91		\$13,295.00
IV. Construction Phase														
A. Preconstruction conference			2	4								8		\$84.00
B. Progress meetings (Assume 6)			18	36								54		\$8,460.00
C. Site visits (Assume 5)			18	30								54		\$8,460.00
D. Submittal review (Assume 20)			10	40								50		\$7,500.00
E. Pay estimates (Assume 9)			9	18								27		\$4,230.00
F. RFIs (Assume 10)			10	20								40		\$5,900.00
G. Change Orders (Assume 3)			3	12		10						15		\$2,280.00
H. Final Walk Through			4	4								8		\$1,300.00
I. Close-out			2	8								10		\$1,520.00
J. Record Drawings			2	4		40						46		\$5,740.00
Subtotal - Construction Phase	0	78	182	0	60	0	0	0	0	0	0	310		\$46,430.00
Total Labor and Subconsultant Costs (Preliminary, Design, Bid and Construction)														
														\$582,805.00
Expenses														
	Quantity	Unit Cost	Total											
Mileage														
Design site visits and coordination meetings (10 trips @ 53 mi/trip)	530	\$0.55	\$296.80											
Property owner visits (10 trips @ 53 mi/trip)	530	\$0.55	\$296.80											
Construction Phase (10 trips @ 53 mi/trip)	530	\$0.55	\$296.80											
Copies (B&W, photo copy)														
Specifications (Assume 2 sets of 50 sheets @ 3 submittals)	300	\$0.15	\$45.00											
Reproduction (B&W full-size, bond)														
Design submittals (Assume 2 sets of 60 sheets @ 3 submittals)	360	\$1.00	\$360.00											
Reproduction (B&W, full size, mylar)														
Final mylars	80	\$10.00	\$800.00											
Deliveries/Courier	10	\$15.00	\$150.00											
Miscellaneous			\$5,000.00											
Total Expenses			\$7,045.40											
Total Project Costs														
														\$689,850.40
Optional Easement Acquisition Services														
<i>Note: It is anticipated that 25 easement parcels and 1 lift station site parcel will be needed for a total of 26 parcels</i>														
Prepare and mail ROE Letters (Estimated 26 parcels @ \$500/parcel)														\$13,000.00
Title Commitments (Estimated @ 26 parcels @ \$750/parcel)														\$19,500.00
Easement Acquisition (26 parcels @ \$4,000/parcel)														\$104,000.00
Appraisal Fee (26 parcels @ \$1,800/parcel) - only needed for parcels for which we are unable to reach agreement														\$46,800.00
Total Optional Easement Acquisition Services														\$183,300.00

ATTACHMENT 3
BILLING RATE SCHEDULE

COBB, FENDLEY & ASSOCIATES, INC.

2014 STANDARD RATE SCHEDULE #660

January 1, 2014 – December 31, 2014

Principal / Chief Engineer	(Professional VIII)*	\$250.00/HR
Senior Engineer	(Professional VII)*	\$235.00/HR
Senior Project Manager	(Professional VI)*	\$200.00/HR
Project Manager	(Professional V)*	\$180.00/HR
Senior Hydrologist	(Professional V)*	\$180.00/HR
Project Engineer III	(Professional III)*	\$145.00/HR
Project Engineer II	(Professional II)*	\$125.00/HR
Project Engineer I	(Professional I)*	\$105.00/HR
Senior Technician	(Technician IV)*	\$120.00/HR
Technician III	(Technician III)*	\$105.00/HR
Technician II	(Technician II)*	\$95.00/HR
Technician I	(Technician I)*	\$75.00/HR
Licensed State Land Surveyor	(Professional VI)*	\$200.00/HR
Registered Professional Land Surveyor	(Professional III)*	\$145.00/HR
4-Man Survey Crew		\$165.00/HR
3-Man Survey Crew		\$145.00/HR
2-Man Survey Crew		\$125.00/HR
1-Man Survey Crew		\$105.00/HR
Construction Manager	(Professional IV)*	\$165.00/HR
Senior Field Construction Observer	(Professional I)*	\$105.00/HR
Field Construction Observer	(Technician II)*	\$90.00/HR
Utility Specialist	(Professional II)*	\$125.00/HR
Telecommunications Designer	(Technician II)*	\$95.00/HR
Telecommunications Fieldman	(Technician I)*	\$75.00/HR
GIS Manager	(Professional III)*	\$145.00/HR
GIS Analyst	(Technician II)*	\$95.00/HR
Right-of-Way Agent		\$110.00/HR
Administrative		\$90.00/HR
Clerical		\$65.00/HR

* Category labels "Professional xx" etc. are interim designations for 2014 and are to be implemented in lieu of previous position titles in 2015.

COBB, FENDLEY & ASSOCIATES, INC.

2014 STANDARD RATE SCHEDULE #660

January 1, 2014 – December 31, 2014

(Continued)

SUBSURFACE UTILITY ENGINEERING

Level C & D (Without Level B)	\$0.45/Foot
Level B – Designation (Without Level C & D)	\$1.43/Foot
Level A – Location (Non-Destructive Excavation):	
> Vertical Depth: 0 Ft. – 5 Ft.	\$1,125/Hole
5 Ft. – 8 Ft.	\$1,580/Hole
8 Ft. – 13 Ft.	\$1,825/Hole
13 Ft.– 20 Ft.	\$2,510/Hole
> 20 Ft.	\$3,600/Hole
Ground Penetrating Radar	\$250/HR
SUE Technician (With Equipment)	\$98/HR
Vacuum Excavation Truck with 2 Technicians	\$250/HR
Traffic Control Officer	@ Cost + 10%
Traffic Control (Lane Closures, etc.)	To Be Negotiated
Permits (Local, State, etc.)	@ Cost + 10%
Designation & Traffic Control Vehicles	\$3.40/Mile
Location Vehicles	\$6.80/Mile

REIMBURSABLE EXPENSES

Technology Fee (*)	\$3.75/HR
Consultant or Specialty Contractor (Outside Firm)	@ Cost + 10%
Courier, Special Equipment Rental	@ Cost + 10%
Reasonable Out of Town Travel Expenses (Air, Hotel, Rental, etc.)	@ Cost
Mileage (Standard Car or Truck)	IRS Approved Rate
Per Diem for Out of Town Travel (Per Day/Person)	\$35/Day
Title Plant Charges	@ Cost + 10%
Other Misc. Expenses Related to the Project	@ Cost + 10%
In-House Reproduction:	
> Copies (Up to 11" x 17")	\$0.15/Each
> Color Prints (Up to 11" x 17")	\$1.50/Each
> Color Prints (Larger than 11" x 17")	\$3.00/Sq. Ft.
> Bluelines (All Sizes)	\$1.00/Each
> Bond Prints (All Sizes)	\$2.00/Each
> Mylar Prints	\$12.00/Each
> Vellum Prints	\$9.00/Each

(*) Technology charges added to each billable man-hour.