



2002 N. Saint Mary's St.
San Antonio, TX 78212
210.733.3535

February 21, 2024

Sean Duncan
Project Manager
City of San Antonio
PO Box 839966
San Antonio, TX 78283-3966

RE: Additional Services Request No. 04R1 – Extended Construction
2017 – 2021 General Obligation Bond Program
Perrin Homestead Historic Center – Design Phase
4101 Swan's Landing
San Antonio, TX 78218

SEAN, RVK along with our consultants, has provided additional construction administration time due to the extended period of construction in a previous ASR 04 submittal. We have received updated additional services information from our consultants, so we are submitting this revised ASR 04 for your consideration.

The Construction Completion Date of October 29, 2022, has not been met by LTPB. In addition, a Construction Schedule was finally received on 3.15.2023, many submittals have not been received, and the consultants are extremely frustrated because LTPB seems to not understand that this project has to be installed / constructed as the plans and specifications show due to the historic nature of the building, and the nature of their contract with the City of San Antonio.

The design team finds themselves holding the GC's hand concerning basic knowledge of the Project Manual, the importance of correct submittals, the crucial importance of hiring subcontractors skilled in historic restoration, etc.,

There have been numerous site meetings where not much was accomplished or LTPB wanted to proceed with work that did not adhere to the plans or specifications.

Field Reports were issued as follows:

01.06.22	SJPA
02.02.22	SJPA
02.17.22	SJPA
02.22.22	SJPA
03.11.22	SJPA
03.17.22	SJPA
03.31.22	SJPA
04.14.22	SJPA
04.28.22	SJPA
05.12.22	SJPA
05.26.22	SJPA
06.09.22	SJPA
07.07.22	SJPA

07.21.22	SJPA
08.26.22	SJPA
09.12.22	Meeting at RVK with Eric concerning Design Team's frustration with LTPB and construction progress not in line with the due date of 10.29.22.
11.10.22	SJPA
11.15.22	IES Engineering
12.18.22	SJPA
01.05.23	Sparks Engineering
01.13.23	Received Master Submittal List from SJPA
03.10.23	Meeting with City
03.14.23	RVK
04.07.23	Termination Letter Sent

We anticipate an additional and extended amount of construction time with more hours on site by the Design Team observing construction with this General Contractor or with the Surety Company's Contractor. The Design Team did not anticipate this situation with their initial fee proposal or with their Project Re-Bid proposal (ASR 02) and are extremely behind concerning their fees.

Therefore, we ask for the following amounts to complete this project in CA:

RVK	\$25,000
SJPA	\$30,300
Structural	\$12,200
Alderson	\$ 3,000
IES – Civil	\$ 7,245

The existing status of construction is 30%

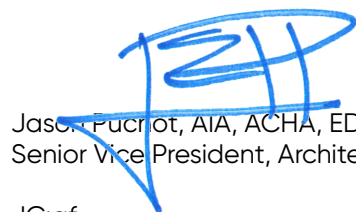
If this meets with your approval, please sign and return a copy to RVK.

Approved:



Joe Cannata, ASLA
Senior Associate

Eric Reyna
Project Manager



Jason Puchot, AIA, ACHA, EDAC, LEED AP
Senior Vice President, Architecture

JC:af

February 18, 2024

Mr. Joe Cannata,
Senior Associate
RVK
2002 N. St. Mary's St.
San Antonio, TX 78212

Re: *2017-2022 General Obligation Bond Program – Perrin Homestead*
Professional Services Proposal – Additional Services Request

Dear Joe,

This proposal intends to propose additional services for the restart effort associated with the *2017-2022 General Obligation Bond Program – Perrin Homestead, 4101 Swans Landing, San Antonio, Texas.*

Based on previous discussions, the scope of the work will include the following design services:
Completion of Construction Administration Services.

The original duration of the project was approximately 1 year with a contract date of 10/14/21 for the contractor and the anticipated construction completion was late 2022.

SJPA made its first site visit on 1/06/22 – SJPA Field Report 01, and the last site visit was made on 3/20/23 – SJPA Field Report 20. Which is over 15 months. During this time SJPA staff spent over 300 hours completing Construction Administration Services because the contractor was performing non-conforming work.

Of note, during the first site meeting, the contractor and the superintendent claimed that they had never received the specifications. Everyone who spoke stated that the contractor was issued the specifications during the bidding process. The contractor had bid on the project twice, and there was no way the specifications had not been provided. The instance was a precursor for more of the same throughout the duration of construction where the contractor either claimed to not know the requirements or claimed not to know how to complete the work. On one occasion, the GC plainly stated that he did not want to follow the specifications. He did this in the presence of a city representative.

The GC's desire to execute the project without following any of the project requirements was made evident on several occasions and resulted in non-conforming work. This included but was not limited to non-existent shoring at locations where masonry was left unsupported, and conditions where the GC could not determine how plumbing would enter a detached structure. There were also other instances of the GC not following the plans and specifications.

The GC's brazen disregard for the requirements resulted in additional work for the A/E team in the form of additional site visits, multiple reviews of submittals, and time spent researching and creating additional detailing.

The costs of the impacts were never recorded as specific impacts however, considering the size and complexity of the project, SJPA has estimated that 80 to 100 hours of time was spent in unnecessary efforts driven by the GC's non-conforming execution of the project.

At the time of the last site visit the project was at an incomplete stage of 40% to 50%. The existing structure has been in an incomplete state and should be reviewed to determine if it has sustained any damage beyond the known scope of work.

It is my understanding that my scope of work will include the following items:

1. Review and determination of existing conditions.
 - a. Review work that may have been non-conforming before the work was stopped.
 - b. Review existing structure for additional damage.
 - c. Review areas for salvaged wood to determine if salvaged wood is damaged or lost.
2. Completion of Construction Administration Services
 - a. Responses to RFI's (Submit to RVK)
 - b. Review Submittals (Submit to RVK)
 - c. Review Change Orders (Submit to RVK)
 - d. Review Pay Applications (Submit to RVK)
 - e. Site Observation
 - f. Attend Meetings
 - g. Project Closeout (Submit to RVK)
3. Site visits
 - a. Site visits are intended to be visits to observe the construction progress and confirm the construction work is following the design intent. Site visits will be limited to one per month over the duration of the work. The number of visits for Punch List confirmation will be limited to two visits for confirmation punch items have been completed.

Based on the current level of construction completion, we anticipate the project will take five to six months to complete. SJPA anticipates spending approximately 5 hours per week over the anticipated duration for a total of 120 hours. The fee can be broken down as follows;

NO.	SERVICE / DISCIPLINE	FEE
	<u>FEE TOTAL</u>	<u>\$30,300.00</u>
1	Non-Conforming Work Impacts (80 Hours)	\$8,800.00
2	Review Existing Conditions	\$5,000.00
3	Completion of Construction Administration (120 Hours)	\$16,500.00

The total fee to perform the design services is **\$30,300.00**.

Additional site visits for observation or punch confirmation will be at \$300.00 per visit. This assumes the site visit and a subsequent site visit report.

Although the fees above include submittals and participation in meetings with regulatory officials, they do not include costs for plan review, permitting or other regulatory reviews and approvals. Costs for regulatory reviews and approvals, i.e., permitting will be billed directly at **1.10** times the cost as a reimbursable.

Thank you for the opportunity to submit this proposal for design services. I look forward to collaborating with you and completing the work for the **2017-2022 General Obligation Bond Program – Perrin Homestead** successfully. Please let me know if you have questions about this proposal.

Agreement

Please indicate your acceptance of this proposal. Please indicate your acceptance of this proposal and the attached terms by executing it with a signature in the space provided below, and returning a copy to my

office via original mail, facsimile or digital media in “PDF” format. In the event this document is not executed with a signature, it is hereby agreed that the provisions are binding if any services associated with this project are ordered explicitly or by reasonable implication via written correspondence; or if I am compensated for any services associated with this project. Please let me know if you have questions about this proposal. Thank you.

Sincerely,



Steve J. Patmon, AIA

SJPA, President

Acceptance Signature and Date

Joe Cannata, Senior Associate

Printed Name and Position

Agreement for the Provision of Limited Professional Services and Acceptance of Terms and Conditions

TERMS AND CONDITIONS

The architect shall perform the services outlined in a separate and attached document for the stated scope of work and fee based upon the following terms and conditions.

Fee: The total fee, except stated lump sum, shall be understood to be an estimate, based upon the Scope of Services, and shall not be exceeded without written approval of the Client. Where the fee arrangement is to be on an hourly basis, the rates shall be those specifically identified in the agreement or those that prevail at the time services are rendered. Additional services are considered to be any services required beyond the stated services and scope of work or where areas and quantities have been increased by greater than 10%. Such additional services require a separate written authorization by the Client and will be billed based upon a lump sum agreement or at an hourly rate based upon the current SJPA prevailing rates. A copy of the current SJPA hourly rates has been attached.

Billings / Payments: Invoices will be submitted monthly for services and reimbursable expenses and are due when rendered. Invoice shall be considered PAST DUE if not paid within 30 days after the invoice date and the architect may without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the service. Retainers shall be credited on the final invoice. A service charge will be charged at 1.5% (or the legal rate) per month on the unpaid balance. In the event any portion of an account remains unpaid 90 days after billing, the Client shall pay cost of collection, including reasonable attorney's fees.

Hidden Conditions and Hazardous Materials: A condition is hidden if concealed by existing finishes or if it cannot be investigated by reasonable visual observation. If the architect has reason to believe that such a condition may exist, the architect shall notify the Client. The Client is responsible for all risks associated with hidden conditions, and the architect shall not be responsible for the existing condition nor any resulting damages to persons or property as a result of said hidden conditions. Architect shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form.

Indemnifications: The Client shall indemnify and hold harmless the architect and all of its personnel from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees and costs) arising out of or resulting from the Architect's performance of the services, provided that the sole proximate or producing cause of such claims, damage, loss or expense is the Client's breach of this contract, or negligent act or omission, or act for which the Client has strict liability, whether any such is performed by the Client or anyone for whose acts and omissions the Client may be liable. This indemnification shall include any claim, damage or losses due to the presence of hazardous materials.

Risk Allocation: In recognition of the relative risks, rewards and benefits of the project to both Client and the architect, the Client agrees that, to the extent permitted by law, the architect's total liability to the Client for any cause or causes, including but not limited to claims for negligence, strict liability, breach of contract, breach of warranty, or any other claim or cause, shall not exceed the total amount of the architect's fee or \$50,000.00, whichever is smaller.

Termination of Services: This agreement may be terminated upon 10 days written notice by either party should the other fail to perform his obligations hereunder. In the event of termination, the Client shall pay the architect for all services rendered to the date of termination, all reimbursable expenses, and reimbursable termination expenses.

Ownership of Documents: All documents produced by the architect under this agreement shall remain the property of the architect and may not be used by the Client for any other endeavor without the written consent of the architect.

Dispute Resolution: Any claim or dispute between the Client and the architect shall be resolved by binding arbitration as allowed by the Texas Arbitration Act. The arbitrator shall not have the authority to render a decision that contains reversible error of state or federal law or apply a cause of action or remedy not expressly provided for under existing state or federal law. As a condition precedent to the filing of any demand for arbitration, the claim or dispute between the Client and the architect shall be submitted to non-binding mediation.

SJPA
2024 HOURLY RATE SCHEDULE
February 18, 2024

CATEGORY	RATE
PRINCIPLE	\$160.00
PROJECT MANAGER	\$130.00
SENIOR ARCHITECT	\$130.00
PROJECT ARCHITECT	\$110.00
CONSTRUCTION ADMINISTRATION	\$110.00
INTERN III	\$80.00
INTERN II	\$70.00
INTERN I	\$60.00
ADMIN / CLERICAL	\$60.00
SERVICE RATES	
3 rd PARTY DESIGN REVIEW *	\$90.00
CADD DEVELOPMENT **	\$60.00

NOTE: RATES ARE SUBJECT TO PERIODIC REVIEW

Additional Services Request

Sent via email to joe.cannata@rvk-architects.com

Perrin Homestead Construction Phase

Scope of Additional Services

You have requested that we continue our construction phase services beyond our original allotted scope to include additional site visits, requests for information and submittals. The additional services will be performed in accordance with the terms and conditions of our original agreement signed August 20, 2019, and based on our current 2023 Rate Schedule (attached).

Based on our understanding of the requested additional services, we propose the following Lump Sum Fees:

Additional Services 2022 Construction Phase	\$ 3,700.00
Site visit to re-evaluate conditions	\$ 1,200.00
Pre-construction meeting	\$ 1,000.00
Review RFIs and submittals	\$ 1,800.00
Minor design revisions	\$ 1,700.00
<u>Site visits for monitoring during construction 4 @ \$700/ea</u>	<u>\$ 2,800.00</u>
	\$ 12,200.00

Addition site visits for construction monitoring will be invoiced at \$700 /visit.

Meetings, conference calls, public involvement, and regulatory compliance are not included and will be invoiced at our standard hourly rates.

To authorize these additional services please sign below and return one original to our office. Please contact our office with any questions regarding these services.

SPARKS ENGINEERING, INC.
Texas Registered Engineering Firm F-00515



S. Patrick Sparks, P.E.

President

Title

November 21, 2023

Date

Attachments

2023 Fee Schedule

Authorization

To authorize these services, please sign below and return one signed original.

Client Name _____

Attention _____

Address _____

City _____

State / Zip _____

Email _____

Telephone _____

Signature and Printed Name

Title

Date

2023 Fee Schedule

Personnel

The following hourly rates (plus expenses¹) apply for all time spent in evaluation, field investigation, analysis, design, project management, consultation or meetings, site visits, travel time, sampling, review and analysis of field and laboratory data, report preparation and review, etc.

A. Professional		
	Principal Engineer	\$ 285.00/hr
	Expert Witness ²	\$ 427.00/hr
	Senior Engineer	\$ 225.00/hr
	Project Manager	\$ 185.00/hr
	Project Engineer	\$ 160.00/hr
B. Support Personnel		
	Administrative Assistant	\$ 80.00/hr
	CAD Designer	\$ 100.00/hr
	Technician	\$ 90.00/hr

Expenses

A. Travel Expenses ³		
1.	Company or personal vehicle:	per mile at the Current Federal Rate
2.	Airfare or other travel:	at cost
3.	Meals & Incidentals (M&I) ⁴ :	\$46 per day (\$7, \$11, \$23, \$5) lump sum
4.	Lodging ⁵ :	at cost
B. Special equipment or supplies, permits, shipping charges, printing or other items not customarily provided will be charged at cost.		

Subcontracts

Subcontract services (if required) will be invoiced at cost. Administrative and professional fees for coordination and administration of the subcontract will be included in our proposed fee.

Our hourly billing rates are subject to change on an annual basis. When this occurs, our invoices for hourly projects will reflect our latest billing rates. However, previously established lump-sum fees and not-to-exceed fee amounts will be unaffected by rate changes.

¹ All fees and expenses are portal to portal.

² Expert witness fees apply to testimony in trial, arbitration, or deposition.

³ Rates apply only to travel within the continental United States. When possible, we will pro-rate travel expenses among active projects involving travel to the same general area.

⁴ M&I costs apply to project assignments outside the metropolitan area of the home office and of 6 hours duration or more. Partial-day M&I allowance will be adjusted for meals furnished or not taken by deducting the appropriate amount shown in parenthesis (breakfast, lunch, dinner, incidentals). Receipts for M&I will not be provided unless agreed to in writing prior to deployment.

⁵ Applies when required to remain overnight, or on full-time projects outside metropolitan area of the home office.



Extra Service #2

April 13, 2023

Ms. Kimberly M. Wolf, ASLA, LEED AP
RVK Architects
745 E. Mulberry Ave., Suite 601
San Antonio, TX 78212

Re: **Project Name:** Perrin Homestead Historic Center Renovation and Addition
Client: RVK Architects
AAI Project Number: 19-060
AAI Project Manager: Ryan A. Royal, P.E.

SCOPE OF EXTRA SERVICES

Scope of Extra Services includes additional construction administration labor due to delays in project construction.


COST FOR EXTRA SERVICES

- ☐ Hourly per Attached Rate Schedule
☐ Hourly per Attached Rate Schedule, not to exceed \$ _____.
☒ Lump Sum of \$ 3,000
☐ Other _____

Please authorize our proceeding with the Extra Services Authorization itemized above by signing and returning a copy of this form to our office.

ALDERSON & ASSOCIATES, INC.

CLIENT


Authorized Signature

Authorized Signature

Ryan A. Royal
Printed Name, Title

Printed Name, Title

April 13, 2023
Date

Date

November 21, 2023

Mr. Joe Cannata, ASLA
Senior Associate
RVK Architects
2002 N. Saint Mary's St.
San Antonio, Texas. 78212
210.733.3535 Office
Joe.Cannata@rvk-architects.com

**Re: Proposal – Scope of Civil Engineering Services and Compensation (Part I)
Additional Services
Perrin Homestead Site Improvements
San Antonio, Texas
Proposal # 23-1128-C5049**

Dear Mr. Cannata:

We are pleased to express our interest in providing civil engineering services for the referenced project and offer the following proposal for your consideration.

SCOPE OF PROJECT

We understand the scope of work to be additional construction administration associated with the restart of the referenced project with a new contractor. The proposed construction administration services consist of the following tasks: reviewing submittals and responding to RFI's, additional site visits, and live video observations.

Note that the remaining fee of the original contract covers the following tasks:

- Final Punch follow up.
- Record drawing preparation.
- 1-year warranty walk.

This proposal is based on our understanding of the project at this time and may be revised in the event a change in the scope of work occurs or if our understanding of the project is not correctly reflected as outlined above.

BASIC SERVICES:

Basic Civil Engineering Services of Construction Administration for the project will include the following tasks:

- Additional time for review and answering submittals and RFI's.
- Three (3) additional site visits including field reports: one (1) for new preconstruction meeting of site work, one (1) for progress observation and one (1) for final punch.
- Up to four (4) TEAMS live video observations or other types of live video observations.

Services excluded from basic services:

1. The reissuance of project drawings and specifications signed and sealed.
2. Geotechnical Report providing data for pavement designs, utility excavation and backfill requirements, and sub-surface strata detail for the on-site or off-site work.
3. Subsurface utility investigations.

4. Design, review, or analysis of retaining wall structures or systems. This includes modular block wall systems.
5. Local property platting or metes and bounds descriptions.
6. Any upgrades or extensions of existing off-site utilities.
7. Storm water detention design or analysis, other than those described under Basic Services.
8. This proposal does not include any modification to a flood plain or hydraulic computer modeling.
9. Preparation of reports, permit applications and processing of permits for obtaining approvals. This includes permitting through local City and/or County agencies, State agencies (TCEQ), and federal agencies [e.g., FEMA-Flood Plain Letter of Map Amendment (LOMA), Corps of Engineer Wetland permit, etc.].
10. Design, detailing, review or analysis of below grade drainage systems or sub-surface drainage structures including but not limited to French drain systems and crawlspace grading. Civil scope of work begins 5 feet outside the building perimeter.
11. Others will provide landscaping and irrigation design, if necessary, to meet applicable City landscaping or tree ordinances.
12. Traffic Impact Analysis.
13. Certified Fire Flow Testing, review, and analysis. (Unless specifically outlined in this proposal)
14. Water distribution network modeling for system or service demands, including fire flow analysis (existing or proposed).
15. Construction administration:
 - a. Attendance at regularly scheduled construction progress meetings.
 - b. Attendance at Pay Application review meetings.
 - c. Additional site visits beyond the number listed above.
 - d. Review of formwork and shoring drawings.
16. Reporting to USGBC for project LEED certification, or other similar “green building” certifications.
17. All reproduction, printing, or handling of documents necessary for owner reviews and bidding or record sets of plan documentation for review agencies.
18. Payment of all agency fees required for project approval.
19. Impact fees associated with utility service requirements.
20. Attendance at regularly scheduled meetings with the General Contractor during the construction phase of the project.
21. The Contractor for this project will be required to obtain all local, state, and federal permits (if required) for the construction of this project.
22. Construction control staking and building foundation staking and other site improvement staking typically provided by the Contractor.

FEES

We propose to provide civil and structural engineering support services for a lump sum fee as follows:

Civil Engineering	\$7,245.00
Additional Site Visits	\$1,575.00 / visit

Authorized additional services will be billed at the following hourly rates:

Principal / Partner	\$240.00/hour
Project Manager	\$210.00/hour
Senior Project Engineer	\$195.00/hour

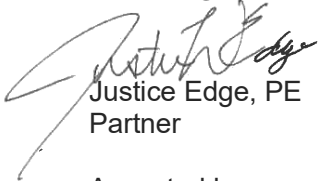
Project Engineer	\$180.00/hour
Technician/CAD Operator	\$125.00/hour
Administrative	\$75.00/hour

PAYMENT SCHEDULE

Invoices for progress payments of the basic fee will be billed each month for services performed during the prior month on a percentage of completion basis.

If this proposal is acceptable, please sign Part I and return one copy to our office. Signature of Part I also acknowledges and accepts the terms and conditions set forth in Part II of this proposal. These documents will serve as our contract for this project unless superseded by a standard form agreement. We appreciate your consideration and look forward to working with you.

Sincerely,
INTELLIGENT ENGINEERING SERVICES, LLP



Justice Edge, PE
Partner

Accepted by:

RVK Architects

Date

PART II - TERMS AND CONDITIONS

INTELLIGENT ENGINEERING SERVICES, LLP PROFESSIONAL SERVICES AGREEMENT

WHEREAS: This Professional Services Agreement is made and entered into between RVK Architects, 2002 N. Saint Mary's St., San Antonio, TX 78212 (Client) and Intelligent Engineering Services, LLP (Engineer) a Texas Limited Liability Partnership. This Agreement consists of two parts: Part I - Proposal - Scope of Services and Compensation. Part II - Terms and Conditions

ARTICLE 1: PROFESSIONAL SERVICES

1.1 **Services.** In connection with the property described in the Proposal ("Property"), Engineer shall render the professional services ("Services") for the project described in the Proposal ("Project") as outlined in the Proposal and any Amendments.

1.2 **Agreement.** The Professional Services Agreement includes the Proposal dated November 21, 2023, Amendments to the Proposal, and these Terms and Conditions (collectively, the "Agreement").

ARTICLE 2: PROPOSALS

2.1 **Scope.** The Proposal(s) shall identify the specific scope of Services to be performed and the amount and type of compensation for the specific services. Any services not specifically identified in the Proposal are excluded unless added as additional services with additional compensation to Engineer.

2.2 **Acceptance of Agreement.** Client shall authorize and Engineer shall commence work upon Engineer's receipt of the properly executed and signed Proposal(s), as may be amended from time to time. If the Agreement is not executed by Client within thirty (30) days of the date tendered, it shall become invalid unless: (1) Engineer extends the time in writing; or (2) at the sole option of Engineer, Engineer accepts Client's oral authorization to proceed with the services, in which event the terms of the oral authorization shall be presumed to include all the terms of this Agreement. Engineer's performance of the services under the oral authorization shall be in reliance on the inclusion of all the terms of this Agreement in the oral authorization and the effective date of the Agreement is the date of the Proposal.

ARTICLE 3: CHANGES

3.1 **Changes.** The Engineer and Client may at any time, by written amendment, make changes within the general scope of individual Proposal(s) or relating to services to be performed. If such changes cause an increase or decrease in the Engineer's cost of, or time required for, performance of any services under individual Proposals, an equitable adjustment shall be made and reflected in a properly executed Amendment.

3.2 **Regulatory Changes.** In the event that there are modifications or additions to regulatory requirements relating to the services to be performed under this Agreement after the date of execution of this Agreement, the increased or decreased cost of performance of the services provided for in this Agreement and subsequent Proposals shall be reflected in an appropriate Proposal Amendment.

ARTICLE 4: THE TERM

4.1 **Term.** Engineer shall be retained by Client as of the date Client executes the attached Proposal until the Services have been fully performed or until the Engineer's Services are terminated under provisions of the Agreement. Engineer will pursue completion of Services in accordance with the timely completion specified in the Proposal and any amendments thereto. Engineer shall not be liable or responsible for any delays caused by circumstances beyond Engineer's control.

ARTICLE 5: DUTIES

5.1 **Access.** Client will provide Engineer with access to the Property or to any other site as required by Engineer for performance of the Services.

5.2 **Client-furnished Data.** Client shall provide all criteria and full information as to Client's requirements for the Project, designate a person to act with authority on Client's behalf in respect to all aspects of the Project, examine and respond promptly to Engineer's submissions, and give prompt written notice to Engineer whenever he observes or otherwise becomes aware of any defect in the work.

Client shall also do the following and pay all costs incident thereto: Furnish to Engineer core borings, probings and subsurface exploration, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment and similar data; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; architectural or other engineering design documents, and any other information previously made available to the Client, which may be required by Engineer, all of which Engineer may rely upon the accuracy of in performing its Services.

Client shall provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of contractor(s)' applications for payment, and any inspection services to determine if contractor(s) are performing the work.

5.3 **Other Information.** Engineer will rely upon commonly used sources of data, including database searches and agency contacts. Engineer does not warrant the accuracy of the information obtained from those sources and has not been requested to independently verify such information.

5.4 **Ownership of Documents.** All designs, drawings, specifications, documents, and other work products of the Engineer (collectively, the "Documents"), whether in hard copy or electronic form, are instruments of service for the services and are owned by the Engineer regardless of whether or not services are completed. Reuse, change or alteration of the Documents by the Client or by others acting through or on behalf of the Client is not permitted without the written consent of Engineer. ANY REUSE, CHANGE OR ALTERATION OF THE DOCUMENTS BY THE CLIENT OR THIRD PARTIES IS AT THEIR OWN RISK AND CLIENT AGREES TO HOLD HARMLESS AND INDEMNIFY THE ENGINEER, ITS OFFICERS, PARTNERS, EMPLOYEES, AND SUBCONTRACTORS FROM ALL CLAIMS, DAMAGES, LOSSES, EXPENSES AND COSTS (INCLUDING ATTORNEYS' FEES), INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR ENGINEER'S ALLEGED NEGLIGENCE, ARISING OUT OF OR RELATED TO SUCH AUTHORIZED OR UNAUTHORIZED REUSE, CHANGE OR ALTERATION.

5.5 **Reporting Obligations.** Client has responsibility for complying with all legal reporting obligations. Nothing in the Agreement precludes Engineer from providing any notices or reports that it may be required by law to give to governmental entities.

5.6 **Laboratory Services.** In performing services, Engineer may make use of an independent testing laboratory. Certain testing or laboratory services are the responsibility of Client or third parties. Engineer will not, and Client shall not rely upon Engineer to, check the quality or accuracy of the testing laboratory's services and Engineer will rely on the accuracy of the testing or laboratory services.

5.7 **Changed Conditions.** The Client shall rely on the Engineer's judgment as to the continued adequacy of the Agreement in light of occurrences or discoveries that were not originally contemplated by or known to the Engineer. Should Engineer call for contract renegotiation, the Engineer shall identify the changed conditions necessitating renegotiation and the Engineer and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If the terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement.

5.8 **Site Visit.** All conclusions, opinions and recommendations will be based upon site conditions at the Property as they existed at the time of Engineer's site visit. Any report should not be relied upon to represent conditions at a later date. This paragraph does not obligate the Engineer to perform construction administration services.

5.9 **Opinions of Cost.** Should Engineer provide any cost opinions, it is understood that those opinions are based on the experience and judgment of Engineer and are merely opinions. Engineer does not warrant that actual costs will not vary from those opinions because, among other things, Engineer has no control over market conditions.

5.10 **Construction Observation.** If construction phase services are included in the Services, the Engineer shall periodically visit the Project during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. The Client has not retained the Engineer to make detailed inspections or to provide exhaustive or continuous Project review and observation services. The Engineer does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the Project. Engineer shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by contractor(s) or the safety precautions and programs incident to the work of contractor(s). Regardless of the inclusion of construction phase services as part of the Services, any use of the word "inspect" in any communication relating to services provided by the Engineer is understood to mean a general visual observation and not a detailed, scrutinized investigation of the site or the contractor's work.

5.11 **No Responsibility for Contractor's Work or Safety.** The Engineer does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the Project. Engineer shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by contractor(s) or the safety precautions and programs incident to the work of contractor(s). Engineer shall not be responsible for any contractor's failure to comply with any laws, regulations, standards or ordinances relating to the contractor's performance of its work.

5.12 **Permits.** Client is responsible for obtaining and complying with all required permits or other approvals of, and for giving any required notices to, all governmental and quasi-governmental authorities having jurisdiction over the Services or the Property. Before Engineer performs the Services, Client will provide Engineer evidence satisfactory to Engineer that all required permits or other approvals have been obtained and that all required notices have been given. Client will provide to Engineer copies of any such permits or any such notices, together with any other relevant

information that will alert Engineer to the requirements of such permits, approvals, or notifications.

5.13 **Standard of Care.** In providing services under this Agreement, the Engineer shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.

5.14 **Third-Part Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Engineer. The Engineer's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Engineer because of this Agreement or the performance or nonperformance of services hereunder. The Client and the Engineer agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

5.15 **Accessibility Compliance.** Various federal and state statutes such as the Americans with Disabilities Act, Fair Housing Act and Texas Architectural Barriers Act may be applicable to the design and construction of the Project. Notwithstanding anything to the contrary in this Agreement, Engineer does not represent, warrant or guaranty that the Engineer's design will comply with all interpretations of these statutory requirements and/or requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they may apply to the Project.

5.16 **Fast-Track Projects.** This clause 5.16 only applies if a fast track process is identified as part of the scope of Engineer's Services or is required due to changes in the Project after the effective date of the Agreement. In consideration of the benefits to the Client of employing the fast track process in which some of the Engineer's Services overlap the construction work and are out of sequence with the traditional project delivery method, and in recognition of the inherent risks of fast tracking, including but not limited to design conflicts and errors and omissions, Client agrees to waive all claims against the Engineer for damages or costs relating to design changes and modification of portions of the contractor's work due to the Client's decision to employ the fast track process. Client further agrees to compensate Engineer for all Additional Services that arise as a result of the fast track process.

ARTICLE 6: COMPENSATION FOR SERVICES

6.1 **Compensation for Services.** Engineer's compensation for services shall be set forth in individual Proposal(s).

6.2 **Compensation.** Client agrees to pay Engineer for Services in accordance with the Agreement. Expenses directly related to these Services, including reproduction, travel, long distance telephone bill, express mail, special deliveries and subcontractor expenses shall include a ten percent (10%) markup on cost, unless these costs have been included in individual proposals.

6.3 **Payments.** Engineer will invoice Client monthly in accordance with the terms and conditions of the Proposal, and amendment(s) for Services and reimbursables. Client agrees to promptly pay Engineer at its office at 1045 Central Parkway North, Suite 200, San Antonio, Texas 78232, the full amount of each such invoice upon receipt. In no event shall Engineer's failure to bill monthly constitute default under the terms and conditions of this Agreement.

6.4 **Sales and Use Tax.** Sales Tax must be collected on Surveying Fees for the establishment of Real Property Boundaries and determining the location of structures or improvements in relation to the boundaries. Charges for prints and reproductions are also subject to the Sales Tax. Sales Tax shall be per the current applicable governing authority tax rates. In the event subsequent taxes are levied by Federal, State, or Local authorities, relating to the services in writing and such modifications as are required shall be made a part of this Agreement.

6.5 **Right to Stop Performance.** If Client does not pay any amount due to Engineer within thirty (30) days after the invoice date, Engineer may, upon three (3) additional days verbal or written notice to Client, stop performance of the Services until payment of the amount owed has been received.

6.6 **Interest.** Payments due and unpaid to Engineer under the Agreement shall bear interest at the rate of twelve percent (12%) per annum, or lesser if required by law, calculated from the date of the invoice, if the payment is not made within thirty (30) days of the date of the invoice.

6.7 **Attorney's Fees.** In the event Engineers' invoices for Services are given to any attorney for collection, or if suit is brought for collection, or if they are collected through probate, bankruptcy, or other judicial proceeding, then Client shall pay Engineer all cost of collection, including the maximum attorney's fees allowed by law and court costs, in addition to other amounts due.

6.8 **Contractual Lien.** In the event the Client is the owner, or agent of the owner, of the Property (fee and/or leasehold estate), Client grants to Engineer a contractual lien, in addition to all statutory and other liens that may exist, on the Property and improvements thereon where the Project is located to secure payment for all debts owed, now or in the future, to Engineer by Client including those arising as a result of Engineer's services provided under this Agreement. Client grants Engineer

the authority and right to file a copy of this Agreement in the public records of the county or counties where the Project is located to give notice of Engineer's lien rights.

ARTICLE 7: TERMINATION OF SERVICES

7.1 **Termination.** This Agreement may be terminated without cause at any time prior to completion of Engineer's services, either by Client or by Engineer, upon seven (7) days written notice to the other at the address of record. Upon receipt of written notice from Client to discontinue work, the Engineer shall discontinue work under this Agreement. Such termination shall release Engineer from any further obligation to provide Services to Client on this Agreement, but all obligations of Client shall continue. In the event Client terminates the Agreement based on Client's reasonable opinion the Engineer has failed or refused to prosecute the work efficiently, promptly or with diligence, the Engineer shall have ten (10) days, from the receipt of written notification by Client, to cure such failure to perform in accordance with the terms of this Agreement or Proposal(s).

Client waives any and all claims it has against Engineer arising out of termination of this Agreement by Engineer. Client waives any and all claims, causes of action, or damages that it has or may have against Engineer for failure to perform further services under this or any other Agreement with Client.

7.2 **Compensation in Event of Termination.** Upon termination by either Client or Engineer, Client shall pay Engineer with respect to all contracted Services rendered and expenses incurred before termination an amount fixed by applying the Engineer's standard hourly rates, in force at the time of termination, to all Services performed to date, in addition to termination settlement costs the Engineer reasonably incurs relating to commitments which had become firm before the termination.

ARTICLE 8: RELATIONSHIP OF PARTIES

8.1 **Independent Contractor.** It is understood that the relationship of Engineer to Client shall be that of an independent contractor at all times during the performance of this agreement and no provision or obligation expressed or implied in this Agreement shall create an employment, agency, or fiduciary relationship. Neither Engineer nor employees of Engineer shall be deemed to be employees of Client.

ARTICLE 9: LIMITATION OF LIABILITY

9.1 **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF ENGINEER, ITS EMPLOYEES, OFFICERS, SUBCONSULTANTS AND SUBCONTRACTORS, TO CLIENT FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, OR DAMAGES WHATSOEVER FROM ANY CAUSE OR CAUSES, INCLUDING, BUT NOT LIMITED TO, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR ERRORS OR OMISSIONS SHALL NOT EXCEED THE ENGINEER'S TOTAL FEE NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCURRED DUE TO THE FAULT OF THE OTHER PARTY, REGARDLESS OF THE NATURE OF THIS FAULT OR WHETHER IT WAS COMMITTED BY THE CLIENT OR BY ENGINEER, THEIR EMPLOYEES, AGENTS, SUBCONSULTANTS, OR SUBCONTRACTORS. CONSEQUENTIAL DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF USE AND LOSS OF PROFIT.

If Client prefers to have higher limits of professional liability, Engineer agrees to increase the aggregate limit, up to a maximum of \$500,000, provided Client agrees to pay an additional consideration of ten percent of Engineer's total contract amount (fees and expenses) or \$500, whichever is greater. This election must be made prior to Engineer's commencement of Services. The additional consideration is due immediately on the entire contract amount and the ten percent consideration shall be included with each increase in the cost of Services under this Agreement.

9.2 **No Certification.** Engineer shall not be required to sign any documents that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain. The Client also agrees not to make resolution of any dispute with Engineer or payments of any amount due to Engineer in any way contingent upon Engineer's signing any such certification.

9.3 **Asbestos or Hazardous Materials.** It is acknowledged by both parties that Engineer's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event Engineer or any other party encounters asbestos or hazardous or toxic materials at the Property, or should it become known in any way that such materials may be present at the Property or any adjacent areas that may affect the performance of Engineer's Services, Engineer may, at its option and without liability for consequential or other damages, suspend performance of Services on the Project until the Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials and warrant that the Property is in full compliance with applicable laws and regulations.

9.4 **Delays.** Engineer is not responsible for delays caused by factors beyond Engineer's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or disapprove of Engineer's Services or work

product promptly, or delays caused by faulty performance by the Client or by contractors of any level. When such delays beyond Engineer's reasonable control occur, the Client agrees Engineer is not responsible for damages, nor shall Engineer be deemed to be in default of this Agreement. In the event such delay exceeds ninety (90) days, Engineer shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation. In the event Engineer is delayed by the Client and such delay exceeds thirty (30) days, Engineer shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

9.5 Project Enhancement. If, due to Engineer's error or omission, any required item or component of the Project is omitted from Engineer's documents, Engineer shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the Project or otherwise adds value or betterment to the Project. In no event will Engineer be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

ARTICLE 10: MISCELLANEOUS

10.1 Entire Agreement. The Agreement contains the entire agreement between Engineer and Client, and no oral statements or prior written matter shall be of any force or effect. The Agreement may be modified only by written document executed by both parties.

10.2 Modifications. No one has authority to make variations in, or additions to, the terms of this Agreement on behalf of Engineer other than one of its officers, and then only in writing.

10.3 Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.4 Venue. Engineer and Client agree that the services will be performed or partially performed in Bexar County, Texas, and the venue of any action under the Agreement shall be exclusively in Bexar County, Texas.

10.5 Severability. If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a party hereto, and the remaining provisions shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision, there shall be added automatically as a part of the Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

10.6 Construction of Agreements. The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement or any amendments or exhibits.

10.7 Successor and Assigns. Client, for himself and partners, if any, and Engineer, for itself, each binds himself or itself and its successors, executors, administrators and assigns to the other party to this Agreement and to partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Neither Client nor Engineer shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than Client and Engineer. Client's representative signing below warrants that he or she has full authority to bind Client to this Agreement and further warrants that Client has an ownership interest in the real property that is part of the Project. Client's representative signing below agrees to indemnify, save, and hold Engineer harmless for any and all claims, causes of action, and damages that may arise against Engineer if the representations contained in this Paragraph are not correct.

Nothing in Agreement restricts Engineer's ability to hire subcontractor in connection with the Services. The Services and any report prepared under this Agreement are for the sole benefit and sole use of Client and are not for the use of any other person. Only Client may rely upon the Agreement and the Services, unless the Engineer gives Client prior and specific written approval.

10.8 Dispute Resolution. Any claim, dispute or other matter in question arising out of or related to the Agreement of the Services provided thereunder shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve all disputes by mediation. Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. No arbitration arising out of or relating to the Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement. The foregoing agreement to arbitration shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

10.9 Mediation. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or other legal proceedings.

Each party agrees to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include similar mediation provisions in all agreements with their respective subcontractors, suppliers, and subconsultants, thereby providing for mediation as the initial method for dispute resolution between the parties to all those agreements.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.10 No Warranty. Engineer makes no warranty, either expressed or implied, as to Engineer's findings, recommendations, drawings, specifications, or professional advice. Any warranties or guarantees contained in any purchase orders, certifications, requisitions, or notices to proceed issued by the Client are specifically objected to and excluded. Client recognizes that neither Engineer nor any of Engineer's subconsultants or subcontractors owes any fiduciary responsibility to Client.

10.11 Survival of Provisions. Termination of the Services for any reason whatsoever shall not affect (a) any right or obligation of any party that is accrued or vested prior to such termination, and any provision of the Agreement relating to any such right or obligation shall be deemed to survive the termination of the Services or (b) any continuing obligation, liability or responsibility of Engineer and of Client which would otherwise survive termination of the Services.

10.12 Corporate Liability. Client understands and agrees that Engineer is a business entity that has contracted to perform services and any services provided by Engineer's employees, agents, partners, members or officers are not provided in their individual capacity. Client will not make any claim or demand against any of Engineer's employees, officers, directors, members, partners or affiliated business entities.

END OF PROFESSIONAL SERVICES AGREEMENT