

ORDINANCE 2021-06-10-0429

AUTHORIZING AN AMENDMENT IN THE INCREASED AMOUNT NOT TO EXCEED \$214,113.00 TO THE \$2,166,426.00 PROFESSIONAL SERVICES AGREEMENT WITH AECOM TECHNICAL SERVICES, INC. FOR CONSTRUCTION AND CLOSE-OUT SERVICES RELATED TO THE UPPER LEON CREEK RSWF - CULEBRA CREEK PROJECT INCLUDING CONSTRUCTION MANAGEMENT SERVICES FOR THE CULEBRA CREEK HIKE & BIKE TRAIL. FUNDS ARE AVAILABLE FROM 2007 GENERAL OBLIGATION BOND, STORM WATER REGIONAL FACILITIES AND PROPOSITION 2 PARKS DEVELOPMENT AND EXPANSION VENUE FUNDS AND INCLUDED IN THE FY 2021 - FY 2026 CAPITAL IMPROVEMENT PROGRAM.

* * * * *

WHEREAS, as part of the 2007 Bond Program, funds in the amount of \$3,156,000.00 were approved for the Upper Leon Creek Regional Storm Water Facility (RSWF) project initially anticipated to be located within the Government Canyon State Natural Area. As part of this project, a Due Diligence and Feasibility Study for Government Canyon Creek RSWF was completed to analyze several potential detention sites within Government Canyon; and

WHEREAS, due to changes in baseline floodplain conditions from recent floodplain Letters of Map Revision (LOMR) and updated topographic data, it was determined neither size of detention site options were cost-effective solutions for the flood reduction risk associated with this project. As a result, three alternative projects within the Upper Leon Creek Watershed were studied and shown to be more cost-effective options, including the Helotes Creek RSWF, Culebra Creek Natural Waterway Conveyance (NWWC) and Leon Creek NWWC. Of these projects, Culebra Creek NWWC included the appropriate available funding for the City to execute; and

WHEREAS, the Upper Leon Creek RSWF - Culebra Creek NWWC project will improve water drainage conveyance and 100-year flood reduction benefits for several adjacent properties; and

WHEREAS, project improvements will include an earthen channel upstream and downstream of Culebra Road Bridge and Timber Path Bridge, the armoring of bridge columns for both Culebra Road and Timber Path Bridges, the installation of a concrete retaining wall with riprap to stabilize side slopes behind a commercial property, CPS gas line adjustments will also be included as part of the project, and in collaboration with the Parks and Recreation Department incorporating the Culebra Creek Hike and Bike Trail (Cathedral Rock Park to Grissom Road); and

WHEREAS, the Culebra Creek Hike and Bike Trail (Cathedral Rock Park to Grissom Road) project is part of a growing network of interconnected hike and bike trails on the Howard W. Peak Greenway Trails system, which has been funded through a portion of a 1/8-cent voter approved sales tax since its inception; and

WHEREAS, these project locations overlap, the City coordinated the flood control and trail designs for both projects by joint bid utilizing the same contractor; and

WHEREAS, construction of these improvements is anticipated to begin in October 2021 and is estimated to be completed by June 2022; and

WHEREAS, a previously executed contract with Turner Collie and Braden (TCB), now doing business as AECOM Technical Services, Inc., in the amount of \$137,755.00 for the Upper Leon Creek RSWF project was approved by City Council on August 18, 2005 through Ordinance 101235, where previously approved amendments in the total amount of \$2,028,671.00 have increased the agreement amount to \$2,166,426.00; and

WHEREAS, this amendment will increase the agreement in an amount not to exceed \$214,113.00 to a revised amount of \$2,380,539.00; and

WHEREAS, the following table illustrates the previously authorized amendments since the execution of this contract; and

Item	Amount
Original Contract Value	\$137,755.00
Previous Amendments	\$2,028,671.00
Proposed Amendment	\$214,113.00
Revised Contract Value	\$2,380,539.00

WHEREAS, this amendment will compensate AECOM Technical Services, Inc. for construction and close-out phase services in relation to the Upper Leon Creek RSWF - Culebra Creek project and will also increase the scope of work for construction management services related to the Culebra Creek Hike and Bike Trail project; **NOW THEREFORE:**

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

SECTION 1. The City Manager, or designee, is authorized and directed to execute an amendment to the professional services agreement with AECOM Technical Services, Inc., Inc. in an amount not to exceed \$214,113.00 to a revised amount of \$2,380,539.00 for construction and close-out phase services in relation to the Upper Leon Creek RSWF - Culebra Creek project and increase the scope of work for construction management services related to the Culebra Creek Hike and Bike Trail project. A copy of the amendment in substantially final form is attached as **Exhibit I**.

SECTION 2. Payment is authorized to be encumbered and made payable to AECOM Technical Services, Inc. in an amount not to exceed \$214,113.00 for an increase to the existing Professional Services Agreement of \$2,166,426.00.

Payment of \$125,426.00 is in support of the Upper Leon Creek Regional RSWF Project, using Fund 48099000, with the WBS Element 23-03730-01-02 and GL Account 5201170. Funding is

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Item No. 12A

provided by GO Bonds, Revenue Bonds, and the Drainage Detention Project Fund and is in the FY2021-FY2026 CIP Budget.


Payment of \$88,687.00 is in support of the Culebra Creek Greenway (Cathedral Rock Park) Project, using Fund 4005000, with the WBS Element 26-00624-01-19-04 and GL Account 5201040. Funding is provided by Parks Acquisitions and Development Fund and the Linear Parks 2015 Fund and is in the FY2021-FY2026 CIP Budget.

Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Fund Numbers, Project Definitions, WBS Elements, Internal Orders, Fund Centers, Cost Centers, Functional Areas, Funds Reservation Document Numbers, and GL Accounts as necessary to carry out the purpose of this Ordinance.


SECTION 4. This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 10th day of June, 2021.




M A Y O R
Ron Nirenberg

ATTEST:



Tina J. Flores, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

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Exhibit I
Amendment to PSA



City of San Antonio

City Council

June 10, 2021

Item: 12A

File Number: 21-4256

Enactment Number:

2021-06-10-0429

Ordinance approving an amendment in the increased amount not to exceed \$214,113.00 to the \$2,166,426.00 Professional Services Agreement with AECOM Technical Services, Inc. for construction and close-out services related to the Upper Leon Creek RSWF - Culebra Creek project including construction management services for the Culebra Creek Hike & Bike Trail. Funds are available from 2007 General Obligation Bond, Storm Water Regional Facilities and Proposition 2 Parks Development and Expansion Venue funds and included in the FY 2021 - FY 2026 Capital Improvement Program.

Councilmember Jada Andrews-Sullivan made a motion to approve. Councilmember Ana E. Sandoval seconded the motion. The motion passed by the following vote:

Aye: 10 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia,
Gonzales, Cabello Havrda, Sandoval, Courage and Perry

Absent: 1 Pelaez

**AMENDMENT #3
TO
PROFESSIONAL SERVICES AGREEMENT
FOR ADDITIONAL SERVICES FOR THE
UPPER LEON CREEK REGIONAL STORMWATER FACILITY-
CULEBRA CREEK NATURAL WATERWAY CONVEYANCE PROJECT
PROJECT NUMBER: 23-03730**

This amendment to the Professional Services Agreement for Additional Services for The Upper Leon Creek Regional Stormwater Facility - Culebra Creek Natural Waterway Conveyance, Project authorized by **Ordinance No. 2021-_____**, is entered into by and between the **City of San Antonio ("City")**, a home rule municipal corporation, and **AECOM Technical Services, Inc. ("Consultant")**, referred to collectively herein as the "Parties".

WHEREAS, on August 18, 2005 City Council approved Ordinance No. 101235 that authorized a contract with Turner Collie and Braden, now doing business as AECOM Technical Services, Inc., in the amount of \$137,755.00 for the Upper Leon Creek Regional Storm Water Facility- Culebra Creek Natural Waterway Conveyance Project ("Original Agreement"); and

WHEREAS, in May of 2007 through Ordinance No. 2007-05-31-0615 City Council approved a \$1,814,420.00 amendment to a Professional Engineering Services Agreement with Turner Collie & Braden, now doing business as AECOM Technical Services, Inc. for Additional Engineering Services to provide for additional professional engineering services to include a fatal flaw analysis of seven sites as well as a Phase 1 Environmental Site Assessment, an environmental constraints analysis for each site, and limited soil borings at each site to determine suitability of the site for dam construction in connection with Upper Leon Creek Regional Watershed Storage Facility Project ("Amended Agreement"); and

WHEREAS, in June 2015 through Ordinance No. 2015-06-18-0535 City Council approved amending the Professional Services Agreement with AECOM Technical Services, Inc. in the increased amount not to exceed \$214,251.00 for Additional Design Services related to the Upper Leon Creek Regional Stormwater Facility-Culebra Creek Natural Waterway Conveyance bring the total amount to \$2,166,426.00 ("Amended Agreement"); and

WHEREAS, the project requires additional services of construction management services through construction phase services in the increased amount not to exceed **\$91,644.00** and project closeout in the increased amount not to exceed **\$33,762.00**; and

WHEREAS, the project has been modified to increase the scope of work for construction management services for the Culebra Creek Hike & Bike Trail to include 4,000 linear feet of 10' wide concrete trail, park trail head, associated appurtenances, and all necessary permits required for construction in the increased amount not to exceed **\$88,687.00**; and

WHEREAS, it is necessary to amend the Original Agreement to add additional engineering design, bid, construction phase, and close out phase services for the project modifications; and

WHEREAS, this amendment increases the total contract capacity by \$ **214,113.00** to provide for the cost of the additional services;

NOW THEREFORE, in consideration of the terms, covenants, agreements and demises herein contained each to the other given, the sufficiency and receipt of which are hereby acknowledged, the Original Agreement, as previously amended, is amended as follows:

1. **Exhibit 1 - Fee Summary.** The not-to-exceed contract amount set out in Exhibit 1 – Fee Summary of the Original Agreement is hereby increased by **TWO HUNDRED FOURTEEN THOUSAND ONE HUNDRED THIRTEEN AND 00/100 DOLLARS (\$ 214,113.00)** for a total not-to-exceed contract amount of **TWO MILLION THREE HUNDRED EIGHTY THOUSAND FIVE HUNDRED THIRTY-NINE AND 00/100 DOLLARS (\$2,380,539.00)**.
2. **Exhibit A.** The 2015 04 07 AECOM COSA Culebra Creek signed proposal attached hereto as Attachment 1 is hereby incorporated into and made a part of Exhibit A of the Original Agreement.
3. **Exhibit A.** The Culebra Hike & Bike Trail Construction Phase Services _050421 signed proposal attached hereto as Attachment 2 is hereby incorporated into and made a part of Exhibit A of the Original Agreement.

Except as amended hereby, all other provisions of the Agreement are hereby retained in their entirety and remain unchanged.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

AECOM Technical Services, Inc.

(Signature)
Razi Hosseini
Director,
Public Works Department
Date: _____

DocuSigned by:
Rod McCrary, P.E.

(Signature) 4FFBA842842E ...
Printed Name: Rod McCrary, P.E.
Title: Vice President
Date: 5/13/2021

Approved as to Form:

Assistant City Attorney

ATTACHMENT 1
2015 04 07 AECOM COSA Culebra Creek signed proposal



AECOM
112 E. Pecan Ste 400
San Antonio, Texas 78205
www.aecom.com

210 296 2000 tel
210 296 2025 fax

April 7, 2015

David Pulido, PE
Project Manager
City of San Antonio
Transportation & Capital Improvements

RE: Scope of Services - Culebra Creek

Dear Mr. Pulido:

AECOM Technical Services, Inc. (AECOM) is pleased to submit our proposal for the Culebra Creek Project. If acceptable, this proposal will form the basis of an Amendment to the Professional Services Agreement for Upper Leon Creek Regional Storm Water Facility between the City of San Antonio (City) and AECOM (attached).

ARTICLE I

BASIC SERVICES: AECOM will develop plans, specifications and estimate for Culebra Creek. The goal of this project is to lower the flow-line of Culebra Creek near Timber Path Bridge and Culebra Road Bridge. The project limits are in Culebra Creek from 1,070 ft. downstream of Timber Path Bridge to 350 ft. upstream of Timber Path Bridge and from 80 ft. downstream of Culebra Road Bridge to 150 ft. upstream of Culebra Road Bridge.

AECOM shall render the following professional services in connection with the development of the Project:

A. INITIAL SCOPE MEETING

1. Complete Design Summary Report (DSR), attend meeting, and document with meeting minutes.

B. DESIGN PHASE:

AECOM shall provide professional services in this phase as follows:

1. Topographic Surveying/ Base Mapping
 - a. See Surveyors (Cude Engineers) Proposal for more details.
2. H&H Services
 - a. Data Collection: Review pertinent information developed at the Government Canyon Creek Regional Storm Water Facility (RSWF) – Downstream Studies regarding the project. Data collection includes, but is not limited to the following:
 - i. Hydrologic and hydraulic models;
 - ii. Available GIS data consisting of existing aerial photography, two-foot topography, road centerlines, and information relating the existing hydrologic and hydraulic models;



AECOM 210 296 2000 tel
 112 E. Pecan Ste 400 210 296 2025 fax
 San Antonio, Texas 78205
 www.aecom.com

- iii. City standards including standard drainage details;
 - iv. As-built plans for the bridges, and utilities within identified study areas; Flooding reports;
 - v. Culebra Creek Greenway (Parks) plans and any coordination with Vickrey & Associates;
 - vi. Old Grissom Road (TCI Horizontal) plans;
 - vii. Make two (2) site visits to the site.
- b. **Channel Design:** Based on the results from the Canyon Creek RSWF – Downstream Studies, AECOM will develop the design of the Infrastructure needed for improving drainage conditions in the project area using criteria set forth in the City's DGM. The channel will be designed for a 100-year storm. AECOM shall prepare plans and specifications for the design of the channel improvements at Culebra Creek.
- i. Develop a layout of the Culebra Creek improvements from 1,070 ft. downstream of Timber Path Bridge to 350 ft. upstream of Timber Path Bridge and from 80 ft. downstream of Culebra Road Bridge to 150 ft. upstream of Culebra Road Bridge. The channel will be sized for the previously mentioned design event runoff based on existing drainage patterns. The channel will be designed as an earthen channel. The existing channel has a bottom width of approximately 300 to 350 ft. and 3:1 side slopes. The proposed channel section maintains the width and side slopes of the existing channel but lowers the profile by as much as 2.5 ft. Scour analysis for the bridges will be performed.
 - ii. Develop drawings and/or maps to identify key components of the design solutions.
 - iii. Based on the design drawings, prepare probable construction costs for each component. In conjunction with the City, AECOM will develop phasing plans for implementation.
 - iv. AECOM will provide support to CoSA for any documentation needed for Environmental Permitting.
 - v. QA/QC of the Hydrologic and Hydraulic Analyses plus plans and documents associated with the design will be performed.
- c. Prepare detailed final design, channel profile, and cross-sections, drawings, technical specifications, cost estimate and project construction schedule using City of San Antonio Standards for the improvements at Culebra Creek.
- i. Provide three (3) 11"x17" sets at 1"=40' scale of 40% construction documents (plans and outline of the front end documents and technical specifications including any anticipated special provisions or special specifications) for review and approval of the City. PDF copies of the documents will be submitted along with hard copies.
 - ii. Provide three (3) 11"x17" sets at 1"=40' scale of 95% construction documents (plans and outline of the front end documents and technical specifications including any anticipated special provisions or special specifications) for review



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and approval of the City. PDF copies of the documents will be submitted along with hard copies.

- iii. Upon City of San Antonio approval prepare "Issued for Bid" construction documents. Provide copies of plans and specifications to the Plan Rooms utilized by the City. Sell plans and specifications to prospective bidders and notify bidders that all forms can be found on City's website for download.
 - iv. Assist the City of San Antonio in obtaining the necessary permits required for construction of the improvements.
 - v. Assist the City of San Antonio in advertisement of the project and securing bids.
 - vi. Respond to requests for information and questions during the advertisement phase. Prepare up to four addenda to the bid documents and provide to the City of San Antonio for distribution to plan holders. Attend the pre-bid conference. Analyze bids and provide recommendations for the apparent successful low bidder in accordance with the plans and specifications.
- d. Drainage Plan and Report: Prepare a bound design report to present results of the existing conditions analysis, design analyses, permitting requirements, opinion of probable construction costs, phasing, and the implementation schedule. AECOM will submit an "Issued for Review Report" (3 copies) and will incorporate City comments into a "Final Report" (5 copies).
3. Other Plans
- a. Prepare Construction Sequencing Plan.
 - b. Prepare Stormwater Prevention Pollution Plan.
4. Meetings and Coordination (including meeting minutes)
- a. Three (3) Public meetings
 - i. 40% Plans
 - ii. 95% Plans
 - iii. Before Construction starts
 - iv. City will coordinate a 20% utility review meeting after the consultant has completed the initial utility base map. City of San Antonio to provide a location and invite attendees.
 - b. Initial Scope Meeting
 - c. 40% Plans Review Meeting
 - d. 95% Plans Review Meeting
 - e. 100% Plans Review Meeting
 - f. Pre-bid Meeting
 - g. Pre-Construction Meeting
5. Cost Estimating
- a. 40% Probable Cost Estimate
 - b. 95% Probable Cost Estimate
 - c. Evaluate bids and recommend award.



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112 E. Pecan Ste 400 210 298 2025 fax
San Antonio, Texas 78205
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not guarantee the Contractor's performance, nor is AECOM responsible for supervision of the Contractor's operation and employees. AECOM shall not, be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. AECOM shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project. Construction phase services are based on the construction base bids items with additional services broken out for each additive alternative.

1. Attend pre-construction meeting and provide meeting minutes.
2. Attend citizen meeting(s) at the start of construction.
3. Perform Construction Staking (See Surveyors Proposal)
4. Assist with the review of the monthly pay estimates.
5. Assist in preparation and review of change orders.
6. Review shop drawings.
7. Respond to request for information.
8. Perform a minimum of two (2) project site visits per month and prepare a report for each visit to the City regarding progress of construction. In conjunction with site visits attend construction progress meetings and prepare meeting minutes.
9. Participate in final inspection of project.
10. Prepare project record drawings.
11. Participate in one-year warranty inspection of project.
12. Prepare a Letter of Map Revision (LOMR) based on the latest DFIRM models, available from www.bexarfloodfacts.org. In accordance with applicable state and local requirements. City of San Antonio shall submit the LOMR for approval; AECOM shall assist City of San Antonio with responses to any comments received. Payment of fee for FEMA Submittal shall be paid for by the City of San Antonio.

ARTICLE II

ADDITIONAL SERVICES: Additional Services to be performed by AECOM, if authorized by Owner, which are not included in the above described basic services, are described as follows:

1. Subsurface Utility Engineering (S.U.E.) potholes. See SUE Services, Inc. Proposal for more details.
2. Provide Geotechnical Engineering Services. See Arias & Associates Proposal for more details.
3. Field layouts or the furnishing of construction line and grade surveys.
4. GIS mapping services or assistance with these services.
5. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by Owner.
6. Providing renderings, model, and mock-ups requested by the Owner.
7. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by Owner or 2) due to other causes not solely within the control of AECOM.



AECOM 210 296 2000 tel
112 E. Pecan St. 400 210 296 2025 fax
San Antonio, Texas 78205
www.aecom.com

8. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required in connection with the replacement of such Work.
9. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by Owner.
10. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
11. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
12. Preparing data and reports for assistance to Owner in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
13. Furnishing the services of a Resident Project Representative to act as Owner's on-site representative during the Construction Phase. The Resident Project Representative will act as directed by AECOM in order to provide more extensive representation at the Project site during the Construction Phase. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident project Representative and assistants; AECOM shall endeavor to provide further protection for Owner against defects and deficiencies in the work.
14. If Owner provides personnel to support the activities of the Resident Project Representative who is AECOM or AECOM 's agent or employee, the duties, responsibilities and limitations of authority of such personnel will be set forth in an Attachment attached to and made a part of this AGREEMENT before the services of such personnel are begun. It is understood and agreed that such personnel will work under the direction of and be responsible to the Resident Project Representative. Owner agrees that whenever AECOM informs him in writing that any such personnel provided by the Owner are, in his opinion, incompetent, unfaithful or disorderly, such personnel shall be replaced.
15. Furnishing Special Inspections required under chapter 17 of the International Building Code. These Special Inspections are often continuous, requiring an inspector dedicated to inspection of the individual work item, and they are in addition to General Representation and Resident Representation services noted elsewhere in the contract. These continuous inspection services can be provided by AECOM as an Additional Service.
16. Assisting Owner in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
17. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.



AECOM 210 296 2000 lat
112 E. Pacific St. 400 210 296 2025 lsa
San Antonio, Texas, 78205
www.aecom.com

18. Assisting Owner in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by AECOM on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
19. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
20. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
21. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
22. Services required to resolve bid protests or to rebid the projects for any reason.
23. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
24. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
25. Providing services after the completion of the construction phase not specifically listed in Article I.
26. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the Owner.
27. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
28. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of AECOM.
29. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
30. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
31. Provide follow-up professional services during Contractor's warranty period.
32. Provide Geotechnical investigations, studies and reports.

ARTICLE III

TIME OF COMPLETION: AECOM is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule:

Activity	Calendar Days
40% Design Phase	120
95% Design Phase	120
Subtotal Design Phase Bid Phase	240



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112 E. Pecan Ste 400 210 298 2025 fax
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Bid Phase	30
Construction Phase	360 (12 month construction schedule)
Subtotal Bid and Construction Phase	390
Project Close-out	21
Total Project Duration	651

If AECOM's services are delayed through no fault of AECOM, AECOM shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Owner or regulatory reviews, delays on the flow of information to be provided to AECOM, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this AGREEMENT.

ARTICLE IV

PROPOSED BASIS OF COMPENSATION: Compensation for the above Scope of Services is to be provided in accordance with the terms of the Professional Services Agreement for Upper Leon Creek Regional Storm Water Facility. The total compensation for the above Scope of Services is a LUMP SUM fee of \$583,086.00

We appreciate the opportunity to be service to you on this project. If you have any questions regarding this proposal, please feel free to contact Mr. Mehmet Boz at (210) 253.7513 or Mr. Luis Alday at (210) 321.1119.

Respectfully,
AECOM Technical Services, Inc.

Mike Patorno, PE
Vice President

Mehmet Boz, PhD, PE
Project Manager

- Attachment A: Project Work Plan
- Attachment B: Cude Engineers Scope of Work
- Attachment C: Aras & Associates Scope of Work
- Attachment D: Professional Services Agreement for Upper Leon Creek Regional Storm Water Facility

Project/Activity Name	Personnel		Department		Project		Route		Route		Project		CADD Team		CADD Team		Total Hours	Total Fee	Sub-Project Total Fee
	FTE	Hours	FTE	Hours	FTE	Hours	FTE	Hours	FTE	Hours	FTE	Hours	FTE	Hours					
Task 10 - J&K																			
10.1 - Project Approach Meeting	1																		1,000.0
10.2 - Permitting	1																		1,750.0
10.3 - EIR/CEQA	1																		1,750.0
10.4 - Construction	1																		1,750.0
10.5 - Final Review	1																		1,000.0
10.6 - Construction	1																		1,000.0
10.7 - Construction	1																		1,000.0
10.8 - Construction	1																		1,000.0
10.9 - Construction	1																		1,000.0
10.10 - Construction	1																		1,000.0
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10.50 - Construction	1																		1,000.0
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10.52 - Construction	1																		1,000.0
10.53 - Construction	1																		1,000.0
10.54 - Construction	1																		1,000.0
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10.56 - Construction	1																		1,000.0
10.57 - Construction	1																		1,000.0
10.58 - Construction	1																		1,000.0
10.59 - Construction	1																		1,000.0
10.60 - Construction	1																		1,000.0
10.61 - Construction	1																		1,000.0
10.62 - Construction	1																		1,000.0
10.63 - Construction	1																		1,000.0
10.64 - Construction	1																		1,000.0
10.65 - Construction	1																		1,000.0
10.66 - Construction	1																		1,000.0
10.67 - Construction	1																		1,000.0
10.68 - Construction	1																		1,000.0
10.69 - Construction	1																		1,000.0
10.70 - Construction	1																		1,000.0
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10.84 - Construction	1																		1,000.0
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10.97 - Construction	1																		1,000.0
10.98 - Construction	1																		1,000.0
10.99 - Construction	1																		1,000.0
10.100 - Construction	1																		1,000.0

Hours/Professional Title	Principal	Site Principal	Department	Project	Senior	Structure	Senior	Project	CAD Tech #1			CAD Tech #2			Total Hours	Fee	Other Services	Total Fee	
									Engineer	207.0	207.0	207.0	207.0	207.0					207.0
Task to be performed/Phase Description (including sub-associated work)	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
1.0 - Final Inspection	1																		
2.0 - Construction	1																		
3.0 - Design/Check and/or Construction	1																		
4.0 - Prepare Plan of Record	1																		
5.0 - Prepare Record Plans Through	1																		
6.0 - LAND	1																		
Total Hours	6	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
REGISTRATION FEE	\$17,280	\$200	\$1,875	\$6,000	\$5	\$0	\$24,710	\$13,500	\$27,413	\$4,500	\$62,800	\$38,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Page 1 of 1

AGREEMENT

For the provision of limited professional services



DATE January 30, 2015

PROJECT NO. P-5783.014

CLIENT AECOM
Attn: Mr. Mehmet Boz, PhD, PE
112 E Pecan Street, Suite 400
San Antonio, TX 78205

Project Name - Culebra Creek Survey

Location - Culebra Road Bridge and Timber Path Bridge near Grissom Road, Bexar County, Texas

Scope / Intent and Extent of Services / Schedule - Provide field surveying and office calculations in order to prepare survey plat showing existing site conditions along portions of Culebra Creek near the Culebra Road Bridge and the Timber Path bridge. Field survey to include setting horizontal and vertical control points outside the proposed limits of construction, locate both bridges at the Culebra Road Bridge and Timber Path Bridge and take 50-foot interval cross-sections along Culebra Creek 1,070 feet downstream and 350 feet upstream of the Timber Path Bridge, and 80 feet downstream and 150 feet upstream of the Culebra Road Bridge. Improvements, utilities and trees will also be located within the survey limits along with any significant grade breaks or topo features. SUE work will also be provided as an additional service at a fee per location as listed below. We will begin the field survey within 10 working days after receiving a written notice-to-proceed and will take an additional 20 working days after beginning the field survey to complete the project.

Survey Fee Summary - \$29,996.00

SUE Fee Summary -	0 FT.- 6 FT.	\$1,375/HOLE
	6 FT.-10 FT.	\$1,661/HOLE
	EVERY 1FT. DEEPER THAN 10FT	\$165 EACH ADDITIONAL FT
	HOLES > 20FT	TO BE NEGOTIATED
	PLUS ANY ADDITIONAL PASS THROUGH COSTS FOR PERMITS OR TRAFFIC CONTROL	

Deliverables - Topographic Survey Plat for the Culebra Road Bridge and the Timber Path Bridge

**CULEBRA CREEK
SURVEY PROPOSAL FOR APPROXIMATELY 1750 FEET OF TOPO, IMPROVEMENTS, UTILITIES AND TREES
ALONG CULEBRA ROAD BRIDGE AND TIMBER PATH BRIDGE**

POSITION DESCRIPTION	RPLS	Survey Tech	Cadd Tech	3-Man Crew	3-Man Crew	4-Man Crew	Clerical (Survey)	Total Labor hrs	Cost
RAW LABOR RATES									
BILLABLE LABOR RATES	\$130.00	\$93.00	\$70.00	\$120.00	\$160.00	\$180.00	\$55.00		

DETAILED DESIGN PHASE SERVICES

SURVEYING SERVICES										
#	DESCRIPTION	RPLS	Survey Tech	Cadd Tech	3-Man Crew	3-Man Crew	4-Man Crew	Clerical (Survey)	Total Labor hrs	Cost
1	ESTABLISH PRIMARY AND SECONDARY CONTROL POINTS	4	2						16	\$2,906.00
2	LOCATE TOPO, IMPROVEMENTS, UTILITIES & TREES (Top of bank to Top of bank) ALONG CULEBRA CREEK INCLUDING SUE LOCATIONS <small>(Unless top of bank is clearly defined, survey limits will extend to adjoining property line for both)</small>	18	14			10		20	122	\$16,942.00
3	LOCATE & DETAIL BRIDGE DECK AT CULEBRA ROAD AND TIMBER PATH	4	2			20			26	\$3,906.00
4	PREPARE DRAWING AND DIGITAL TERRAIN MODEL OF PROJECT	18	14	60					82	\$7,842.00
	Sub-total									\$29,996.00
ADDITIONAL SERVICES (for parcels to be acquired)										
5	PREPARE PARCEL PLATS AND FIELD NOTES INCLUDING ACQUIRING RIGHT-OF-ENTRIES FOR ADJACENT PROPERTIES ALONG PROJECT LIMITS AND TITLE SEARCH <small>(Lump sum of \$3,000 per Parcel Plat, Field Notes and Title Report)</small>									
	PREPARE RIGHT-OF-WAY STRIP MAP SHOWING BOUNDARY AND IMPROVEMENTS <small>(Lump sum fee dependent upon length of property acquisition)</small>									
6	FEE PER UTILITY TEST HOLE IS AS FOLLOWS: 0 FEET - 8 FEET \$1375.00/HOLE 8 FEET - 10 FEET \$1661.00/HOLE EVERY 1 FOOT DEEPER THAN 10 FEET \$165.00 EACH ADDITIONAL FOOT HOLES GREATER THAN 20 FEET TO BE NEGOTIATED <small>(Plus any additional pass through costs for permits or traffic control)</small>									
	Sub-total									\$0.00
	Total hours	44	32	60	0	100	0	20	256	\$29,996.00
SUMMARY										
	HOURS SUB-TOTALS	44	32	60	0	100	0	20	256	
	BILLABLE RATE PER HOUR (LABOR BURDEN & OVERHEAD)	\$130.00	\$93.00	\$70.00	\$120.00	\$160.00	\$0.00	\$55.00		
	TOTAL	\$5,720.00	\$2,976.00	\$4,200.00	\$0.00	\$16,000.00	\$0.00	\$1,100.00		

Subtotal \$29,996.00
Additional Services \$0.00

Gross total \$29,996.00

A consultant to Professional Services Association for Additional Design Services
10000 S. Redwood Road, Suite 100, San Ramon, CA 94583
Tel: 925-391-1000 Fax: 925-391-1001
www.psaonline.com



142 Chula Vista, San Antonio, Texas 78232 • Phone: (210) 308-5884 • Fax: (210) 308-5886

January 23, 2015
 Arias Job No. 2015-48

VIA Email: Mehmet.Boz@aecom.com

Mr. Mehmet Boz, PhD, PE
 AECOM
 112 E. Pecan Street, Suite 400
 San Antonio, Texas 78205

RE: Proposal for Geotechnical Engineering Services
 Culebra Creek NWWC Improvements Project
 San Antonio, Texas

Dear Mr. Boz:

Thank you for the opportunity to submit this proposal for geotechnical engineering services for the proposed project. We understand that Arias & Associates, Inc. has been pre-selected for this project based upon our qualifications.

Project Information

We understand that the proposed project will consist of improvements to the existing Culebra Creek channel to lower the flow-line of the creek near Timber Path Bridge and Culebra Road Bridge. The project limits are in Culebra Creek from 1,070 ft. downstream of Timber Path Bridge to 350 ft. upstream of Timber Path Bridge and from 80 ft. downstream of Culebra Road Bridge to 150 ft. upstream of Culebra Road Bridge.

Detailed design information has not been provided to us; however, we anticipate that preliminary plans are to provide selective clearing and limited channel excavation to create an improved earthen channel. The results of this study will be used to provide design information for potential scour and slope stability concerns. We have prepared our project scope and budget based on our experience with similar projects constructed on soil conditions similar to those anticipated for this project.

Based on observations made in a preliminary site visit, we are proposing the following number and depth of borings for the project.

Item	No. of Borings	Boring Depth (ft)	Drilling Footage
Top of Creek Embankment near Culebra Road Bridge	1	25	25
Creek Channel Bottom near Culebra Road	3	15	45
Top of Creek Embankment near Timber Path	1	25	25
Creek Channel Bottom near Timber Path Bridge	4	15	60
		Total:	155

Austin • Corpus Christi • Eagle Pass • Fort Worth • San Antonio

Proposed Scope of Services

Arias & Associates, Inc. (Arias) proposes the following geotechnical services for the project:

1. We propose to perform nine (9) soil borings drilled to the depths described above. The borings will be drilled at locations accessible to a truck-mounted drill rig. Arias will retain a subcontract driller to perform drilling; however, Arias personnel will locate the borings, will direct the sampling efforts, and will visually classify recovered samples. Soil interpreted to be clay in the field will be sampled by either pushing a thin-walled tube (ASTM D 1587) or with a split barrel sampler while performing the Standard Penetration Test (ASTM D 1586). Soil interpreted to be sand or gravel in the field will be sampled with a split barrel sampler while performing the Standard Penetration Test (ASTM D 1586). Samples in bedrock where SPT samples cannot be obtained will be taken from the auger cuttings. Rock coring is not included in our service scope. Recovered soils/rock will be visually classified in the field.
2. We will obtain 2 near-surface/surficial bulk samples within the approximate proposed channel areas to provide scour analysis parameters. Gradation analyses will be performed on the bulk samples retrieved to estimate D95 and D50 grain size parameters so that scour analysis can be performed by others.
3. The subsurface soils will be characterized in accordance with their physical and engineering characteristics by means of Atterberg Limits, moisture content and sieve (grain size) analysis, as appropriate.
4. Global stability analysis (GSA) will be performed for the proposed channel improvements. Allowable side excavation slopes for the anticipated drainage channel improvements will be provided based on the estimated soil types and the results of our GSA. We will perform a global stability analysis for the selected cross-sections of the proposed configuration for both the end-of-construction condition and a long-term, saturated, drained condition (worst case scenario). For the purposes of this proposal, we have included an engineering budget to provide a GSA at 2 locations. We have assumed that AECOM will assist us in providing site topographic elevation data for both the existing and proposed geometric cross-sections.

Please be advised that Arias & Associates, Inc. performs Construction Materials Engineering and Testing (CoMET) project services. We will be pleased to provide a separate proposal for construction materials testing at your request.

Proposed Fee

We propose that the fee for the performance of the scope of work for this project as described in this proposal be **\$14,953.00** and that the work will be performed as outlined in the General Conditions included with this proposal. A Geotechnical Cost breakdown is included with this proposal.

We will submit monthly progress billing during the course of our study; invoicing will be based on the percentage of project completion to bill for project tasks as they are completed (i.e. site mobilization of geotechnical field testing equipment and personnel, completion of field work and laboratory testing, engineering analysis, report preparation, etc.).

We have prepared our scope and fee with the understanding that no clearing will be required, no concrete coring will be required, and that no special permission will be needed for access. We have assumed that you will provide free access to the site. Meetings after report submission and supplemental letters are not included in our proposed project fees. If required, these items will be billed according to the current Arias & Associates Unit Rate Schedule for Geotechnical Services.

As mentioned above, we are assuming at this time that the site is accessible for our drilling equipment and mechanical brush clearing will not be required to conduct our field exploration. If it is determined that mechanical brush clearing will be required to gain access to the boring locations, the fee for clearing will be invoiced separately.

Schedule

Based on our experience with permitting, we anticipate that about two (2) weeks will be required to obtain dig/access/utility permits. We have assumed that AECOM will assist in coordinating right-of-entry permissions, if needed. The field study can typically begin two (2) to three (3) days after receipt of permits. Laboratory testing usually requires about 10 to 14 days. Our final written report can be delivered to you about four (4) weeks after completing the field exploration.

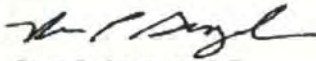
Delays sometime occur due to adverse weather, utility clearance requirements, site clearing requirements for drill rig access, obtaining drilling permits, obtaining Right of Entries and other factors outside of our control. In this event, we will communicate the nature of the delay with you and provide a revised schedule at the earliest possible date.

Proposal Acceptance

Please let us know if this proposal meets your expectations. If acceptable, the authorization table at the end of this proposal should be completed as applicable. We will begin work upon receipt of a signed copy of the proposal by an authorized representative. Please return the entire signed proposal to us by fax, mail or email to rgonzales@ariasinc.com. If the billing address is different, please include that information as well.

Should you have any questions, please do not hesitate to contact me. We appreciate the opportunity provided and look forward to being an integral part of the Project Team.

Sincerely,
ARIAS & ASSOCIATES, INC.
TBPE Registration No: F-32



Rene P. Gonzales, P.E.
Senior Geotechnical Engineer



Christopher M. Szymczak, P.E.
Senior Geotechnical Engineer

City of San Antonio
 Capital Improvements Management Services
 Fee/Price Proposal Breakdown for Professional Services

Project Name:	Culebra Creek Flood Enhancement Project
Name of Firm/Subconsultant:	Armas & Associates, Inc.
Date Proposal Submitted:	January 23, 2015
Project Manager:	Rene P. Gonzales, P.E.

Position/Personnel Title	Principal/Partner	Project Manager	Senior Engineer/Architect	Design Engineer/Architect	EIT	Engineering Tech	CADD	Admin/Clerical	Geologist	Insert other position as needed	Total Hours
Fully-Loaded Hourly Wage Rates * (as defined below)	\$200.00	\$185.00	\$125.00	\$125.00	\$75.00	\$80.00	\$65.00	\$45.00	\$75.00		
Task to be performed/Phase Description (including Sub-consultant work)	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Total Hours
Project Set Up		1							2		3
Utility Coordination and Boring Layout		1				6	4				11
Field Exploration, Drilling and Sampling						16					16
Boring Logs		3					6		2		11
Global Stability Analysis			6		10						16
Meetings - 2		2			2						4
Draft Report	1	2	4				2				17
Review/Edits		1			4						5
Final Review/Sign	1	1	2								4
Deliverables									2		2
Total Hours:	2	10	12	6	24	16	12	4	2	0	82
Sub-Total Labor Costs	\$400.00	\$1,850.00	\$1,500.00	\$750.00	\$1,800.00	\$960.00	\$792.00	\$180.00	\$0.00	\$0.00	\$7,282.00

* A Fully-loaded Hourly Wage Rate is defined as an employee's base hourly rate plus labor overhead (including fringe benefits), general and administrative (indirect) expenses, profit and escalation (if applicable).

Direct Expenses	Quantity	Unit	Rate	Total
Mobilization (LS) for Personnel & Equipment	1	LS	\$315.00	\$315.00
Drilling - 2 borings @ 25 ft, 7 borings @ 15 ft	155	foot	\$16.00	\$2,480.00
CoSA Road-Cut Permits	0	each	\$360.00	\$0.00
Backfill and Patch Street Borings	0	ls	\$60.00	\$0.00
Traffic Control - Partial Lane Closures	0	day	\$500.00	\$0.00
Determination of Moisture Content in Soil Materials	67	test	\$18.00	\$1,206.00
Atterberg Limits	18	test	\$60.00	\$1,080.00
Percent Soil Finer than No. 200 sieve	18	test	\$60.00	\$1,080.00
Sieve Analysis	2	test	\$125.00	\$250.00
Determination of Sulfate Content in Soils	0	test	\$36.00	\$0.00
Unconfined Compression Test	6	test	\$76.00	\$456.00
Lime Series	0	test	\$375.00	\$0.00
CBR	0	test	\$460.00	\$0.00
Sub-Total Direct Expenses				\$7,671.00
Summary				
Total Labor Costs (Armas)				\$7,282.00
Total Additional Services (Armas)				0
Total Direct Expenses (Armas)				\$7,282.00
Grand Total (Armas) - Not to Exceed				\$14,063.00

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

**AGREEMENT FOR
UPPER LEON CREEK REGIONAL STORM WATER FACILITY**

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. 101235, passed and approved on the 18th day of August, 2005 and **TURNER COLLIE & BRADEN** and through its Associate Vice President/Director of Public Works-South Texas, **Keith P. Kindle, P.E.** (hereinafter referred to as "CONSULTANT"), both of which may be referred to herein collectively as the "PARTIES".

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

1.4 "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.*

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. **CONSULTANT** shall provide a written summary of the scope meeting, including a description of the Project's scope and **CONSULTANT's** services required by said scope. 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 necessary for the development of the Project to substantial completion, including plans and specifications, construction services and any special and general conditions and instruction to bidders as acceptable to Director.

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 engineer's 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 ATTACHMENT "B" – (Production Schedule)

3.6.3 ATTACHMENT "C" – (Consultant's Fee Proposal and SBEDA Participation Statement From Consultant's Interest Statement)

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 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 **ONE HUNDRED THIRTY- SEVEN THOUSAND, SEVEN HUNDRED FIFTY-FIVE DOLLARS AND NO CENTS (\$137,755.00)**.

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) PRELIMINARY PHASE "A": (a percentage to be determined later) of the total fee due **CONSULTANT** shall be payable no later than thirty (30) days following acceptance of the Preliminary Phase "A" work by **CITY**.
- 2) PRELIMINARY PHASE "B": (a percentage to be determined later) of the total fee due **CONSULTANT** shall be payable no later than thirty (30) days following acceptance of the Preliminary Phase "B" work by **CITY**.
- 3) FINAL DESIGN: (a percentage to be determined later) of the total fee due **CONSULTANT** shall be payable no later than thirty (30) days following acceptance of the Final Design by **CITY**.
- 4) BID PHASE & DOCUMENTS: (a percentage to be determined later) of the total fee due **CONSULTANT** shall be payable no later than thirty (30) days following acceptance of the Bid Documents by **CITY**.
- 5) CONSTRUCTION PHASE: (a percentage to be determined later) of the total fee due **CONSULTANT** shall be payable by **CITY** in monthly installments in accordance with the percentage of construction completed as determine by Director in his sole discretion.

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) Actual performance of test borings and other soil or foundation investigations and related analysis.
- (20) Tree surveys.

C. Salary Cost - Salary cost is defined as the cost of salaries of engineers, draftsmen, stenographers, surveymen, 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 39 % 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>Keith Kindle, P.E.</u>	<u>\$150.00</u>

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 contractor 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 contractor 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**.

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 subcontractors 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 "Upper Leon Creek Regional Storm Water Facility", 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:

TYPE	MINIMUM AMOUNTS
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 Contractors c. Products/completed operations d. Personal Injury e. Contractual liability	Combined Single Limit for Bodily Injury and Property Damage 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 subcontractors' 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 subcontractors for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, subcontractors, 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 subcontractors of **CONSULTANT**. **CONSULTANT** or its subcontractors 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 subcontractors identified in **CONSULTANT**'s Interest Statement. No further approval shall be needed for **CONSULTANT** to use such subcontractors 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 subcontractor. Any references in this **AGREEMENT** to an assignee, transferee, or subcontractor, 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 CONTRACTOR

14.1 **CONSULTANT** covenants and agrees that (s)he is an independent contractor 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

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.

XVI. SBEDA REQUIREMENTS

16.1 **CONSULTANT** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), handicapped and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by **CITY**. This policy and its implementation is known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

16.2 **CONSULTANT** agrees to implement the plan submitted in **CONSULTANT**'s response to **CITY**'s Request for Interest Statement under the SBEDA Program for Small, Minority and Women-owned Business Participation in this **AGREEMENT**, thereby meeting the percentages for participation of those groups as submitted therein. **CONSULTANT** agrees to be in full compliance with this article by meeting the percentages listed in **CONSULTANT**'s Interest Statement no later than 60 days from the date of execution of this **AGREEMENT**, and to remain in compliance throughout the term of this **AGREEMENT**. **CONSULTANT** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this **AGREEMENT**, as may be approved pursuant to this **AGREEMENT**, that will meet the percentages submitted in **CONSULTANT**'s Interest Statement. Changes in contract value by changes in work orders, **AGREEMENT** amendments, or use of contract alternatives, which result in an increase in the value of the **AGREEMENT** by 10% or greater require the **CONSULTANT** to increase its use of business enterprises described in this section, if such is necessary to maintain the same percentages as exist in **CONSULTANT**'s Interest Statement. However, the delegation of any duties hereunder by any means must be approved by **CITY** as stated herein.

16.3 **CONSULTANT** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/WBE's. **CONSULTANT** shall submit annual reports to **CITY**'s Department of Economic Development, identifying the above activity and other efforts at increasing SBE/MBE/WBE participation in the **AGREEMENT**. Further, such records shall be open to inspection by **CITY** or its authorized agent at all reasonable times. Should **CITY** find that **CONSULTANT** is not in compliance with this article, **CITY** shall give notice of non-compliance to **CONSULTANT**. **CONSULTANT** shall have 30 calendar days to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this **AGREEMENT** and may subject **CONSULTANT** to any of the penalties listed in **CITY** of San Antonio Ordinance No. 77758, at **CITY**'s option. Further, such failure may be considered a default for which **CITY** may terminate this **AGREEMENT** in accordance with Article VIII, Termination.

16.4 **CONSULTANT** shall appoint a representative of its company to administer and coordinate its efforts to carry out these requirements.

16.5 In all events, **CONSULTANT** shall comply with the **CITY**'s Small, Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

16.6 It is **CITY**'s understanding, and this **AGREEMENT** is made in reliance thereon, that **CONSULTANT**, in the performance of services required hereunder, will use the subcontractor(s) listed in its response to **CITY**'s Request for Interest Statement.

16.7 Any work or services subcontracted by **CONSULTANT** shall be by written contract, and unless specific waiver is granted in writing by **CITY**, shall be subject by its terms to each and every provision of this **AGREEMENT**. Compliance by subcontractor with the provisions of said contract shall be the responsibility of **CONSULTANT**.

16.8 CITY shall in no event be obligated to any third party, including any subcontractor of CONSULTANT, for performance or services or payment of fees.

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
Attn: Dean Bayer, P.E.
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for CONSULTANT, to:

Turner Collie & Braden
Attn: Joe A. Accves, P.E.
6800 Park Ten Boulevard, Suite 180-S
San Antonio, Texas 78213

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.

XVI. 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.

XVII. 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)

ATTACHMENT "B" - (Production Schedule)

ATTACHMENT "C" - (**CONSULTANT**'s Fee Proposal and SBEDA Participation Statement from **CONSULTANT**'s Interest Statement)

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" and Attachments "B" and/or Attachment "C", the terms of Attachment "A" shall control over the terms of Attachment "B" and 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.

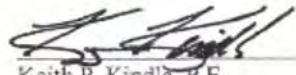
EXECUTED ON THIS, THE _____ DAY OF _____, _____.

CITY OF SAN ANTONIO

CONSULTANT:

TURNER COLLIE & BRADEN

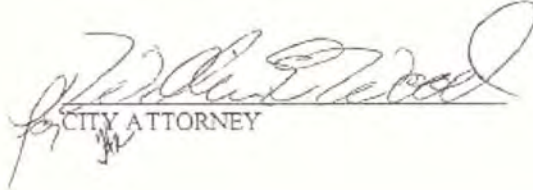

CITY MANAGER


Keith P. Kindle, P.E.
Associate Vice President/Director of
Public Works- South Texas



CITY CLERK
9-13-05
DATE

APPROVED AS TO FORM:


CITY ATTORNEY

ATTACHMENT 2
The Culebra Hike & Bike Trail Construction Phase Services _050421 signed proposal



Culebra Creek Hike & Bike Trail – Construction Phase Services

May 4, 2021

Eric Salazar, PE
Project Manager
City of San Antonio - Public Works Department

RE: Culebra Creek - Proposal for Hike & Bike Trail Construction Phase Services

Dear Mr. Salazar,

AECOM is pleased to provide you a proposal for construction management services for the above referenced project. Please find below the details of the scope of work and the associated attachments outlining the estimated fees for your review.

Project Scope

AECOM assumes that their scope of work is generally defined as construction management services for the Culebra Creek Hike & Bike Trail and that the duration for this task order is for approximately 9 months. Project components include the construction management and observation of approximately 4,000 linear feet of 10' wide concrete trail, park trail head, and associated appurtenances (as outlined in the bid set provided by Vickrey & Associates dated April 24, 2019). Project schedule extensions and/or revisions to the scope will require a modification to this proposal. All necessary permits required for construction will be obtained by the City and/or Contractor prior to the start of work, unless otherwise stated. Additional detailed construction inspection will be performed by City staff.

AECOM proposes the following tasks to execute the scope of work:

- Task 1.0 Construction Administration
 - 1.1 Pre-Construction Meeting
 - 1.2 Respond to Requests For Information
 - 1.3 Submittal Reviews
 - 1.4 Review Change Orders/Provide Recommendations
 - 1.5 Review Monthly Pay Estimates
 - 1.6 Site Visits/ Project Meetings (Weekly)
 - 1.7 Provide Project Update Reports (Monthly)
 - 1.8 Final Walk-through/ Punchlist
 - 1.9 Prepare Plan of Records



Culebra Creek Hike & Bike Trail – Construction Phase Services

- Task 2.0 Construction Observation
 - 2.1 Site Visits/ Construction Observation (Daily)
 - 2.2 Observation Reports (Weekly)
 - 2.3 Contractor Dispute Resolution/ Documentation
 - 2.4 Construction Schedule Reviews (Weekly)

Exclusions: AECOM shall be responsible for its performance and that of AECOM's lower tier subconsultants and vendors. However, AECOM shall not be responsible for health or safety programs or precautions related to Client's activities or those of Client's other contractors and consultants or their respective subcontractors and vendors ("Contractors"). AECOM shall have no responsibility for (i) construction means, methods, techniques, sequences or procedures; (ii) for the direction of Contractors' personnel; (iii) selection of construction equipment; (iv) coordination of Contractors' work; (v) for placing into operation any equipment; or (vi) for Contractors' failure to perform the work in accordance with any applicable construction contract. AECOM shall not be responsible for Client's pre-existing site conditions or the aggravation of those preexisting site conditions to the extent not caused by the negligence or willful misconduct of AECOM. It is anticipated that the contractor makes available a construction trailer for the purpose of update meetings, safety meetings, plan reviews, etc. It is not anticipated AECOM personnel will need office space in the construction trailer. AECOM understands that the Client (or a representative thereof) will be providing all services as it relates to ADA compliance reporting, inspection, and registration as required by the TDLR.

Total Fees for Scope of Services:

Please find enclosed **Attachment 1 – AECOM Fee Estimate** that details the breakdown of the total value of **\$88,687.00** for the services to be provided under these task orders. This overall fee estimate includes all services to be provided by AECOM and subconsultants, with their scope/fee estimates provided as separate attachments.

If you have any further questions, please feel free to contact me at (210) 296-2010.

Respectfully,

Bobby Mengden, P.E., CFM
AECOM Project Manager

Rod McCrary, P.E., DBIA
Vice President, Water Business Line

Enclosures:

- 1. AECOM Fee Estimate

City of San Antonio
Transportation and Capital Improvements
Project Work Plan for Professional Services on the 2012-2017 Bond Program

Task Services Special
Task Fee Fee
The Construction Phase Services \$ 86,837 \$

Project Name:	Citywide Streets
Name of Performance Consultant:	CDM, INC.
Prepared Date:	4/25/12
Project Manager:	Andy Meyerhan

Project/Phase/Task	2012		2013		2014		2015		2016		2017		Total		Special Services Total Fee	Special Services Total Fee
	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$		
Task 1 - Preliminary/Phase Design (including Subcontract work)																
1.1 - Preliminary/Phase Design																
1.2 - Review/Design/Construction Plans																
1.3 - Submit/Review																
1.4 - Review/Design/Construction Plans/Revisions																
1.5 - Review/Design/Construction Plans																
1.6 - Review/Design/Construction Plans																
1.7 - Review/Design/Construction Plans																
1.8 - Final Review/Design/Construction Plans																
1.9 - Review/Design/Construction Plans																
Task 2 - Construction Observation																
2.1 - Site/Shop Construction Observation - Daily																
2.2 - Construction Review (Weekly)																
2.3 - Construction Report/Summary Documentation																
2.4 - Construction Schedule Review (Monthly)																
Total Hours																
ACCOM Fee Proposal																