

AN ORDINANCE 101273

SELECTING LOCKWOOD, ANDREWS AND NEWNAM, INC. TO PROVIDE ENGINEERING SERVICES IN CONNECTION WITH THE SALADO CREEK HIKE AND BIKE, PHASE II PROJECT, LOCATED IN COUNCIL DISTRICT 2; AUTHORIZING THE NEGOTIATION AND EXECUTION OF A PROFESSIONAL SERVICES CONTRACT IN AN AMOUNT NOT TO EXCEED \$438,457.00; AUTHORIZING \$43,845.00 FOR PROJECT CONTINGENCY EXPENSES, AND \$33,761.14 FOR CAPITAL ADMINISTRATIVE COSTS FOR A TOTAL AMOUNT OF \$516,063.14 FUNDED BY TRANSPORTATION EFFICIENCY ACT 21 (TEA) GRANT FUNDS AND PROPOSITION 3 FUNDS; APPROPRIATING FUNDS; AND PROVIDING FOR PAYMENT.

* * * * *

WHEREAS, the City authorized the submission of a grant application to the Texas Department of Transportation for assistance in the construction of a Hike and Bike Trail and related infrastructure improvements adjacent to the Salado Creek Floodplain to be matched with local funds from Proposition 3, in Ordinance 93785 on May 3, 2001;

WHEREAS, a Local Transportation Project Advance Funding Agreement with the Texas Department of Transportation was authorized and Proposition 3 funds were appropriated in Ordinance 96074 on August 1, 2002 for the construction of a Hike and Bike Trail adjacent to the Salado Creek Floodplain; **NOW THEREFORE**,

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

SECTION 1. **Lockwood, Andrews and Newnam, Inc.**, is hereby selected to provide professional engineering services in connection with the Salado Creek Hike and Bike, Phase II Project.

SECTION 2. City staff is authorized and directed to commence negotiations with said firm to reach an agreement on a contract for such work at a fair and reasonable price not to exceed \$438,457.00.

SECTION 3. If a contract can be negotiated in accordance with the terms of the standard-form contract for architectural services, and in accordance with the price provisions contained herein, the City Manager, the Interim City Manager or the designee of either is authorized to execute such an agreement without further City Council action. A copy of such standard form contract appears as **Attachment A** and is incorporated by reference herein. Should a contract be negotiated which varies from the standard terms, the contract must be considered through a subsequent ordinance. If so, City Council must approve the contract terms and the compensation provided must meet the legal requirements set out in Section 2254.004 of the Texas Government Code.

SECTION 4. The amount of \$43,845.00 for project contingency and the amount of \$33,761.14 for capital administrative costs are hereby authorized.

SECTION 5. The following financial adjustments are hereby authorized to effect this Ordinance:

a) Funding in the amount of \$412,850.51 will be from a Transportation Efficiency Act 21 grant from Texas Department of Transportation(TxDot) and is authorized to be transferred to Project 23-00181, WBS No. 23-00181-90-03, GL No. 6101100 entitled "Interfund transfers In from TxDot". Funding in the amount of

\$103,212.63 will be from Proposition 3 and is authorized to be transferred to Project 23-00181, WBS No. 23-00181-90-04, GL No. 6101100 entitled "Interfund transfers In from Proposition 3".

b) Funding in the amount of \$516,063.14 for Project No. 23-00181 entitled "Salado Creek Hike & Bike, Phase II" shall be encumbered and made payable, upon purchase order, to Lockwood, Andrews and Newnam, Inc. as follows:

Design Costs, WBS Element 23-00181-01-02, GL Account #5201170 entitled "Engineering Fees" in the amount of \$438,457.00; and

Design Contingency, WBS Element 23-00181-01-03, GL Account #5201170 entitled "Engineering Fees" in the amount of \$43,845.00; and

Design Capital Adm., WBS Element 23-00181-01-04, GL Account #5402010 entitled "Capital Program Admin, Costs" in the amount of \$33,761.14.

c) City staff is hereby authorized to adjust line items within the budget of Project No. 23-00181 through the normal budget adjustment process.

d) The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Fund Numbers, Project Definitions, Internal Orders, WBS Elements and GL Account Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 6. This ordinance shall take effect on the 4th day of September, 2005.

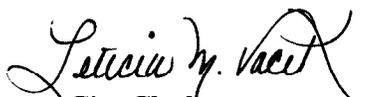
PASSED AND APPROVED this 25th day of August, 2005.



M A Y O R

PHIL HARDBERGER

ATTEST:



Leticia M. Vaca
City Clerk

APPROVED AS TO FORM:
Office of the City Attorney



for City Attorney

PROFESSIONAL SERVICES AGREEMENT

ENGINEERING SERVICES

FOR LOCAL AGENCY MANAGED (LAM) PROJECTS

STATE OF TEXAS

COUNTY OF BEXAR

AGREEMENT FOR

SALADO CREEK HIKE AND BIKE, PHASE II

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY"), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. _____, passed and approved on the _____ day of _____, 200__ and LOCKWOOD, ANDREWS & NEWNAM, INC. and through its Principal, Thomas Turk, P.E. (hereinafter referred to as "CONSULTANT"), both of which may be referred to herein collectively as the "PARTIES".

WITNESSETH

WHEREAS, this is a Federally Funded, in whole or part, Professional Services Contract,

WHEREAS, Government Code, Chapter 2254, Subchapter A, "Professional Services Procurement Act," is incorporated by reference,

NOW THEREFORE, in consideration of the mutual covenants, terms, conditions, privileges and obligations herein contained, CITY and CONSULTANT do hereby agree as follows:

I. DEFINITIONS

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

1.1 "Director" means the director of CITY's Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 "Project" means the capital improvement/construction development undertaking of CITY for which CONSULTANT's design services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 "TxDOT" means the Texas Department of Transportation.

1.4 "MPO" means the local Metropolitan Planning Organization for the area in which CITY is located.

1.5 "Ab Initio" means from the beginning; from the first act; from the inception. *See Black's Law Dictionary, 5th Ed., © 1983.*

1.6 "Respondeat Superior" means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black's Law Dictionary, 5th Ed., © 1983.*

1.7 "DBE" means Disadvantaged Business Enterprises for the area in which **CITY** is located.

1.8 "DOT" means Department of Transportation.

II. PERIOD OF SERVICE

This AGREEMENT shall take effect on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and continue in full force and effect for the period required for completion of the duties as set forth in the Scope of Services.

III. SCOPE OF SERVICES

3.1 **CONSULTANT** shall not commence work until **CONSULTANT** has been thoroughly briefed on the scope of Project, and has been notified in writing by Director to proceed. The Project scope and **CONSULTANT's** services are outlined in the Agency Scoping Meeting document, attached hereto as Attachment A, Appendix 1. Should the scope subsequently change, either party may request a review of the anticipated services, with an appropriate adjustment in fees; however, such adjustment cannot exceed the maximum allowed for additional services in Article V, Compensation, and cannot substantially alter the original scope of this AGREEMENT.

3.2 **CONSULTANT**, in consideration for the compensation herein provided, shall render the professional services described herein and in all attachments hereto, necessary for the development of the Project to Final Design, including plans and specifications, and submission to TxDOT for certification for letting.

3.3 **CONSULTANT** shall be represented by a 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 and other meetings as may be required by the Project development process. All design submittals shall carry the signature and seal or, in the case of progress, or incomplete submittals, an appropriate disclaimer with the professional engineers name and license number, with the date of the submittal adjacent thereto of a licensed professional engineer.

3.4 **CONSULTANT** shall complete the various phases of work listed in this Article III "Scope of Services", including all attachments hereto, in accordance with the Production Schedule in Attachment "B" of this AGREEMENT. Director may, in writing, extend any delivery dates contained in said Attachment "B", Production Schedule, as requested by **CONSULTANT**.

3.5 Upon acceptance and approval of the plans, reports or other producibles required for a phase of work, as set forth in the Scope of Services, Director shall authorize **CONSULTANT**, in writing, to proceed with the next phase of work.

3.6 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **CONSULTANT** agrees to perform all work required by this Scope of Services.

3.6.1 ATTACHMENT "A" (Scope of Services)

3.6.2 APPENDIX 1 to ATTACHMENT "A" (General Project Development Process – [Information Only])

3.6.3 APPENDIX 2 TO ATTACHMENT "A" (Minutes from the Agency Scope Meeting)

3.6.4 APPENDIX 3 TO ATTACHMENT "A" (Schematic Design Checklist)

3.6.5 APPENDIX 4 TO ATTACHMENT "A" (Preliminary Design Checklist)

3.6.6 APPENDIX 5 TO ATTACHMENT "A" (Intermediate Design Checklist)

3.6.7 APPENDIX 6 TO ATTACHMENT "A" (Final Design Checklist)

3.6.8 APPENDIX 7 TO ATTACHMENT "A" (PS&E Submittal Checklist)

3.6.9 ATTACHMENT "B" – (Production Schedule)

IV. COORDINATION WITH THE CITY

4.1 **CONSULTANT** shall hold periodic conferences with Director, so 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. No more than two conferences shall be held per phase, unless otherwise agreed to by Parties. **CITY** shall make available, for **CONSULTANT**'s use, all existing plans, maps, field notes, statistics, computations, and other data in its possession relative to existing facilities and to this Project as may be requested by **CONSULTANT** at no cost to **CONSULTANT**.

4.2 Director shall act on behalf of **CITY** with respect to the work performed under this AGREEMENT. He shall have complete authority to transmit instructions, receive information, and interpret and define **CITY**'s policies and decisions with respect to materials, equipment elements and systems pertinent to **CONSULTANT**'s services.

4.3 **CITY** shall provide written notice to the **CONSULTANT** of any errors or omissions discovered in the **CONSULTANT**'s services, or performance, or of any development that affects the scope or timing of **CONSULTANT**'s services.

4.4 **CONSULTANT** shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by **CONSULTANT** for **CITY**'s use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for completion of the Project. **CONSULTANT** shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, entitled "Compensation".

V. COMPENSATION

5.1 For and in consideration of the services to be rendered by **CONSULTANT**, **CITY** shall pay **CONSULTANT** the fee set forth in this Article V, Compensation. **CITY** may request **CONSULTANT** to perform an engineering study to refine the Project scope. Payment for such a study will be negotiated in accordance with Article V, Section 5.5 herein.

5.2 Nothing contained in this AGREEMENT shall require **CITY** to pay for any unsatisfactory work, as determined by the Director, or for work that is not in compliance with the terms of this AGREEMENT. **CITY** shall not be required to make any payments to **CONSULTANT** at any time **CONSULTANT** is in default under this AGREEMENT.

5.3 BASIS FOR COMPENSATION

A. The total fee for **CONSULTANT**'s work as defined in the Scope of Services shall be as a lump sum of **FOUR HUNDRED THIRTY EIGHT THOUSAND, FOUR HUNDRED FIFTY-SEVEN DOLLARS AND NO CENTS (\$438,457.00)**.

B. **CONSULTANT** may submit invoices for partial payment prior to submittal of review documents as outlined below. **CONSULTANT** must submit a written progress report detailing work performed for the billing period reflected in the invoice. A partial payment made must be in proportion to the work performed as reflected in the report and approved by Director. Partial payments shall be payable no later than thirty (30) days following acceptance by Director. Partial payments shall not exceed 70% of each phase prior to acceptance of that phase by **CITY**. The balance due for that phase will be paid upon acceptance of the phase by **CITY**. **CITY** shall have no more than 45 days from the date of submittal within which to review and approve or reject said phase. If no action has been taken by Director at the expiration of the 45 day review period, said phase shall be deemed approved. If any phases are authorized to be omitted then the percentage allocation will be applied to the next appropriate phase. Payments shall be made to the **CONSULTANT** in accordance with the following:

- (1) **SCHEMATIC SUBMITTAL**: 30% of the total fee due **CONSULTANT** shall be payable no later than thirty (30) days following acceptance of the Schematic Submittal by **CITY**;
- (2) **PRELIMINARY DESIGN**: 10% of the total fee due **CONSULTANT** shall be payable no later than thirty (30) days following acceptance of the Preliminary Design by **CITY**.

- (3) INTERMEDIATE DESIGN: 25% of the total fee due **CONSULTANT** shall be payable no later than thirty (30) days following acceptance of the Intermediate Design by **CITY**.
- (4) FINAL DESIGN: 20% of the total fee due **CONSULTANT** shall be payable no later than thirty (30) days following acceptance of the Final Design by **CITY**.
- (5) SAN ANTONIO DISTRICT OF TxDOT APPROVAL: 5% of the total fee due **CONSULTANT** shall be payable no later than thirty (30) days after the project is approved by the San Antonio District of TxDOT.
- (6) CONSTRUCTION PHASE SERVICES: 10% of the total fee due **CONSULTANT** shall be payable by **CITY** in monthly installments in accordance with the percentage of construction completed as determined by Director in his sole discretion.
- (7) PROMPT PAYMENT: **CONSULTANT** shall pay each subconsultant or subcontractor (collectively "SUBCONSULTANT") under this AGREEMENT for satisfactory performance of its contract no later than 15 days from the receipt of each payment by **CITY** to **CONSULTANT**. **CONSULTANT** further agrees to return retainage payments to each SUBCONSULTANT within 15 days after the SUBCONSULTANT's work is satisfactorily completed. Any delay or postponement of payment may occur only for good cause following written approval of the **CITY**. This clause applies to both DBE and non-DBE subcontractors.

5.4 MODIFICATIONS

CONSULTANT and **CITY** acknowledge the fact that the base fee as determined in section 5.3(A) above has been established predicated upon the total estimated costs of services to be rendered under the AGREEMENT. For additional services, compensation shall be subject to renegotiations in accordance with section 5.5 below.

5.5 COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

CONSULTANT may be required to perform the additional services listed in 5.5(B) below, subject to appropriations having been made therefore, in connection with this AGREEMENT. Should **CONSULTANT** be directed in writing by Director to perform these services, compensation shall be paid by **CITY** to **CONSULTANT** as authorized in writing by Director, as follows:

A. The basis for compensation for additional services may be in one or more of the following forms:

- (1) Rate for testimony of principals to be negotiated.
- (2) Non-Principal - Salary cost times a multiplier of 2.5 with a stated maximum not to be exceeded.

- (3) Principal – hourly rate set forth in 5.5(D) herein with a stated maximum not to be exceeded.
- (4) Reimbursement of non-labor expenses and **CITY** directed subcontract expenses at invoice cost plus a 15% service charge.
- (5) Lump sum per item of work to be negotiated.
- (6) Lump sum to be negotiated.

B. Additional services include, but are not limited to the following:

- (1) Assistance to **CITY** as an expert witness in any litigation with third parties, arising from the development or construction of the Project including the preparation of engineering data and reports.
- (2) Preparation of plats and field notes for acquisition of property required for the construction of the project.
- (3) Site visits for ROW pin locating and/or setting for utility companies.
- (4) Preparation of applications and supporting documents for governmental grants, loans, or advances in connection with the Project.
- (5) Preparation or review of environmental assessments and impact statements.
- (6) Review and evaluation of the effect on design requirements of the Project of any assessments, statements, or documents prepared by others.
- (7) Assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- (8) Revising previously accepted studies, reports, design documents or **AGREEMENT** documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, standards, design criteria or orders enacted subsequent to the preparation of such studies, reports, and documents, or are due to causes beyond **CONSULTANT's** control.
- (9) Preparation of feasibility studies not required in the base **AGREEMENT**.
- (10) Detailed quantity surveys of materials, equipment and labor during or after construction phase.
- (11) Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions by **CITY** proposed by the **CONTRACTOR** retained to construct the designed Project; and services after the award of each **CONTRACT** in evaluating and determining the acceptability of an unreasonable and excessive number of substitutions proposed by **CONTRACTOR**.
- (12) Services after the completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantee called for in any contract for the Project.
- (13) Additional copies of reports, drawings and specifications over the number specified in the base **AGREEMENT**.
- (14) Preparation of all documents dealing with 404 permits, highway permits, and railroad agreements.
- (15) Preparation of driveway plats.
- (16) Obtaining Right of Entry Agreements on behalf of **CITY** for driveway penetrations.
- (17) Detailed measurements and surveys for exploration for utilities, if required.

- (18) Preparation of record drawing after completion of work by CONTRACTOR.
- (19) Construction Administration Services.
- (20) Actual performance of test borings and other soil or foundation investigations and related analysis.

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

- a. The amount of customary and statutory benefits of all personnel other than Principals of the Consulting Firm will be considered equal to ___% of salaries or wages.

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

<u>Principal Name</u>	<u>Hourly Charge</u>
<u>Thomas Turk, P.E.</u>	_____/hour

5.6 MAXIMUM COMPENSATION FOR ADDITIONAL SERVICES

Total cumulative costs for the additional services listed in Section 5.5 or in Article VI below shall not exceed that amount appropriated by CITY as set forth in the ordinance authorizing this AGREEMENT, without prior authorization of the San Antonio City Council by passage of an ordinance therefore.

VI. REVISIONS TO DRAWINGS AND SPECIFICATIONS

CONSULTANT shall provide, at no expense to CITY, reasonable minor revisions to any phase, whether previously approved and accepted, as may be required to satisfy the scope of services established by this AGREEMENT. Approval of any phase constitutes CITY's acceptance of the design presented. After acceptance of each phase of the Project, any revisions, additions, or modifications made at CITY's request which constitute a change in the Scope of Services shall be subject to additional compensation to CONSULTANT as agreed upon by CITY, subject to Article V, Section 5.6 above.

VII. OWNERSHIP OF DOCUMENTS

7.1 CONSULTANT acknowledges and agrees that 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 shall be delivered to CITY at no additional cost to CITY upon request or completion or termination of this AGREEMENT without restriction on future use.

7.2 **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 consent of **CITY** and shall be returned intact to **CITY** upon completion or termination of this AGREEMENT.

7.3 **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 moral 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 instrument of services, unless otherwise specified herein). **CONSULTANT** shall, at its expense, 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.

7.4 **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. **CITY** shall require that any such change or other use shall be appropriately marked to reflect what was changed or modified.

7.5 Copies of documents that may be relied upon by **CITY** are limited to the printed copies (also known as hard copies) that are sealed and signed by **CONSULTANT**. Files in electronic media format of text, data, graphics, or other types that are furnished by **CONSULTANT** to **CITY** are only for convenience of **CITY**. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

VIII. TERMINATION AND/OR SUSPENSION OF WORK

8.1 For purposes of this AGREEMENT, termination of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

8.2 Termination Without Cause.

8.2.1 This AGREEMENT may be terminated by either party upon written notice in accordance with Article XVIII, Notice. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

8.2.2 This AGREEMENT may be terminated by CITY prior to Director giving CONSULTANT written notice to proceed pursuant to Article III, Section 3.1, should Director, at his sole discretion, determine that it is not in CITY's best interest to proceed with this AGREEMENT. Such notice shall be provided in accordance with Article XVIII, Notice and shall be effective upon delivery by CITY in accordance with Article XVIII.

8.2.3 CITY shall equitably compensate CONSULTANT in accordance with the terms of this AGREEMENT for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by CITY. CONSULTANT shall not, however, be entitled to lost or anticipated profits should CITY choose to exercise its option to terminate.

8.3 Defaults With Opportunity for Cure.

Should CONSULTANT fail to provide the required designs and/or documents required by Article III, Scope of Services by the due dates establish in Article III, Attachment B, Production Schedule, in acceptable form, as indicated in said Scope of Services as approved by Director, same shall be considered a default. However, Parties agree that no default shall be considered to occur where CONSULTANT's failure to provide the designs and/or documents is directly caused by the actions of CITY. CITY shall deliver written notice of said default specifying such matter(s) in default. CONSULTANT shall have ten (10) days after receipt of the written notice, in accordance with Article XVIII, Notice, to cure such default. If CONSULTANT fails to cure the default within such ten-day cure period, CITY shall have the right, without further notice, to terminate this AGREEMENT in whole or in part as CITY deems appropriate, and to CONTRACT with another CONSULTANT to complete the work required in this AGREEMENT. CITY shall also have the right to offset the cost of said new CONTRACT with a new consultant against CONSULTANT's future or unpaid invoice(s), subject to the duty on the part of CITY to mitigate its losses to the extent required by law.

8.4 Termination For Cause. Upon written notice, CITY may terminate this AGREEMENT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this AGREEMENT:

8.4.1 CONSULTANT makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this AGREEMENT, including, but not limited to, CONSULTANT's Interest Statement, or any covenant, obligation, term or condition contained in this AGREEMENT; or

8.4.2 CONSULTANT violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this AGREEMENT, except those events of default for which an opportunity to cure is provided herein; however, if such default as provided in Section 8.3, Defaults with Opportunity for Cure, exceeds the following, same shall be considered an Event for Cause, subject to the remedies as provided herein:

(A) CONSULTANT fails to cure a default listed in Section 8.3 within the time period required for cure; or

(B) **CONSULTANT** is in default as provided in Section 8.3 on more than one occasion in any consecutive twelve (12) month period.

8.4.3 **CONSULTANT** attempts to assign this AGREEMENT contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or

8.4.4 **CONSULTANT** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this AGREEMENT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **CONSULTANT**'s assets or properties; or

8.4.5 **CONSULTANT** fails to comply in any respect with the insurance requirements set forth in this AGREEMENT; or

8.4.6 **CONSULTANT** violates any rule, regulation or law by which **CONSULTANT** is bound or shall be bound while and in performing the services required under this AGREEMENT or violates the provisions of Attachment D incorporated herein for all purposes.

8.5 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.

8.6 **Effect of Termination.** Notwithstanding Section 8.3, Defaults with Opportunity for Cure, upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **CONSULTANT** specifying the effective date of termination, notice of which shall be given in accordance with Article XVIII, Notice.

8.6.1 Regardless of how this AGREEMENT is terminated, and subject to 8.6.2, **CONSULTANT** shall affect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all completed or partially completed specifications and reproducibles of all completed or partially completed designs and plans prepared pursuant to this AGREEMENT, documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by **CONSULTANT**, or provided to **CONSULTANT**, hereunder in accordance with Article VII, Ownership of Documents. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at **CONSULTANT**'s sole cost and expense. Payment of compensation due or to become due to **CONSULTANT** is conditioned upon delivery of all such documents.

8.6.2 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this AGREEMENT, **CONSULTANT** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this AGREEMENT through the effective date of termination. Failure by **CONSULTANT** to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of **CITY** and constitute a **Waiver** by **CONSULTANT** of any and all right or claims to collect moneys that **CONSULTANT** may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.

8.6.3 Upon the effective date of expiration or termination of this AGREEMENT, **CONSULTANT** shall cease all operations of work being performed by **CONSULTANT** or any of its subconsultants pursuant to this AGREEMENT.

8.6.4 **Termination not sole remedy.** In no event shall **CITY**'s action of terminating this AGREEMENT, whether for cause or otherwise, be deemed an election of **CITY**'s remedies, nor shall such termination limit, in any way, at law or at equity, **CITY**'s right to seek damages from or otherwise pursue **CONSULTANT** for any default hereunder or other action.

8.7 Right of **CITY** to Suspend Giving Rise to Right of **CONSULTANT** to Terminate.

8.7.1 **CITY** may 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) as provided in Article XVIII, Notice, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **CONSULTANT**'s receipt of said notice.

8.7.2 **CONSULTANT** may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. **CONSULTANT** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article XVIII, Notice, (citing this paragraph) to **CITY** after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by **CITY**.

8.8 Procedures for **CONSULTANT** to follow upon Receipt of Notice of Suspension.

8.8.1 Upon receipt of written notice of suspension, **CONSULTANT** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this AGREEMENT and cancel all existing orders and contracts.

8.8.2 **CONSULTANT** shall prepare a statement showing in detail the services performed under this AGREEMENT prior to the effective date of suspension.

- 8.8.3 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.
- 8.8.4 In the event that CONSULTANT exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by CITY of CONSULTANT's notice of termination, CONSULTANT shall submit the above referenced statement showing in detail the services performed under this AGREEMENT prior to the effective date of suspension. Nothing in this section 8.8.4 shall prevent CONSULTANT from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.
- 8.8.5 Additionally, any documents prepared in association with this AGREEMENT shall be delivered to CITY by CONSULTANT, as a pre-condition to final payment, within thirty (30) calendar days after receipt by CITY of CONSULTANT's notice of termination.
- 8.8.6 Upon the above conditions being met, CITY shall pay CONSULTANT that proportion of the prescribed fee which the services actually performed under this AGREEMENT bear to the total services called for under this AGREEMENT, less previous payments of the fee.
- 8.8.7 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 fee for which CONSULTANT did not supply such necessary statements and/or documents.

IX. INSURANCE REQUIREMENTS

9.1 Prior to the commencement of any work under this AGREEMENT, CONSULTANT shall furnish an original completed Certificate of Insurance to CITY's Public Works Department and CITY's Risk Management Division, and shall be clearly labeled "Salado Creek Hike and Bike, Phase II", which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to CITY. CITY shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to CITY's Public Works Department and CITY's Risk Management Office, and no officer or employee shall have authority to waive this requirement.

9.2 **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 basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Consultants c. Products/completed operations d. Personal Injury e. Contractual liability	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. 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 by reason of any negligent act, malpractice, error or omission in professional services.

9.3 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by **CITY**. **CONSULTANT** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided in Article IX herein within 10 days of the requested change.

9.4 **CONSULTANT** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name **CITY** and its officers, employees, and elected representatives as additional insureds 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;

- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where CITY is an additional insured shown on the policy;
- Workers’ compensation and employers’ liability policy will provide a waiver of subrogation in favor of CITY.

9.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by CITY, CONSULTANT shall notify CITY of such and shall give such notices not less than thirty (30) days prior to the change, if CONSULTANT knows of said change in advance, or ten (10) days notice after the change, if the CONSULTANT did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to CITY at the following addresses:

City of San Antonio	City of San Antonio
Public Works Department - Capital Programs	Risk Management
P.O. Box 839966	111 Soledad, Suite 1000
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

9.6 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 work hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof. A stop work order given to CONSULTANT by CITY in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VIII, Section 8.7.

9.7 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 subconsultants’ performance of the work covered under this AGREEMENT.

9.8 It is agreed that CONSULTANT’s insurance shall be deemed primary with respect to any insurance or self insurance carried by CITY of San Antonio for liability arising out of operations under this AGREEMENT.

X. INDEMNIFICATION

10.1 CONSULTANT, whose work product is the subject of this AGREEMENT for engineering services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney’s fees and costs of

defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of 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.

10.2 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.

10.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

XI. ENGINEER'S LIABILITY

11.1 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 subconsultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, subconsultants, and agents.

11.2 Standard of Care: 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.

XII. LICENSING

CONSULTANT shall utilize qualified personnel to complete the work to be performed under this AGREEMENT, and all work performed under this AGREEMENT is to be executed under the direct supervision of a licensed professional engineer as required by state law. Persons retained to perform work pursuant to this AGREEMENT shall be the employees or subconsultants of **CONSULTANT**. **CONSULTANT** or its subconsultants shall perform all necessary work.

XIII. ASSIGNMENT OF RIGHTS OR DUTIES

13.1 By entering into this AGREEMENT, **CITY** has approved the use of any subconsultants identified in **CONSULTANT**'s Interest Statement. No further approval shall be needed for **CONSULTANT** to use such subconsultants as are identified in **CONSULTANT**'s Interest Statement.

13.2 Except as otherwise required herein, **CONSULTANT** may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of **CITY**. Actual engineering services, those required by law to be performed by a licensed engineer, or services to be performed which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the written approval of the San Antonio City Council, by approval and passage of an ordinance therefore. Any other services to be performed under this AGREEMENT may be subcontracted upon the written approval of Director.

13.3 As a condition of consent, if same is given, **CONSULTANT** shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor consultant, assignee, transferee or subconsultant. Any references in this AGREEMENT to an assignee, transferee, or subconsultant, indicate only such an entity as has been approved by **CITY** in accordance with this Article.

13.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **CONSULTANT** assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, **CITY** may, at its option, terminate this AGREEMENT in accordance with Article VIII, Termination, and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this AGREEMENT. The violation of this provision by **CONSULTANT** shall in no event release **CONSULTANT** from any obligation under the terms of this AGREEMENT, nor shall it relieve or release **CONSULTANT** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

13.5 **CONSULTANT** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to

CITY under this AGREEMENT, any such change of ownership interest or control of its business entity may be grounds for termination of this AGREEMENT in accordance with Article VIII, Termination.

XIV. INDEPENDENT CONSULTANT

14.1 **CONSULTANT** covenants and agrees that (s)he is an independent **CONSULTANT** and not an officer, agent, servant, or employee of **CITY**; that **CONSULTANT** shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **CONSULTANT**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **CONSULTANT**.

14.2 No Third Party Beneficiaries - For purposes of this AGREEMENT, including its intended operation and effect, the Parties specifically agree and CONTRACT that: (1) this AGREEMENT only affects matters/disputes between the Parties to this AGREEMENT, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with **CITY** or **CONSULTANT** or both, or that such third parties may benefit incidentally by this AGREEMENT; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **CONSULTANT**.

XV. EQUAL EMPLOYMENT OPPORTUNITY

15.1 **CONSULTANT** shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, **CONSULTANT** agrees to abide by all applicable provisions of San Antonio City Ordinance Number 69403 on file in the City Clerk's office.

15.2 The following clause shall be placed in every DOT-assisted contract and subcontract:

“The **CONSULTANT** or **SUBCONSULTANT** shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The **CONSULTANT** shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the **CONSULTANT** to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the City deems appropriate.”

XVI. DBE REQUIREMENTS

16.1 Attachment D of this contract is incorporated herein for all purposes.

XVII. ESTIMATES OF COST

Because CONSULTANT has no control over the cost of construction labor, materials or equipment or over the construction contractor's methods of determining prices, or over competitive bidding or market conditions, CONSULTANT's opinions of probable construction cost provided herein shall 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. CONSULTANT cannot and does not guarantee that proposals, bids or the construction cost will not vary from opinions of probable cost prepared by CONSULTANT.

XVIII. NOTICES

Unless otherwise expressly provided elsewhere in this AGREEMENT, any election, notice or communication required or permitted to be given under this AGREEMENT shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

City of San Antonio
Public Works Department - Capital Programs
Attn: Dean Bayer, P.E.
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for CONSULTANT, to:

Lockwood, Andrews & Newnam, Inc.
Attn: Richard A. Camero, P.E.
10101 Reunion Place, Suite 200
San Antonio, Texas 78216

XIX. INTEREST IN CITY CONTRACTS PROHIBITED

19.1 CONSULTANT acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

19.2 **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 in compliance with **CITY's** Ethics Code.

XX. SOLICITATION

CONSULTANT warrants and represents that he 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**, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONSULTANT**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this **AGREEMENT**. This representation constitutes a substantial part of the consideration for the making of this **AGREEMENT**.

XXI. CONTRACT CONSTRUCTION

All parties have participated fully in the review and revision of this **AGREEMENT**. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this **AGREEMENT**.

XXII. FAMILIARITY WITH LAW AND CONTRACT TERMS

CONSULTANT represents that, prior to signing this **AGREEMENT**, **CONSULTANT** has become thoroughly acquainted with all matters relating to the performance of this **AGREEMENT**, all applicable laws, and all of the terms and conditions of this **AGREEMENT**.

XXIII. APPLICABLE LAW

This **AGREEMENT** shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XXIV. VENUE

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

XXV. SEVERABILITY

In the event any one or more paragraphs or portions of this **AGREEMENT** are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this **AGREEMENT**, but such shall be confined to the specific section, sentences, clauses or portions of this **AGREEMENT** held invalid or unenforceable.

XXVI. FORCE MAJEURE

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXVII. SUCCESSORS

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this AGREEMENT, their assigns.

XXVIII. NON-WAIVER OF PERFORMANCE

28.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

28.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIX. PARAGRAPH HEADINGS

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXX. LEGAL AUTHORITY

The signer of this AGREEMENT for CITY and CONSULTANT each represents, warrants, assures and guarantees that he has full legal authority to execute this AGREEMENT on behalf of CITY and CONSULTANT respectively, and to bind CITY and CONSULTANT to all of the terms, conditions, provisions and obligations herein contained.

XXXI. INCORPORATION OF ATTACHMENTS

CONSULTANT understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

ATTACHMENT "A" (Scope of Services)

APPENDIX 1 to ATTACHMENT "A" (General Project Development Process --
[Information Only])

APPENDIX 2 TO ATTACHMENT "A" (Minutes from the Agency Scope Meeting)

APPENDIX 3 TO ATTACHMENT "A" (Schematic Design Checklist)

APPENDIX 4 TO ATTACHMENT "A" (Preliminary Design Checklist)

APPENDIX 5 TO ATTACHMENT "A" (Intermediate Design Checklist)

APPENDIX 6 TO ATTACHMENT "A" (Final Design Checklist)

APPENDIX 7 TO ATTACHMENT "A" (PS&E Submittal Checklist)

ATTACHMENT "B" – (Production Schedule)

ATTACHMENT "C" – (CONSULTANT's Fee Proposal)

ATTACHMENT "D" – (Disadvantaged Business Entity Participation)

ATTACHMENT "E" – (Local Transportation Funding Agreement between the Texas
Department of Transportation and the City of San Antonio)

In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail. In the event of a conflict or inconsistency between Attachment "A", Appendices 1 through 7 and/or Attachment "B" and/or Attachment "C" and/or Attachment "D", the terms of Attachment "A", Appendices 1 through 7 shall control over the terms of Attachment "B", Attachment "C" and Attachment "D". In the event of a conflict or inconsistency between Attachment "D" and/or Attachment "B" and/or Attachment "C", the terms of Attachment "D" shall control over the terms of Attachment "B" and over Attachment "C". In the event of a conflict or inconsistency between Attachment "B" and Attachment "C", the terms of Attachment "B" shall control over the terms of Attachment "C".

XXXII. ENTIRE AGREEMENT

32.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXXI, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

32.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE _____ DAY OF _____, _____.

CITY:

CONSULTANT:

CITY OF SAN ANTONIO

**LOCKWOOD, ANDREWS &
NEWNAM, INC. (LAN)**

CITY MANAGER

Thomas Turk, P.E.
Principal

APPROVED AS TO FORM:

CITY ATTORNEY

ATTACHMENT A

Scope of Services

PART ONE - SERVICES TO BE PROVIDED BY TXDOT AND/OR CITY

CITY and/or TXDOT will furnish or make available to CONSULTANT the following items:

1. Previous reports, bicycle route studies, and other design studies related to the project.
2. Advertise, host, and document any public hearing or meetings for Social, Economic and Environmental Studies and Public Involvement.
3. Provide verified horizontal control points on the State Plane coordinate system if available.
4. Mapping and information on existing CITY Rights of Way, in CADD format when available.
5. Available and applicable special specifications, special provisions, and updated list of bid items applicable to the project.
6. Any negotiated AGREEMENTS with utility entities for required utility relocation.
7. Assistance in obtaining any required data and information from other local, regional, State and Federal agencies, as necessary.
8. Timely review of submittals in accordance with the project schedules. Specific submittal/review dates coinciding with the project will be mutually agreed upon as the work progresses. CITY will coordinate its project review with TxDOT and assemble all review comments redline together and provide them to CONSULTANT. CITY will attempt to resolve all comments that are in direct conflict prior to providing them to CONSULTANT.
9. The CITY will obtain a Right of Entry for the CONSULTANT which will allow CONSULTANT the right to enter the subject property, allow excavation of test pits, and other work as necessary to perform their services.
10. The CITY will be responsible for preparation and submission of the bid advertisement, and associated costs.

PART TWO - SERVICES TO BE PROVIDED BY CONSULTANT

A. GENERAL

CONSULTANT shall prepare a design package that shall be coordinated with CITY and appropriate TxDOT District Area Office.

The work to be performed by CONSULTANT under this AGREEMENT shall consist of providing engineering services required for the preparation of Design Schematics, existing Right-of-Way Data, Field Surveying, Plans, Specification, and Estimates (PS&E) in accordance with the requirements and policies incorporated herein. For purposes of this AGREEMENT, the "project" consists of the following: (Please refer to Attachment A entitled "Scope of Services")

Except as noted, all documents for the above work shall be prepared in accordance with the applicable requirements of current CITY standards, using English units. Plan and profile sheets will be 24"x36" at an appropriate scale. Where appropriate, TxDOT standard drawings, standard specifications, or previously approved special provision and/or special specification may be used.

CONSULTANT shall contact the appropriate CITY staff and TxDOT office early in the project design to discuss construction sequences as they are developed and periodically as the design continues.

CONSULTANT shall meet with designated CITY representatives on a regularly scheduled basis to discuss project issues and report on progress. Review submittals to CITY shall be in paper form until notice to print mylars is given and shall consist of the following:

Schematic Design	18 copies
Preliminary Design	18 sets
Intermediate Design	18 sets
95% Design	18 sets
Final PS & E Packages	2 sets
Mylar	1 set

CADD Deliverables: A copy of the final drawings in CADD format on CD ROM. Coordinates of points in the file are to match state plane survey coordinates. The civil site CADD file submitted will be compatible with AutoCAD 2000 format.

B. DESIGN RESPONSIBILITIES

1. CONSULTANT shall correct design errors and/or omissions that become evident before, during or after construction of the project, including, but not limited to:

- a. Additional design work required to correct any negligent errors and/or omissions.
- b. Preparation of design documents and detail drawings necessary for a field change due to negligent design errors and/or omissions.
- c. Revisions of the original tracings to the extent required for a field change due to negligent design errors and/or omissions.

2. CONSULTANT shall promptly make any necessary revisions or corrections resulting from CONSULTANT's said negligent acts, errors, or omissions without compensation. Acceptance of the work by CITY/TxDOT will not relieve CONSULTANT of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities.

C. SCOPE OF SERVICES

Project Development

1. An initial meeting with CITY representatives to discuss the proposed restoration and project approach.
2. Review of available documents, including existing drawings and previous reports.
3. Visit the site as required to document conditions/details sufficiently for preparation of construction documents.
4. Scheduling: Critical path schedule using Microsoft *Project*
 - a. Develop and maintain schedule for the design phase
 - b. Develop conceptual schedule for Construction phase

Environmental Consulting

5. TxDOT Environmental Document, including historical background, description of existing facility, need for the project, public involvement summary, project description, alternatives, environmental impacts summary, and determination of effect.
6. Section 106 Review coordination.

Investigation & Testing

7. Structural Evaluation

- a. Condition Survey. Consultant will provide lift equipment necessary for our evaluation.
- b. Foundation evaluation. Consultant will require two test pits.
- c. Structural analysis of existing trusses
- d. Fracture Critical Investigation
 - i. Fracture mechanics model
 - ii. Visual inspection
 - iii. Ultrasonic Testing of fracture critical elements
 - iv. Report

8. Materials evaluation at representative locations

- a. Concrete strength survey
- b. Concrete cores
 - Compressive strength
 - Petrography
 - Chloride, pH, and sulfate content
- c. Field Metallurgical survey (non-destructive)
- d. Corrosion testing (half-cell potential)
- e. Location of existing column reinforcement

Design Services

9. Opinion of Probable Construction Cost

- a. Items of work based on City of San Antonio and Texas Department of Transportation standard specifications and as amended and approved thereof.
- b. Quantity take-off
- c. Schematic
- d. Design development
- e. Final designs

10. Civil Design

- a. Land survey showing property lines, R.O.W., utilities, and site features
- b. Topographic survey
- c. State plane coordinate survey of existing approaches, bridge, piers, and deck
- d. Site drainage calculations and design
- e. Site plan
- f. Storm water prevention plan
- g. Traffic control plan showing street barricades and detour, using City signage and barricade standards
- h. Recommendations for changing the profile of cross streets. Design of major changes to cross streets is excluded.

11. Structural Design

- a. Connection to existing substructures
- b. New concrete approaches, piers, and retaining walls
- c. New timber deck and pedestrian treadway
- d. Repairs to wrought-iron trusses
- e. Preparation and painting with appropriate industrial coating system

12. Architectural Enhancements

- a. Stairs, ramps, and other accessibility features compatible with ADA Requirements for historic structures.
- b. Coordination of ADA accessibility review per Texas Department of Licensing and Regulation requirements. Application and review fees will be paid by the CITY.
- c. Railing design compatible with character of the bridge, and meeting AASHTO Bicycle route.
- d. Lighting beneath and on the bridge. Fixture location and selection will be coordinated with City Public Service.
- e. Regulatory and Interpretive Signage

13. Landscape Architecture Enhancements

- a. Walkways
- b. Plantings
- c. Irrigation

14. Electrical Engineering

- a. Power distribution for lighting
- b. Lighting controls

15. Meetings:

- a. Four design submittal review meetings (Schematic, 30%, 60%, 95%) with City representatives
- b. Two public involvement meetings. Consultant will prepare exhibits and provide technical assistance for the public meetings as required.
- c. Two Historic Landmark review meetings.

16. Preparation of Project Manual using the CITY's standard construction contract and general conditions.

Construction Phase Services

- 17. Bid phase services: Attendance at one pre-bid conference, preparation of addenda, review of bids and performing bid tabulations, and assistance in evaluating bid responses.
- 18. Construction Administration: City has requested that Consultant not provide complete construction administration services. Consultant will provide the following construction phase services:
 - a. Processing RFIs and shop drawings related to the design;
 - b. 35 site visits during construction for progress meetings;
 - c. Limited site visits by electrical engineer, civil engineer, and landscape architect;
 - d. Preparation of minor drawings revisions as required;
 - e. Review of pay applications.
- 19. Construction Monitoring: City will provide most of the construction administration services including quantity surveys and concrete inspection and testing. Consultant will provide required special inspection services as follows:
 - a. Metal fabrication and welding inspection, including field repairs of existing trusses (10 hours);
 - b. Coatings inspection for surface preparation, coating thickness and adhesion for painting iron trusses (10 adhesion tests).

APPENDIX 1

GENERAL PROJECT DEVELOPMENT PROCESS (INFORMATION ONLY)

MPO Project Selection

1. Agency Scoping Meeting
2. Preliminary Engineering Phase
3. Preliminary Design Meeting
4. Special Review
5. Intermediate Design Phase
6. Substantial Completion Meeting
7. Final Design Review Meeting
8. TxDOT Departmental Review

MPO Project Selection

Each Agency will develop and submit to the MPO a list of projects for selection for funding. The MPO will then determine the projects to be selected for inclusion in the Transportation Improvement Plan (TIP). Each project will have a general scope of work to include which will include identifying roadways or streets involved, limits of the project, elements of the proposed improvements, preliminary cost estimate, and the anticipated schedule for completion.

Agency Scoping Meeting

The purpose of the meeting is to determine how the project is to be developed and will include:

- Responsible contact person for each Agency.
- Preliminary ROW requirements.
- Potential environmental impacts and environmental process and activities required.
- Complete Project Development Checklist.
- Potential impact on utilities and adjustments required. Underground conversion project?
- Review major project elements that will affect the project scope i.e., design constraints, drainage requirements, structures, retaining walls, traffic requirements, and project schedule and cost.

Preliminary Engineering Phase

- Complete local Agency Agreement.
- Define State and Agency duties for engineering, ROW acquisition, PS&E, utility coordination, and environmental mitigation.
- Agency selects design CONSULTANT to begin work.
- Develop preliminary schematic design to include:
 - geometric design
 - typical roadway sections
 - traffic design

- pavement design
- drainage details
- utility impacts
- updated cost estimate and schedule
- preliminary Traffic Control Plan

Preliminary Design Meeting

The purpose of this meeting is to disseminate the initial project design information and to resolve issues leading to the completion of the schematic design. Elements of the design that require special review and approval will be discussed at this meeting.

Special Review

The purpose of the Special Review is to receive early approval for critical information that requires coordination with others.

- Bridge layouts
- Retaining wall layouts
- Railroad revisions and/or coordination
- Typical roadway sections
- Pavement design
- Schematic design (as required)
- Environmental assessments
- Right of Way map (as required)
- Other items identified at Preliminary Design meeting

Intermediate Design Phase

Initiated after completion of the Preliminary Design Meeting. Continue the design activities and project objectives established during Preliminary Design.

- Provide cross sections
- Recommend "pothole" locations for utility companies
- Establish vertical locations of utilities
- Identify necessary adjustments, which effect project design or relocation of utilities
- Conceptual TCP planning

Substantial Completion / Review Meeting

The purpose of the Substantial Completion Meeting is to establish the time when the design for utility adjustments can be finalized. Meeting can be convened at any time when the functional elements are completed and a degree of AGREEMENT is achievable. (Does not conform to any percent of design completion.)

- Horizontal and vertical design is finalized.
- Drainage alignment is established.
- Other elements that effect utility adjustments are established.
- Confirm that utility companies can proceed with plans for adjustments.
- No revisions to the plans that will impact utility adjustments.
- Which utilities will be joint bidding on the project.
- Review Project Development Checklist to confirm original decisions are still valid.
- Can project proceed to final design? Establish a firm completion schedule and letting date.
(Cast in Stone)

Final Design Review Meeting

Review of the status of all the project elements to assure that the final PS&E is ready for submission and processing and all supporting activities are completed or on schedule.

- Status of Right of Way acquisition
- Permit applications (if any)
- Utility design is complete and schedule of adjustments.
- Utility Company design plans and bid items are included in bid package.
- Construction sequence and traffic control plans are included.

TxDOT Departmental Review

After the Final Design Review comments are incorporated into the plans, the final PS&E is submitted to the TxDOT San Antonio office for final technical review and processing. This includes review by the District Office, and the Area Office. The full package is then submitted to the Austin Headquarters Office for review and approval for letting. The entire TxDOT review process takes approximately five months.

APPENDIX 2

Minutes from the Agency Scope Meeting

APPENDIX 3

SCHEMATIC DESIGN CHECKLIST

CONSULTANT shall prepare a design schematic for the project. The design schematic will be 24" x 36" sheets. The following information will be shown on the design schematic as a minimum:

A. Title Portion

City of San Antonio
Schematic Layout
Roadway Name
County Name
Limits:
CSJ:
Length:
Office of District Engineer San Antonio District
Functional Classification
Approved: Design Division Letter Dated
Approved: FHWA Letter Dated
CITY of S.A.(DBE Projects, etc.)
Approved _____, 2005 Director of Public Works
Correct: _____, 2005 Area Engineer
Recommended for Approval: _____, 2005 Director of T P & D
Approved _____, 2005 District Engineer
Copy Right info.

B. Existing Typical Sections

1. ROW Widths
2. Bridge Widths
3. Shoulders Widths
4. Border Width
5. Pavement Cross Slopes

C. Proposed Typical Sections

1. ROW Widths
2. Border Width
3. X-Slopes
4. Horizontal Control
5. Border widths (Minimum 8 feet)
6. Minimum Design Values obtained
7. Approved Pavement/Base dimensions

D. Plan View

1. Existing and Proposed ROW Lines
2. Existing and Proposed Approach Alignments
3. Existing and Proposed Utilities
4. Existing and Proposed Edge of Pavement/Shoulders/Curbs
5. Existing and Proposed Sidewalks

6. Existing and Proposed Driveways
 7. Existing and Proposed Drainage Structures
 8. Existing and Proposed Grade Separations
 9. Existing Shoulder
 10. Existing Retaining Walls
 11. Proposed Bridge Dimensions
 12. Proposed X-Slopes
 13. Proposed PC/PT Stations
 14. Proposed P.I. Curve Data, as required
 15. Centerline Bearings
 16. Minimum Design Values Obtained
- E. R.O.W. (Existing & Proposed)
1. Drainage easement
 2. Property Lines & Owners
 3. Control of access lines (if applicable)
- F. Geometrics
1. Horizontal Alignment
 - a. Approaches
 - b. Ramps
 - c. Crossroads
 - d. PI Station/Location
 - e. Degree of Curve
 - f. Radius
 - g. Length of Curve
 - h. PC & PT (Graphical Location)
 - i. Bearings (Note: Frontage Road Data is not required)
 2. Vertical Alignment
 - a. Approaches
 - b. Ramps
 - c. Crossroads
 - d. Grade separations
 - e. Natural Ground
 - f. Vertical Clearance
 - g. Grades
- G. Other
1. Location of major drainage structures
 2. Major Utilities (typically on urban projects)
 3. Bridge layouts
 4. Retaining wall layouts
 5. Railroad revisions and/or coordination
 6. Typical roadway sections
 7. Pavement design
 8. Schematic design (as required)
 9. Environmental assessments
 10. Right of Way map (as required)
 11. Other items identified at Preliminary Design meeting
- H. Other unique/unusual infrastructure features as they are encountered.

APPENDIX 4

PRELIMINARY DESIGN CHECKLIST

CONSULTANT shall prepare a Preliminary design for the project. The preliminary design will be on 24" x 36" sheets. The preliminary design plans shall show the following information as a minimum:

- A. Preliminary Title and Index of Sheets
 - 1. Federal Project
 - 2. State Project
 - 3. Project Classification
 - 4. Work Type
 - 5. Project Limits
 - 6. Project Length
 - 7. Bridge Length
 - 8. Project No.
 - 9. CSJ
 - 10. Begin / End Station
 - 11. Project Description from DCIS Project Identification screen
 - 12. Limits Match Plan Sheets

- B. Sequence of Work Outline for Traffic Control - Show the basic concept of how to handle traffic during construction, including preliminary phasing

- C. Existing Typical Sections
 - 1. ROW
 - 2. Bridge Width
 - 3. Shoulders
 - 4. Curbs
 - 5. Border Width
 - 6. Foundation (Depth of base, ACP, etc.)

- D. Proposed Typical Sections
 - 1. ROW
 - 2. Bridge Width
 - 3. Shoulders
 - 4. Curbs
 - 5. Border Width
 - 6. X-Slopes
 - 7. Horizontal Control
 - 8. Minimum Design Values Obtained
 - 9. Design Exception identified and submitted for approval
 - 10. Border widths meet Minimum Design Values (8 feet)

- E. Preliminary Summary Sheets
 - 1. Major Bid Items
 - 2. Totals

F. Plan & Profile Sheets

1. Plan View

- a. Existing and Proposed ROW Lines
- b. Existing and Proposed Approach Alignments
- c. Existing and Proposed Utilities
- d. Existing and Proposed Edge of Pavement/Shoulders/Curb
- e. Existing and Proposed Sidewalks
- f. Existing and Proposed Driveways
- g. Existing and Proposed Drainage Structures
- h. Existing and Proposed Medians
- i. Proposed Lane Dimensions
- j. Proposed Bridge Dimensions
- k. X-Slopes
- l. PC/PT Stations
- m. P.I. Curve Data
- n. Bearings
- o. Minimum Design Values met
- p. Cross Drainage Structures

2. Profile View

- a. Vertical Alignment
- b. Natural Ground
- c. Vertical Clearances (where required)
- d. Grades
- e. Cross Drainage Structures

G. Intersecting Streets

1. Horizontal Alignment

H. Drainage

1. Preliminary drainage
2. Drainage Area Map
3. Discharge Relationships
4. Drainage Calculations
5. Storm Drain Master Plan

I. Preliminary Culvert Layouts

1. NOT APPLICABLE

J. Preliminary Bridge & Bridge Class Structures

1. Plan & Profile
2. Size
3. Length
4. Station

K. Preliminary Traffic Control Plan & SW3P Layout - These layouts must show a comprehensive method of how traffic is being handled during the duration of the project. These sheets should contain work zone pavement marking, channelization devices, signing appropriate for the various phases, SW3P controls, etc.

APPENDIX 5

INTERMEDIATE DESIGN CHECKLIST

CONSULTANT shall submit an intermediate design submittal for the project, showing the following as a minimum for the submittal at this stage of the design:

- A. Update Plans from Preliminary Phase
- B. Update Title Sheet with Index including all standards with Copyright information on all Sheets
- C. Final Typical Sections
 - 1. Existing Typical Sections
 - a. R.O.W.
 - b. Bridge Width
 - c. Shoulders
 - d. Curbs
 - e. Border Width
 - f. Foundation (Depth of base, ACP, etc.)
 - 2. Proposed Typical Sections
 - a. R.O.W.
 - b. Bridge Width
 - c. Shoulders
 - d. Curbs
 - e. Border Width
 - f. X-Slopes
 - g. Horizontal Control
 - h. Design Values
 - i. Minimum Design Values
 - j. Design Exception
 - k. Borders widths Minimum Design Values
 - l. Pavement Foundation (intersecting streets)
- D. Preliminary Summary Sheets
 - 1. Grading
 - 2. Small Drainage Structures
 - 3. Large Drainage Structures
 - 4. Pavement Markings & Delineation
 - 5. Signing Traffic Control
- E. Traffic Control Plan & SW3P Layout - These layouts must show a comprehensive method of how traffic is being handled during the duration of the project. These sheets must contain work zone pavement marking, channelization devices, signing appropriate for the various phases, SW3P controls, etc.

F. Plan & Profile Sheets

1. Plan View

- a. R.O.W. Lines
- b. Roadway Alignments
- c. Utilities
- d. Curbs
- e. Sidewalks
- f. Driveways
- g. Lane Dimensions
- h. X-Slopes
- i. PC/PT Sta.
- j. P.I. Curve Data
- k. Bearings
- l. Minimum Design Values met
- m. Cross Drainage Structures
- n. Cross Reference
- o. Storm Drainage
- p. Storm Drain Reference

2. Profile View

- a. Vertical Alignment
- b. Natural Ground
- c. Vertical Clearances (where required)
- d. Grades
- e. Cross Drainage Structures

G. Drainage

1. Storm Drainage Layouts
2. Storm Drainage Profiles
3. Drainage Area Maps
4. Discharge Relationships
5. Final Drainage Calculations
6. Storm Drain Master Plan

F. Final Culvert Layouts

1. NOT APPLICABLE

G. Final Bridge & Bridge Class Structures

1. Plan & Profile
2. Size
3. Length
4. Station

J. Preliminary Signing Layouts

K. Preliminary Pavement Markings and Delineation Layouts

L. Preliminary Illumination and Signal Layouts

M. Final Utility Exhibits

- N. Update Opinion of Probable Cost
- O. Update Design Contract Schedule
- P. Update Cross-sections

APPENDIX 6

FINAL DESIGN CHECKLIST

CONSULTANT shall prepare final design plans and specifications for the project and submit 18 sets of plans to **CITY** for review. The plan shall be prepared on 24" x 36" paper copies. The following shall be shown on the plans as a minimum:

- A. Update Plans from Intermediate Phase (60% Design)
- B. Update Title Sheet with Index including all standards with Copyright information on all Sheets
- C. Final Typical Sections
 - 1. Existing Typical Sections
 - a. R.O.W.
 - b. Lanes Width
 - c. Shoulders
 - d. Curbs
 - e. Border Width
 - f. Foundation (Depth of base, ACP, etc.)
 - 2. Proposed Typical Sections
 - a. R.O.W.
 - b. Lanes Width
 - c. Shoulders
 - d. Curbs
 - e. Border Width
 - f. X-Slopes
 - g. Horizontal Control
 - h. Design Values
 - i. Minimum Design Values
 - j. Design Exception
 - k. Borders widths Minimum Design Values
 - l. Pavement Foundation
- D. Traffic Control Signing & Warning Devices
- E. Final Summary Sheets
 - 1. Grading
 - 2. Small Drainage Structures
 - 3. Large Drainage Structures
 - 4. Pavement Markings
 - 5. Signing & Delineation
 - 6. Traffic Control
 - 7. SW3P

F. Final Traffic Control Plan & SW3P Layout - These layouts shall show a comprehensive method of how traffic is being handled during the duration of the project. These sheets shall contain work zone pavement marking, channelization devices, signing appropriate for the various phases, SW3P controls, etc. with completed quantities. A special provision with a narrative of the construction sequencing shall correspond to the TCP layouts.

G. Plan & Profile Sheets.

1. Plan View

- a. R.O.W. Lines
- b. Roadway Alignments
- c. Utilities
- d. Curbs
- e. Sidewalks
- f. Driveways
- g. Lane Dimensions
- h. X-Slopes
- i. PC/PT Sta.
- j. P.I. Curve Data
- k. Bearings
- l. Minimum Design Values met
- m. Cross Drainage Structures
- n. Cross Reference
- o. Storm Drainage
- p. Storm Drain Reference

2. Profile View

- a. Vertical Alignment
- b. Natural Ground
- c. Vertical Clearances (where required)
- d. Grades
- e. Cross Drainage Structures

H. Final Miscellaneous Details

- 1. Curb
- 2. Typical Curb Expansion Joint Detail
- 3. Transition for Curb ends
- 4. Curb Opening @ Concrete Driveway
- 5. Wheelchair Ramp
- 6. Section @ Wheelchair Ramp
- 7. Typical Sidewalk Section

I. Drainage

- 1. Storm Drain Layouts
- 2. Storm Drain Profiles
- 3. Drainage Area Maps
- 4. Discharge Relationships
- 5. Final Drainage Calculations
- 6. Storm Drain Master Plan

J. Final Culvert Layouts

- 1. NOT APPLICABLE

- K. Final Bridge & Bridge Class Structures
 - 1. Plan & Profile
 - 2. Size
 - 3. Length
 - 4. Station
- L. Final Signing Layouts
- M. Final Pavement Markings and Delineation Layouts
- N. Final Illumination Layout
- O. Final Utility Exhibits
- P. Final Opinion of Probable Cost
- Q. Update Design Contract Schedule
- R. Final Cross-sections
- S. General Notes, Specifications Data and Special Provisions
- T. Supporting paperwork to be submitted to Austin (1002), and Contract Time Determination
- U. Project Manual
 - 1. City of San Antonio's General Conditions
 - 2. Division 1 thru 16 Specifications

APPENDIX 7

PS&E SUBMITTAL CHECKLIST

CONSULTANT shall incorporate the revisions from the Final Design review and submit 4 sets of plans and two sealed and signed sets of the Plans, Specifications, and Estimate (P S &E) package to CITY for submittal to the Area office of TxDOT for review. This P S & E package shall include the following:

- A. Final 24" x 36" Plans (paper form)
- B. Final Estimate of Probable Cost
- C. General Notes and Specification Data
- D. Special specifications and/or Special Provisions with Form 1815
- E. Final Contract Time Determination
- F. Special Provision for Detours, Barricades, Warning Signs, Sequence of Work, etc.
- G. PS&E Submission Data (Form 1002)

After the review by the Area office of TxDOT, CONSULTANT shall incorporate any review comments into the final PS & E package and another paper copy of the plans is sent to the San Antonio District office of TxDOT for their review.

After the review by the District office, the final mylar copies of the plans shall then be signed and sealed by CONSULTANT for submission to the TxDOT office in Austin.

ATTACHMENT B

PRELIMINARY PRODUCTION SCHEDULE

ATTACHMENT C
CONSULTANT'S FEE PROPOSAL

Attachment D Instructions

Federally Funded Contracts

Attachment D, Disadvantaged Business Enterprise (DBE) for Federal Funded Professional or Technical Services Contracts revised May 2003.

- ◆ This provision is applicable to federally funded contracts with assigned DBE goals.
- ◆ The appropriate forms for this provision are Attachments D-1, D-2, D-3 and D-4.
- ◆ Note: if the contract is an indefinite delivery contract, Attachment D-1 is required with submittal of the contract for execution; however, Attachment D-2 will be required with each Work Authorization, if the DBE will be performing work.

Attachment D-9, Subprovider and Supplier Information.

- ◆ **REQUIRED FOR ALL CONTRACTS.**

1) **PURPOSE.** The purpose of this attachment is to carry out the U.S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by minority or socially and economically disadvantaged individuals can compete fairly for DOT assisted contracts.

2) **POLICY.** It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26, Subpart A and the Department's Disadvantaged Business Enterprise Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the Disadvantaged Business Enterprise requirements of 49 CFR Part 26, and the Department's Disadvantaged Business Enterprise Program, apply to this contract as follows.

- a. The Provider will offer Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, Subpart A and the Department's Disadvantaged Business Enterprise Program, the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds. In this regard, the Provider shall make a good faith effort to meet the Disadvantaged Business Enterprise goal for this contract.
- b. The Provider and any subprovider(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Provider shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts.
- c. The requirements of this Special Provision shall be physically included in any subcontract.
- d. When submitting the contract for execution by the Department, the Provider must complete and furnish Attachment D-1 which lists the commitments made to certified DBE subprovider(s) that are to meet the contract goal and Attachment D-2 which is a commitment agreement(s) containing the original signatures of the Provider and the proposed DBE(s). For Work Authorization Contracts, Attachment D-1 is required at the time of submitting the contract for execution by the Department. Attachment D-2 will be required to be completed and attached with each work authorization number that is submitted for execution, if the DBE will be performing work. Any substitutions or changes to the DBE subcontract amount shall be subject to approval by the Department.
- e. Failure to carry out the requirements set forth above shall constitute a material breach of this contract and may result; in termination of the contract by the Department; in a deduction of the amount of DBE goal not accomplished by DBEs from the money due or to become due to the Provider, not as a penalty but as liquidated damages to the Department; or such other remedy or remedies as the Department deems appropriate.

3) **DEFINITIONS.**

- a. "Department" means the Texas Department of Transportation (TxDOT).
- b. "Federal-Aid Contract" is any contract between the Texas Department of Transportation and a Provider, which is paid for in whole or in part with U. S. Department of Transportation (DOT) financial assistance.
- c. "Provider" is any individual or company that provides professional or technical services.
- d. "DBE Joint Venture" means an association a DBE firm and one or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a

distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest.

- e. "Disadvantaged Business Enterprise (DBE)" means a firm certified as such by the Department in accordance with 49 CFR Part 26.
- f. "Good Faith Effort" means efforts to achieve a DBE goal or other requirement of this Special Provision, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- g. "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.

4) **PERCENTAGE GOAL.** The goal for Disadvantaged Business Enterprise (DBE) participation in the work to be performed under this contract is 15.5 % of the contract amount.

5) **PROVIDER'S RESPONSIBILITIES.** A DBE prime may receive credit toward the DBE goal for work performed by his-her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported to the Department.

(a) A Provider who cannot meet the contract goal, in whole or in part, shall document the "Good Faith Efforts" taken to obtain DBE participation. The following is a list of the types of actions that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- (1) Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.
- (2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Provider might otherwise prefer to perform the work items with its own forces.
- (3) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (4) Negotiating in good faith with interested DBEs by making a portion of the work available to DBE subproviders and suppliers and selecting those portions of the work or material needs consistent with the available DBE subproviders and suppliers.
- (5) The ability or desire of the Provider to perform the work of a contract with its own organization does not relieve the Provider's responsibility to make a good faith effort. Additional costs involved in finding and using DBEs is not in itself sufficient reason for a Provider's failure to meet the contract DBE goal, as long as such costs are reasonable. Providers are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- (6) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- (7) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Provider.
- (8) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
- (9) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- (10) If the Director of the Business Opportunity Programs Section of the Department's Construction Division determines that the Provider has failed to meet the good faith effort requirements, the Provider will be given an opportunity for reconsideration by the Director of the appropriate Division.

NOTE: The Provider must not cause or allow subproviders to bid their services.

- b. The preceding information shall be submitted directly to the Chair of the Consultant Selection Team responsible for the project.
- c. The Provider shall make all reasonable efforts to honor commitments to DBE subproviders named in the commitment submitted under Section 2.c. of this attachment. Where the Provider terminates or removes a DBE subprovider named in the initial commitment, the Provider must demonstrate on a case-by-case basis to the satisfaction of the department that the originally designated DBE was not able or willing to perform.
- d. The Provider shall make a good faith effort to replace a DBE subprovider that is unable or unwilling to perform successfully with another DBE, to the extent needed to meet the contract goal. The Provider shall submit a completed D-2 Form for the substitute firm(s). Any substitution of DBEs shall be subject to approval by the Department. The Department may request a statement from the firm being replaced concerning its replacement prior to approving the substitution.
- e. The Provider shall designate a DBE liaison officer who will administer the DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.
- f. Providers are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

6) **ELIGIBILITY OF DBEs.**

- a. The Department certifies the eligibility of DBEs, DBE joint ventures and DBE truck-owner operators to perform DBE subcontract work on DOT financially assisted contracts.
- b. This certification will be accomplished through the use of the appropriate certification schedule contained in this Department's DBE program.
- c. The Department publishes annually a Directory of Disadvantaged Business Enterprises containing the names of firms that have been certified to be eligible to participate as DBEs on DOT financially assisted contracts. The directory is available from the Department's Construction Division, Business Opportunity Programs Section. A monthly update of the Directory can be found on the Internet at www.dot.state.tx.us/insdot/orgchart/cmd/cserve/dbelst/.

Only DBE firms certified at the time to be an eligible DBE, the total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subprovider is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

A DBE subprovider may subcontract no more than 70% of a federal aid contract. The DBE subprovider shall perform not less than 30% of the value of the contract work with assistance of employees employed and paid directly by the DBE; and equipment owned or rented directly by the DBE. DBE subproviders must perform a commercially useful function required in the contract in order for payments to be credited toward meeting the contract goal. A DBE performs a commercially useful function when it is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption.

A Provider may count toward its DBE goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.

Proof of payment, such as copies of canceled checks, properly identifying the Department's contract number or project number may be required to substantiate the payment, as deemed necessary by the Department.

7) **RECORDS AND REPORTS.**

- a. After submission of the initial commitment reported (Attachment D-1), required by Section 2.c. of this attachment, the Provider shall submit Monthly Progress Assessment Reports (Attachment D-3), after contract work begins, on DBE involvement to meet the goal and for race-neutral participation. One copy of each report is to be sent to the Construction Division, Business Opportunity Programs Section, and one copy is to be submitted with the Provider's invoice. Only actual payments made to subproviders are to be reported. These reports will be required until all DBE subprovider activity is completed. The Department may verify the amounts being reported as paid to DBEs by requesting copies of canceled checks paid to DBEs on a random basis.
- b. DBE subproviders should be identified on the report by name, type of work being performed, the amount of actual payment made to each during the billing period, cumulative payment amount and percentage of the total contract amount. These reports will be due within fifteen days after the end of a calendar month. Reports are required even when no DBE activity has occurred in a billing period.
- c. All such records must be retained for a period of four years following final payment or until any investigation, audit, examination, or other review undertaken during the four years is completed, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the U.S. Department of Transportation.

d. Prior to receiving final payment, the Provider shall submit a Final Report (Attachment D-4), detailing the DBE payments. The Final Report is to be sent to the Construction Division, Business Opportunity Programs Section and one copy to be submitted with the Provider's final invoice. If the DBE goal requirement is not met documentation of the good faith efforts made to meet the goal must be submitted with the Final Report.

8) **COMPLIANCE OF PROVIDER.** To ensure that DBE requirements of this U.S. DOT-assisted contract are complied with, the Department will monitor the Provider's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review of Monthly Progress Assessment Reports (Attachment D-3), submitted to the Construction Division, Business Opportunity Programs Section by the Provider indicating his progress in achieving the DBE contract goal, and by compliance reviews conducted by the Department.

The Provider shall receive credit toward the DBE goal based on actual payments to the DBE subproviders with the following exceptions and only if the arrangement is consistent with standard industry practice. The Provider shall contact the Department if he/she withholds or reduces payment to any DBE subprovider.

- (1) A DBE firm is paid but does not assume contractual responsibility for performing the service;
 - (2) A DBE firm does not perform a commercially useful function;
 - (3) Payment is made to a DBE that cannot be linked by an invoice or canceled check to the contract under which credit is claimed;
 - (4) Payment is made to a broker or a firm with a brokering-type operation;
 - (5) Partial credit is allowed, in the amount of the fee or commission provided the fee or commission does not exceed that customarily allowed for similar services, for a bona fide service, such as professional, technical, consultant, or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract.
- d. A Provider's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Provider, not as a penalty but as liquidated damages to the Department; or such other remedy or remedies, as the Department deems appropriate. The contract is signed or at the time the commitments are submitted are eligible to be used in the information furnished by the Provider as required under Section 2.c. and 5.d. above. For purposes of the DBE goal on this contract, DBEs will only be allowed to perform work in the categories of work for which they were certified.

9) **DETERMINATION OF DBE PARTICIPATION.**

A firm must be an eligible DBE and perform a professional or technical function relating to the project. Once a firm is determined t

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ATTACHMENT D-1

City of San Antonio Subprovider Monitoring System Commitment Worksheet

Contract #: _____ Assigned Goal: _____ % Federally Funded _____ State Funded

Prime Provider: _____ Total Contract Amount: _____

DBE _____ Vendor ID #: _____ Expiration Date: _____
(First 11 Digits Only)

Subprovider(s) (List All)	Type Of Work	Vendor ID # (First 11 Digits Only)	D=DBE	Expirati on Date	\$ Amount or % of Work *
Subprovider(s) Contract or % of Work* Totals					

*For Work Authorization Contracts, indicate the % of work to be performed by each subprovider.

Total DBE or HUB Commitment Dollars \$ _____

Total DBE or HUB Commitment Percentages of Contract _____ %

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ATTACHMENT D-2

City of San Antonio Subprovider Monitoring System Commitment Agreement

Complete this Form for each DBE Subprovider

This commitment agreement is subject to the award and receipt of a signed contract from the City of San Antonio. **NOTE:** For Work Authorization Contracts, Attachment D2 is required to be completed and attached with each work authorization number that is submitted for execution.

Contract #: _____ Assigned Goal: _____ % Prime Provider: _____
Work Authorization: _____ Work Authorization Amount: _____ Date: _____

Description of Work <i>(List by category of work. Attach additional pages, if necessary.)</i>	Dollar Amount <i>(For each category of work.)</i>
Total Commitment Amount (Including all additional pages.)	\$ _____

IMPORTANT: The signatures of the prime and the DBE and Second Tier Subprovider, if any (both DBE and Non-DBE) and the total commitment amount must always be on the same page.

Provider Name: Address: Phone #:	Name: _____ <i>(Please Print)</i> Title: _____ Signature Date
DBE Sub Provider Subprovider Name: VID Number: Address: Phone #:	Name: _____ <i>(Please Print)</i> Title: _____ Signature Date
Second Tier Sub Provider Subprovider Name: VID Number: Address: Phone #:	Name: _____ <i>(Please Print)</i> Title: _____ Signature Date
VID Number is the Vendor Identification Number issued by the Comptroller. If a firm does not have a VID Number, please enter the owner's Social Security or their Federal Employee Identification Number (if incorporated).	

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ATTACHMENT D-3

City of San Antonio Subprovider Monitoring System

Progress Assessment Report for month of (Mo./Yr.) _____ / _____

Contract #: _____

Original Contract Amount: _____

Date of Execution: _____

Approved Supplemental Agreements: _____

Prime Provider: _____

Total Contract Amount: _____

Work Authorization No. _____

Work Authorization Amount: _____

DBE	Subprovider	Category of Work	Total Subprovider Amount	% Total Contract Amount	Amount Paid This Period	Amount Paid To Date	Subcontractor Balance Remaining

Fill out Progress Assessment Report with each estimate submitted, *for all subcontracts*, and forward as follows:
 1 Copy with Invoice - Project Manager/Capital Programs Division, 114 West Commerce, 5th Floor, San Antonio, Texas 78205,
 1 Copy - San Antonio Public Works Department, Capital Programs Division, Fiscal Office, 114 West Commerce, 7th Floor, San Antonio, Texas 78205, 210.207.4051



ATTACHMENT D-4

City of San Antonio Subprovider Monitoring System Final Report

The Final Report Form should be filled out by the Prime Provider and submitted to the City of San Antonio, Public Works Department, Capital Programs Division, Fiscal Office, 114 W. Commerce, 7th Floor, San Antonio, TX 78205, (210) 207-4051 for review upon completion of the contract. The report should reflect **all subcontract activity** on the project. The report will aid in expediting the final estimate for payment. If the DBE goal requirements were not met, documentation supporting good faith efforts must be submitted.

DBE Goal: _____%

Total Contract Amount: \$ _____

Total Contract Amount: \$ _____

Contract Number: _____

Vendor ID #	Subprovider	Total \$ Amt Paid to Date
TOTAL		

This is to certify that _____% of the work was completed by the DBE subproviders as stated above.

By: Prime Provider _____

Per: Signature _____

Subscribed and sworn to before me, this _____ day of _____, 20__

_____ Notary Public _____ County

My Commission expires: _____

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ATTACHMENT E

**LOCAL AGENCY FUNDING AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF
TRANSPORTATION AND THE CITY OF SAN ANTONIO**