

**AGREEMENT BETWEEN THE CITY OF
AUSTIN, TEXAS AND CONSULTANT**

This AGREEMENT made as of this _____ day of _____,

BETWEEN: The City of Austin, Texas, a Municipal Corporation situated in
Travis County, Texas
P.O. Box 1088
Austin, Texas 78767

hereinafter referred to as "OWNER",

and:

(Name of Firm)

hereinafter referred to as "CONSULTANT",

For the following PROJECT:

CIP ID:

(enter project description)

The OWNER is represented herein for all purposes of this AGREEMENT by the Director of the Contract Management Department, or such other representative as may be authorized by the City Manager of the City of Austin.

The CONSULTANT employs professionals duly licensed to practice in the State of Texas, has the professional abilities, experience, expertise and facilities to provide such professional services, and agrees to undertake and furnish said services in accordance with this AGREEMENT.

The OWNER and the CONSULTANT agree to the terms and conditions of AGREEMENT specified in the General Terms and Conditions and the Supplemental Terms and Conditions, attached hereto and made a part of this AGREEMENT.

The CONSULTANT is bound by a Code of Ethics and guided by rules and restrictions of a State licensing board. Contact the appropriate licensing board if an issue regarding ethics or the practice of consulting arises.

This AGREEMENT is executed to be effective upon the date of the last party to sign.

City of Austin, OWNER
P.O. Box 1088
Austin, Texas 78767

(Name of Firm), CONSULTANT

(Address of Firm)

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved As To Form:

Attest:

By: _____
Assistant City Attorney

By: _____
Secretary, if a Corporation

END

General Conditions Table of Contents

SECTION 1	CONSULTANT'S RESPONSIBILITIES	2
SECTION 2	OWNER'S RESPONSIBILITIES.....	4
SECTION 3	FIXED CONSTRUCTION BUDGET	5
SECTION 4	RESOURCE ALLOCATION PLAN (RAP)	6
SECTION 5	COMPENSATION	7
SECTION 6	INSURANCE REQUIREMENTS.....	11
SECTION 7	TERMINATION OF AGREEMENT	13
SECTION 8	OWNER REMEDIES	14
SECTION 9	CONSULTANT REMEDIES	15
SECTION 10	DISPUTE RESOLUTION.....	16
SECTION 11	MISCELLANEOUS PROVISIONS.....	17

DRAFT

SECTION 1 - CONSULTANT'S RESPONSIBILITIES

1.0 General

The CONSULTANT will serve as the OWNER'S professional consultant in those phases of the PROJECT as stated in the **Supplemental Terms and Conditions of this AGREEMENT**, and will consult and advise the OWNER during the performance of the CONSULTANT's services. The OWNER agrees to compensate the CONSULTANT for those services in accordance with Section 5. CONSULTANT shall report to OWNER's designated PROJECT Manager as defined in subparagraph 11.7.1.1 of the **Supplemental Terms and Conditions of this AGREEMENT**.

1.1 Performance of Services

The CONSULTANT will perform services under this AGREEMENT with the degree of skill and diligence normally practiced by professional engineers, architects, or consultants performing the same or similar services.

1.1.1 The CONSULTANT's employees and the CONSULTANT's associated subconsultants to be used in the performance of PROJECT professional services (as described in subsection 1.4) are identified in Attachment 2. The CONSULTANT must disclose any potential conflict of interest relating to the CONSULTANT, the CONSULTANT's employees, a subconsultant or supplier. Failure to disclose any such conflicts may be grounds for termination under subsection 7.5 of this AGREEMENT by the OWNER.

1.1.2 The person identified as PROJECT manager by the CONSULTANT, identified in Attachment 2, must be employed by the CONSULTANT.

1.1.3 The CONSULTANT is registered to do business with the OWNER and is responsible for ensuring that all subconsultants are registered as vendors with the City of Austin. All subconsultants have been registered with the OWNER prior to execution of this AGREEMENT.

1.1.4 The CONSULTANT agrees not to modify any subconsultant's design after subconsultant's seal has been affixed except with written consent of the subconsultant. The CONSULTANT is fully responsible for the subconsultants' performance and obligations under this AGREEMENT.

1.1.5 The CONSULTANT's key employees and the CONSULTANT's associated subconsultants to be employed in the performance of the PROJECT professional services, shall not be changed except with the OWNER's prior written approval, which will not be unreasonably withheld.

1.1.6 The CONSULTANT shall obtain OWNER's written approval prior to terminating, adding or substituting subconsultants. In the event that the CONSULTANT proposes to add, substitute, or terminate an identified "Minority-Owned Business Enterprise" (MBE) or a "Women-Owned Business Enterprise" (WBE) certified subconsultant firm from its employ on this PROJECT, the CONSULTANT shall comply with the City of Austin MBE/WBE Program, Chapter 2-9A, Austin City Code, and the goals established in the PROJECT solicitation. If the CONSULTANT is unable to substitute a subconsultant firm in compliance with the Austin City Code, the CONSULTANT shall provide OWNER with written documentation of their good faith efforts to acquire the services of a MBE/WBE replacement firm. All requests to change the CONSULTANT's MBE/WBE Compliance Plan must include documentation to support the request.

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

1.1.7 If the OWNER notifies the CONSULTANT that a member of the CONSULTANT's team, including subconsultants, is incompetent, disorderly, abusive, or disobedient, or has knowingly or repeatedly violated any federal, state, or local law, the CONSULTANT shall immediately remove any such person from performing work on the PROJECT. The OWNER's prior written consent must be obtained before any such person may be reinstated. Replacement of any subconsultant removed from the PROJECT must be in accordance with paragraph 1.1.6. The OWNER may report any breaches of professional codes of ethics to the appropriate licensing board.

1.1.8 The CONSULTANT will attend and draft complete minutes of each PROJECT design and construction meeting between CONSULTANT and OWNER and/or CONSULTANT and other agencies, and submit them to OWNER for approval within seven (7) calendar days after each PROJECT conference.

1.1.9 The CONSULTANT shall prepare and submit all appropriate permit applications and supporting drawings, specifications and other documents in the name of the City of Austin to utility companies and providers and governmental authorities having jurisdiction over the PROJECT and shall obtain all approvals and all development and building permits necessary to complete the PROJECT in accordance with the PROJECT Resource Allocation Plan (RAP) described in Section 4, or as otherwise specified by OWNER. Development and permitting fees may be paid for in one of the following methods as mutually agreed:

- (a) Paid by CONSULTANT and billed to OWNER as a reimbursable or
- (b) Payment coordinated through the OWNER using an internal payment transfer document.

1.1.10 The CONSULTANT agrees to attend and make presentations, as specified in the attached scope of services (Attachment 5) as Basic Services, including (i) Board and Commission meetings, (ii) public meetings, and (iii) internal City of Austin meetings. Any other presentations required by OWNER will be considered Additional Services in accordance with Paragraph 1.4.6 of the **Supplemental Terms and Conditions of this AGREEMENT** and paid for in accordance with Paragraph 5.1.3.

1.1.11 The CONSULTANT shall not knowingly specify, request or approve for use any asbestos containing materials or lead-based paint without the OWNER's prior written approval. For materials specified on the basis of performance criteria, the CONSULTANT shall include a requirement in the specifications effectively stating that "Asbestos containing materials or lead-based paint are prohibited from being used in the project." When a specific product is specified, the CONSULTANT shall make best efforts to verify that the product does not include asbestos containing material. The CONSULTANT agrees to execute a Statement of Non-Inclusion of Asbestos Containing Material, on a form provided by OWNER, both prior to design and upon completion of the Construction Documents Phase.

1.1.12 The CONSULTANT shall prohibit discrimination in employment based upon race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age, in compliance with Chapter 5-4-2, Austin City Code. A copy of the CONSULTANT's non-discrimination policy has been provided prior to execution of this AGREEMENT.

1.2 Laboratory Services

If laboratory services are provided for the PROJECT by the CONSULTANT or its subconsultant(s) through this AGREEMENT, these services must be performed by a properly accredited laboratory. The CONSULTANT will provide evidence to the OWNER of such accreditation on an annual basis for the duration of this AGREEMENT.

1.3 Quality Control Plan (QCP)

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

1.3.1 The CONSULTANT agrees to perform quality assurance-quality control/ constructability reviews in accordance with the CONSULTANT's approved Quality Control Plan (QCP) work plan described in Attachment 3, that is incorporated by reference and which includes any subsequent revisions approved by OWNER. The QCP is to be submitted to the OWNER for approval within fourteen (14) calendar days after the OWNER's issuance of a Notice to Proceed to the CONSULTANT. In addition to providing the reports required by the QCP, the CONSULTANT agrees to address any QCP comments from the OWNER and provide resolution to the OWNER's satisfaction. In the event the OWNER retains a separate consultant to perform additional QCP services for the OWNER, the CONSULTANT will provide all necessary information to the OWNER, address any comments from the OWNER's consultant, and provide resolution to the OWNER's satisfaction. The CONSULTANT shall include this language in all its subconsultant contracts to ensure subconsultants understand their responsibility for complying with the OWNER's or OWNER's consultant's QCP requirements.

1.3.2 The QCP reviews will be performed by a staff member of the CONSULTANT not involved in day-to-day PROJECT tasks. If the CONSULTANT does not have the internal staff capacity to provide for this independent review, the CONSULTANT must include a QCP subconsultant on the PROJECT team. The person performing the QCP reviews shall certify, seal and attest that the final construction bid documents have been drafted in full compliance with the QCP.

1.3.3 The CONSULTANT will perform QCP reviews at intervals during the design phase, specified in the QCP, to ensure plans, specifications, and drawings satisfy accepted quality standards and meet the requirements of the PROJECT scope. Based on the findings of the QCP reviews, the CONSULTANT must reconcile the project scope and budget as needed. Documentation will be included that verifies interdisciplinary coordination has occurred.

1.3.4 The CONSULTANT will perform constructability reviews, using persons with construction experience, at appropriate intervals, during the design phase, specified in the QCP to ensure that the PROJECT is buildable, as well as cost-effective, biddable, and maintainable. Based on the findings of the constructability reviews, the CONSULTANT shall redesign the PROJECT, as required, to conform to the Fixed Construction Budget as described in Section 3.3. The CONSULTANT will provide interim construction estimates to verify that the PROJECT is within the Fixed Construction Budget as further described in the phase descriptions in the **Supplemental Terms and Conditions of this AGREEMENT**.

1.3.5 Acceptance and/or approval of the CONSULTANT's QCP documentation by the OWNER do not constitute a release of the responsibilities and liability of the CONSULTANT for the accuracy and competency of its QCP reviews and final construction documents.

1.4 Basic Services

The CONSULTANT will, in the scope of their work and in conformance with the approved PROJECT Resource Allocation Plan (RAP), perform the basic services described in 1.4.1 et seq of the **Supplemental Terms and Conditions of this AGREEMENT**. These basic services shall be provided in phases and/or parts only as authorized by the OWNER (in subsequent written Supplemental Amendments to proceed).

SECTION 2 - OWNER'S RESPONSIBILITIES

2.1 The OWNER will:

2.1.1 Provide its requirements for the PROJECT.

2.1.2 Designate the OWNER's Project Manager.

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

2.1.3 Provide a "Fixed Construction Budget for the PROJECT" as defined in subsection 3.1 prior to negotiation of this AGREEMENT.

2.1.4 Assist CONSULTANT by placing at their disposal readily available (i) reports; (ii) property, boundary, easement, right-of-way, topographic and utility surveys; (iii) zoning and deed restrictions; and (iv) other data relevant to the development of the PROJECT.

2.1.5 Assist CONSULTANT in gaining entry to public property and private property, only when necessary, as may be required by the CONSULTANT in the performance of their services under this AGREEMENT.

2.1.6 Review and provide written comments on documents and questions presented by the CONSULTANT and render decisions pertaining thereto within seven (7) calendar days. The OWNER will review and provide written comments on periodic plan and specifications submittals within fourteen (14) calendar days. OWNER shall immediately notify CONSULTANT if additional time is needed.

2.1.7 Give prompt written notice to the CONSULTANT whenever the OWNER observes or otherwise becomes aware of any defect in the CONSULTANT's work product or services.

2.1.8 Direct CONSULTANT, by way of written Supplemental Amendment to this AGREEMENT (see Subsection 4.2), to provide any necessary Additional Services beyond those authorized in the approved PROJECT RAP or as stipulated in the **Supplemental Terms and Conditions of this AGREEMENT**.

SECTION 3 - FIXED CONSTRUCTION BUDGET

3.1 The "Fixed Construction Budget" means the amount allocated by OWNER for the PROJECT construction contract, which can only be adjusted by OWNER's prior written approval.

3.2 Fixed Construction Budget does not include the compensation of the CONSULTANT and the CONSULTANT'S subconsultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the OWNER.

3.3 Responsibility for Fixed Construction Budget

3.3.1 CONSULTANT is responsible for designing the PROJECT to be constructible within the Fixed Construction Budget. The CONSULTANT will determine what materials, equipment, component systems and types of construction to include in the Contract Documents, make reasonable adjustments in the scope of the PROJECT with the OWNER's consent, and, with the OWNER's approval, develop bid alternates.

3.3.2 If the Fixed Construction Budget is exceeded by the lowest responsible bid, the OWNER shall either:

- (1) give written approval of an increase in the Fixed Construction Budget;
- (2) authorize rebidding of the PROJECT within a reasonable time;
- (3) abandon the PROJECT; or
- (4) cooperate in revising the PROJECT scope and quality as required to reduce the construction cost.

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

In the case of (2) and/or (4), the CONSULTANT, without additional compensation, shall perform those services to produce the Drawings and Specifications as necessary to comply with the Fixed Construction Budget provided that the bidding or rebidding processes occur within six (6) months of the date that the CONSULTANT delivered the final bid documents to OWNER. If the bidding or rebidding processes occur after that six (6) month period, the CONSULTANT is entitled to additional compensation.

3.3.3 Bid Alternates

3.3.3.1 If, under the OWNER's direction, the CONSULTANT prepares the bid documents to include bid alternates as a means to keep the PROJECT cost within the Fixed Construction Budget, the CONSULTANT's compensation will remain the established fee amount irrespective of the outcome of bids. In the event the base bid is not within the Fixed Construction Budget, Paragraph 3.3.2 of this AGREEMENT governs. The OWNER's acceptance of the base bid or bid alternates will not change the CONSULTANT's fee amount.

3.3.3.2 If, under the OWNER's direction, the CONSULTANT prepares bid documents that include bid alternates, and OWNER has advised CONSULTANT that such alternates may not be within the Fixed Construction Budget, the CONSULTANT must track the cost of any such alternates. Compensation for the requested bid alternates will be as follows:

(1) If the bid for the alternates requested by OWNER is within the Fixed Construction Budget, there is no change in the fee.

(2) Otherwise, the work to reconfigure the Bid Documents to include the requested bid alternates will be considered Additional Services with compensation to be determined in accordance with Subsection 5.1 of this AGREEMENT.

SECTION 4 - RESOURCE ALLOCATION PLAN (RAP)

4.1 The CONSULTANT agrees to complete the phases of services in accordance with the approved PROJECT Resource Allocation Plan (RAP), which is Attachment 1 of this AGREEMENT, and the applicable standard of professional care. A specific time period will be set for each phase.

4.2 Supplemental Amendments

4.2.1 Before additional work may be performed or additional costs incurred beyond what is specified in the approved PROJECT RAP, both parties must execute a written Supplemental Amendment. The OWNER is not responsible for actions by the CONSULTANT or any costs incurred by the CONSULTANT relating to additional work prior to the execution of the Supplemental Amendment. Any amendment must be executed within the time period established in the PROJECT RAP.

4.2.1.1 More Time Needed. If the CONSULTANT determines or reasonably anticipates that the PROJECT cannot be completed before the specified completion date, the CONSULTANT shall submit a RAP revision to the OWNER for approval. The OWNER may, at its sole discretion, extend the authorized PROJECT period.

4.2.1.2 Changes in Scope. Changes that would modify the scope of work authorized for the PROJECT must be established by a Supplemental Amendment. If the change in scope affects the schedule or CONSULTANT's fee for the PROJECT, the CONSULTANT shall prepare a revised PROJECT budget and RAP for the OWNER's approval.

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

4.2.1.3 Rate Revisions. The City will consider annual revisions to the rates shown in Attachment 2 only if requested by the CONSULTANT and will issue any such approvals as a Supplemental Amendment. However, rate revisions will not be considered until at least one (1) year after the date of this AGREEMENT or any subsequent amendments relating to rate revisions.

4.2.2 The OWNER may ask the CONSULTANT to submit a proposal for additional work that is within the defined scope of work under this AGREEMENT. The amount to be paid for the proposed additional work will be a lump sum for each proposal. The CONSULTANT may, without penalty, elect not to submit a proposal. If both parties agree to the proposal for additional work, the parties must execute a written Supplemental Amendment and revise the RAP.

4.3 If the OWNER sustains actual damages as a result of willful or negligent failure of the CONSULTANT to furnish services in compliance with the approved PROJECT RAP described in this Section 4 and subsequent approved amendments in accordance with Subsection 4.2, the CONSULTANT agrees to compensate the OWNER for the cost of such damages in accordance with Section 8, itemized costs of which will be provided to the CONSULTANT by the OWNER. The OWNER agrees to provide the CONSULTANT written notification of such damages as the cost is being incurred.

4.4 The CONSULTANT is not liable or responsible for OWNER delays or suspensions of services. If the CONSULTANT is delayed through no fault of its own, written time extension requests may be submitted to the OWNER for approval. These requests will be reviewed only if submitted to OWNER within (14) calendar days of the occurrence unless force majeure conditions exist.

4.5 If the CONSULTANT fails to meet the approved PROJECT RAP schedule, including subsequently approved amendments, OWNER may elect to invoke remedies outlined in Section 8 of this AGREEMENT.

4.6 Time required by the OWNER to review and return documents to the CONSULTANT following their submittal during and after each phase will be included in the approved PROJECT RAP.

SECTION 5 - COMPENSATION

5.1 Basis of Compensation

5.1.1 The OWNER will compensate the CONSULTANT for the Scope of Services described in the approved PROJECT RAP or as subsequently amended, in accordance with Subsection 5.3, *PAYMENTS TO THE CONSULTANT*, and the other Terms and Conditions of this AGREEMENT, as follows:

5.1.1.1 No advance payment will be paid to the CONSULTANT prior to rendering services.

5.1.1.2 Payments for Basic Services will be made monthly in proportion to services performed within each phase of services, as shown in the PROJECT RAP.

5.1.1.3 For Basic Services of Subconsultants, a multiple of one and five hundredth (1.05) times the amount billed to the CONSULTANT for such services will be paid.

5.1.2 The total amount of compensation to be paid the CONSULTANT will not exceed the amount stated in paragraph 5.1.2.1 of the **Supplemental Terms and Conditions of this AGREEMENT** without amendment to this AGREEMENT.

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

5.1.3 *Compensation for Additional Services*

5.1.3.1 For *PROJECT REPRESENTATION BEYOND BASIC SERVICES* as described in Subparagraph 1.4.6 of the **Supplemental Terms and Conditions of this AGREEMENT**, compensation will be made for Additional Services in accordance with the schedule of hourly rates shown in Attachment 2.

5.1.3.2 Principals may only bill at the hourly rate of Principals when acting in that capacity. Principals acting in the capacity of staff must bill at staff rates. The CONSULTANT shall provide documentation with each payment request that clearly indicates how that individual's time is allocated and the justification for that allocation.

5.1.3.3 For *ADDITIONAL SERVICES OF SUBCONSULTANTS* a multiple of one and five hundredth (1.05) times the amounts billed to the CONSULTANT for such services will be paid.

5.1.4 *Compensation for Reimbursable Expenses*

5.1.4.1 For *REIMBURSABLE EXPENSES*, as described in Subsection 5.2, a multiple of one and five hundredths (1.05) times the amounts expended by the CONSULTANT, the CONSULTANT'S employees and subconsultants in the interest of the PROJECT will be paid.

5.1.4.2 The OWNER is a tax-exempt organization as defined by Chapter 11 of the Property Tax Code of Texas. OWNER will furnish CONSULTANT with a Sales Tax Exemption Certification to be issued to suppliers in lieu of tax. If payment of the sales tax is unavoidable in a specific case, the CONSULTANT will be reimbursed by the OWNER for any such costs incurred.

5.1.5 OWNER and the CONSULTANT agree in accordance with the Terms and Conditions of this AGREEMENT that:

5.1.5.1 If OWNER determines the scope of the PROJECT or CONSULTANT'S Services are changed materially, compensation will be equitably adjusted through negotiation.

5.1.5.2 If OWNER determines the Services covered by this AGREEMENT have not been completed within the time specified in the PROJECT RAP, through no fault of the CONSULTANT, the amounts of compensation, rates and multiples set forth herein may be adjusted through negotiation.

5.1.6 *Period of Service*

5.1.6.1 This AGREEMENT will remain in force for that period required to complete the PROJECT (including required extensions thereto) unless discontinued by any of the several provisions contained elsewhere in this AGREEMENT. The total period of service is stated in subparagraph 5.1.2.1 of the **Supplemental Terms and Conditions of the AGREEMENT**.

5.1.6.2 CONSULTANT'S failure to meet the approved PROJECT RAP may result in the assessment of remedies as described in Section 8 of this AGREEMENT.

5.2 Reimbursable Expenses

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

Reimbursable Expenses are part of Basic Services and include actual expenditures made by the CONSULTANT and the CONSULTANT's employees and subconsultants in performing services for the PROJECT for the expenses listed in the following Subsections. CONSULTANT must submit invoices or other similar documentation for Reimbursable Expenses as part of a payment request. The OWNER is a tax exempt entity and will not reimburse the CONSULTANT for any tax expenses. The OWNER will consider exceptions on a case-by-case basis. **Reimbursable Expenses are limited to these specific items:**

5.2.1 By prior written approval of the OWNER, reasonable transportation and living expenses in connection with out-of-town travel.

5.2.1.1 All travel and lodging expenses in connection with the AGREEMENT for which reimbursement may be claimed will be reviewed against the City's Travel Policy and the current (at the time the travel occurs) the General Services Administration (GSA) Domestic Per Diem Rates (the "GSA Rates") at http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=17943&noc=T. Amounts in excess of the Travel Policy or GSA Rates will not be paid. All invoices must be accompanied by copies of receipts (e.g. hotel bills, airline tickets).

5.2.1.2 Reimbursement will be made only for expenses actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

5.2.1.3 Mileage charges for rental cars in connection with out-of-town travel may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations. Mileage costs for travel within the Austin metropolitan area are to be included in CONSULTANT's overhead rate and not billed separately as a reimbursable expense.

5.2.2 Fees paid for securing approval of authorities having jurisdiction over the PROJECT.

5.2.3 Reproduction expenses for drawings, specifications and all other documents required for bidding, OWNER submittals, and for file copies of CONSULTANT, Contractor, and OWNER, and other parties approved by the OWNER.

5.2.4 Expense of renderings, models and mock-ups requested by the OWNER.

5.2.5 Expense of reproducing record drawings for the OWNER on sepia, mylars or plastic film.

5.2.6 Reproduction expense for drawings, specifications and any other documentation to be submitted to utility owners and governmental authorities having jurisdiction over the PROJECT. Interim review plots or drawings for CONSULTANT and subconsultants are not reimbursable.

5.3 Payments to the Consultant

5.3.1 *Payments for Basic Services*

5.3.1.1 Payments for Basic Services, including Reimbursable Expenses, will be made monthly in accordance with the approved PROJECT RAP on the basis set forth in Subsections 5.1 and 5.2. CONSULTANT shall submit the application for payment using the form supplied by OWNER.

5.3.2 *Payments for Additional Services*

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

5.3.2.1 Payments for the CONSULTANT'S Additional Services as defined in Subsection 1.4.6 of the **Supplemental Terms and Conditions of this AGREEMENT** may be made no more often than monthly upon presentation by CONSULTANT of an acceptable statement of Additional Services rendered and/or expenses incurred. Each statement must include the form supplied by the OWNER, copies of supporting invoices, time sheets, and any other evidence of expense as required by the OWNER.

5.3.3 *Payments Withheld*

The OWNER may withhold, amend, or nullify any request for payment by the CONSULTANT under conditions that include those described in Subparagraphs 5.3.3.1 through 5.3.3.7 below .

5.3.3.1 Failure of the CONSULTANT to follow the approved schedule and meet all phase and milestone requirements specified in the PROJECT RAP.

5.3.3.2 OWNER'S receipt of notice that, despite payment to CONSULTANT for services rendered by subconsultants, CONSULTANT has not paid subconsultants for services invoiced to and paid by OWNER within fourteen (14) calendar days of CONSULTANT's receipt of payment from OWNER.

5.3.3.3 Payments for subconsultants' costs when those subconsultants are not included in the approved MBE/WBE compliance plan.

5.3.3.4 Failure of the CONSULTANT to submit timely and complete records of PROJECT conference proceedings as specified in Paragraph 1.1.8.

5.3.3.5 Failure of the CONSULTANT to submit timely and complete weekly reports of its job site observations containing detailed information as specified in Paragraph 1.4.4.5.2 of the **Supplemental Terms and Conditions of this AGREEMENT**.

5.3.3.6 Failure of the CONSULTANT to provide updated record drawings and Contractor's record contract documents to the OWNER within thirty (30) calendar days after Contractor's record contract documents have been provided to the CONSULTANT by the Contractor upon substantial or final completion of the PROJECT.

5.3.3.7 Failure to make timely payment to the City of Austin for taxes.

5.3.4 *Prompt Payments*

The OWNER shall make payment to CONSULTANT of the sum named in a payment application within thirty (30) calendar days after the day on which the OWNER received the mutually acceptable payment application. If the OWNER fails to make such prompt payment, then OWNER will pay CONSULTANT, in addition to the amount owed for the payment application, interest thereon at the rate specified in Government Code, Section 2251.025(b) from date due until fully paid, which shall fully liquidate any injury to CONSULTANT growing out of such delay in payment.

The OWNER cannot make a partial payment on an invoice in dispute. The CONSULTANT may resubmit an invoice for the undisputed amount or wait for payment until the dispute has been resolved. The thirty (30) calendar days restarts after the OWNER receives a corrected payment application.

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

5.3.5 *Payment for Project Suspension or Termination*

5.3.5.1 If the PROJECT is suspended or abandoned in whole or in part for more than three months, the CONSULTANT will be compensated for all services performed prior to receipt of written notice from the OWNER of such suspension or abandonment, together with Reimbursable Expenses then due. If the PROJECT is resumed after being suspended for more than three months, the CONSULTANT'S compensation may be equitably adjusted through negotiation. If the parties cannot agree on an adjustment, OWNER may terminate the AGREEMENT in accordance with Subsection 7.6.

SECTION 6 - INSURANCE REQUIREMENTS

6.1 The CONSULTANT shall carry insurance in the types and amounts indicated below for the duration of the AGREEMENT:

6.1.1 Workers' Compensation and Employers' Liability Insurance Coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401) and (1) minimum policy limits for Employers Liability Insurance of \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee; or (2) as otherwise required in the **Supplemental Terms and Conditions of this AGREEMENT**. The CONSULTANT's policy must be issued by an insurer licensed or approved to do business in the State of Texas and include these endorsements in favor of the OWNER:

- (a) Waiver of Subrogation, form WC 420304, or equivalent.
- (b) 30 day Notice of Cancellation, form WC 420601, or equivalent.

6.1.2 Commercial General Liability Insurance with a minimum combined bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B unless otherwise stated in the **Supplemental Terms and Conditions of this AGREEMENT**. The policy must contain the following provisions:

- (a) Blanket contractual liability coverage for liability assumed under this AGREEMENT and all contracts relative to this PROJECT.
- (b) Independent Contractors coverage.
- (c) OWNER listed as an additional insured, endorsement CG 2010, or equivalent.
- (d) 30 day Notice of Cancellation in favor of the OWNER, endorsement CG 0205, or equivalent.
- (e) Waiver of Transfer Right of Recovery Against Others in favor of the OWNER, endorsement CG 2404, or equivalent.
- (f) Aggregate limits of insurance per project, endorsement CG 2503, or equivalent.

6.1.3 Business Automobile Liability Insurance for all owned, non-owned and hired vehicles (1) with a minimum combined single limit of \$500,000 per accident for bodily injury and property damage; or (2) \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability; or (3) as otherwise required in the **Supplemental Terms and Conditions of this AGREEMENT**. The policy shall contain the following endorsements in favor of the OWNER:

- (a) Waiver of Subrogation endorsement TE 2046A, or equivalent.
- (b) 30 day Notice of Cancellation endorsement TE 0202A, or equivalent.
- (c) Additional Insured endorsement TE 9901B, or equivalent.

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

6.1.4 CONSULTANT's Professional Liability Insurance to pay on behalf of the assured all sums which the assured becomes legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The policy must provide for 30 day notice of cancellation in favor of the OWNER. The minimum limit is specified in subparagraph 6.1.4.1 of the **Supplemental Terms and Conditions of this AGREEMENT**.

6.2 General Requirements

6.2.1 The CONSULTANT must complete and forward the OWNER'S standard certificate of insurance to the OWNER before the AGREEMENT is executed, as verification of coverage required in Paragraphs 6.1.1 through 6.1.4 above. The CONSULTANT shall not commence services until the required insurance has been obtained and until such insurance has been reviewed by the OWNER's Office of Contract and Land Management. Approval of insurance by the OWNER does not relieve or decrease the liability of the CONSULTANT hereunder and must not be construed to be a limitation of liability on the part of the CONSULTANT

6.2.2 Applicable to all insurance policies: If coverage is underwritten on a claims-made basis, the retroactive date must be coincident with or prior to the date of this AGREEMENT and the certificate of insurance must state that the coverage is claims made and the retroactive date. The CONSULTANT shall maintain continuous coverage for the duration of this AGREEMENT and for not less than twenty-four (24) months following substantial completion of the PROJECT. Coverage, including any renewals, must have the same retroactive date as the original policy applicable to the PROJECT. The CONSULTANT shall, on at least an annual basis, provide the OWNER with a certificate of insurance as evidence of such insurance.

6.2.3 The CONSULTANT's insurance coverage must be written by companies licensed or approved to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better unless otherwise required in the **Supplemental Terms and Conditions of this AGREEMENT**. The OWNER will accept workers' compensation coverage written by the Texas Workers Compensation Insurance Fund

6.2.4 All endorsements naming the OWNER as additional insured, waivers, and notices of cancellation endorsements as well as the certificate of insurance will indicate: City of Austin, Office of Contract and Land Management, P.O. Box 1088, Austin, Texas 78767.

6.2.5 The "other" insurance clause will not apply to the OWNER where the OWNER is an additional insured shown on any policy. It is intended that policies required in the AGREEMENT, covering both the OWNER and the CONSULTANT, be considered primary coverage as applicable.

6.2.6 If insurance policies are not written for amounts specified above, the CONSULTANT shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it must follow the form of the primary coverage.

6.2.7 The OWNER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

6.2.8 The OWNER reserves the right to review the insurance requirements set forth during the effective period of this AGREEMENT and to make reasonable adjustments to insurance coverage, limits and exclusions when deemed necessary and prudent by the OWNER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the CONSULTANT.

6.2.9 The CONSULTANT shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the AGREEMENT or as required in the AGREEMENT.

6.2.10 The CONSULTANT shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance.

6.2.11 The CONSULTANT shall provide OWNER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the AGREEMENT.

6.2.12 If OWNER-owned property is being transported or stored off-site by the CONSULTANT, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.

6.2.13 The insurance coverages required under this AGREEMENT are required minimums and are not intended to limit the responsibility or liability of the CONSULTANT.

6.3 CONSULTANT shall determine appropriate types and levels of insurance coverage to be provided by subconsultants and advise the subconsultants of the documentation to be provided to CONSULTANT to verify coverage.

SECTION 7 - TERMINATION OF AGREEMENT

7.1 The rights to terminate this AGREEMENT provided in this Section 7 are in addition to, and cumulative of, all other rights and remedies available to the parties at law or in equity.

7.2 This AGREEMENT may be terminated by the CONSULTANT upon at least seven (7) calendar days written notice should the OWNER substantially fail to perform in accordance with the OWNER's responsibilities through no fault of the CONSULTANT.

7.3 Notice to Cure.

OWNER will provide a Notice to Cure to the CONSULTANT to cure an event of default described in this Section and/or an anticipatory breach of contract. The CONSULTANT must attend a meeting with the OWNER regarding the Notice to Cure, the event of default, and/or the anticipatory breach of contract. The Notice to Cure will set forth the time limit in which the cure is to be completed or commenced and diligently prosecuted. Upon receipt of any Notice to Cure, the CONSULTANT must prepare a report describing its program and measures to affect the cure of the event of default and/or anticipatory breach of contract within the time required by the Notice to Cure. The CONSULTANT's report must be delivered to the OWNER at least three (3) business days prior to the required Notice to Cure meeting with the OWNER.

7.4 This AGREEMENT may be terminated by the OWNER upon at least seven (7) calendar days written notice to the CONSULTANT in the event that the PROJECT is abandoned or indefinitely postponed.

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

7.5 This AGREEMENT may be terminated by the OWNER for cause upon seven (7) calendar days written notice. In the event OWNER terminates the AGREEMENT for cause, the OWNER may reject any and all proposals submitted by CONSULTANT for up to three (3) years. In the event that a termination for cause is found to be wrongful, the termination shall be converted to a termination without cause ("termination for convenience") as set forth in Subsection 7.6 and CONSULTANT's sole remedy for such termination will be limited to the recovery of payments permitted under Subsection 7.6.

The OWNER may terminate for cause due to the occurrence of any one of the following:

7.5.1 If CONSULTANT persistently fails to perform the work in accordance with the AGREEMENT, in particular the approved PROJECT RAP;

7.5.2 If CONSULTANT disregards laws or regulations of any public body having jurisdiction;

7.5.3 If CONSULTANT makes fraudulent statements;

7.5.4 If CONSULTANT fails to make adequate progress and endangers timely and successful completion of the AGREEMENT, which failure includes failure of subconsultants to meet contractual obligations;

7.5.5 CONSULTANT's failure under 7.5.4 includes failure of subconsultants to meet contractual obligations; or

7.5.6 If CONSULTANT otherwise violates in any substantial way any provisions of the AGREEMENT.

7.6 This AGREEMENT may be terminated at the OWNER'S convenience upon seven (7) calendar days written notice; in which event, the CONSULTANT will be compensated for all services performed to termination date, together with Reimbursable Expenses then due, in accordance with Subsection 7.7, and the OWNER retains the right to continue the PROJECT consistent with paragraph 11.2.4.

7.7 In the event of termination not the fault of the CONSULTANT, the CONSULTANT will be compensated for all services performed to termination date, together with Reimbursable Expenses then due without the right to compensation for anticipated profits on services not completed. CONSULTANT will submit to the OWNER, within the timeframe set in the termination notice, all work and documents prepared to that point. Fixed-fee payment to the CONSULTANT, if applicable, shall be proportional to services performed to the date of termination.

SECTION 8 - OWNER REMEDIES

8.1 The OWNER and CONSULTANT agree that in the event of a delay in completion for which the OWNER suffers actual damages, the OWNER may elect to pursue its actual damages and any other remedy allowed by law. Conditions under which the OWNER may seek other damages include, but are not limited to:

8.1.1 Failure of the CONSULTANT to make adequate progress in accordance with paragraph 7.5.4 above.

8.1.2 Failure of the CONSULTANT to design in compliance with the laws of City, State and federal governments as specified in Paragraph 1.4.2 of the **Supplemental Terms and Conditions of this AGREEMENT**, such that subsequent compliance costs exceed expenditures which would have been involved had services been

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

properly executed by the CONSULTANT. The CONSULTANT will financially participate in the OWNER'S financial losses for those non-value added compliance costs.

8.1.3 Losses are incurred, despite the Quality Control Plan (QCP), because of defects, errors and omissions in the design, working drawings, specifications or other documents prepared by the CONSULTANT to the extent that the financial losses are greater than the OWNER would have originally paid had there not been defects, errors and omissions in the documents. The CONSULTANT will financially participate in the OWNER'S financial losses for those non-value added work costs.

8.2 Pursuant to Section 6.1.4, the OWNER may assert a claim against the CONSULTANT's professional liability insurance as appropriate when other remedies are not available or offered for design deficiencies discovered during and after PROJECT construction. When the OWNER incurs non-value added work costs for change orders due to design errors or omissions, the OWNER will send the CONSULTANT a certified cost recovery claim letter that includes

- (1) summary of facts with supporting documentation;
- (2) instruction for CONSULTANT to revise design documents, if appropriate, at CONSULTANT's expense;
- (3) calculation of non-value added work costs incurred by the OWNER; and
- (4) deadline for CONSULTANT's response.

The CONSULTANT will provide a preliminary response to OWNER's cost recovery claim letter within seven (7) calendar days of receipt of the claim letter. The CONSULTANT must submit a formal documented response to the claim letter to the OWNER within fourteen (14) calendar days of the date of the preliminary response. The CONSULTANT will provide the payment requested by OWNER within thirty (30) calendar days of OWNER's acceptance of the CONSULTANT's formal response or the CONSULTANT will request alternative dispute resolution, as described in subsection 10.2 of this AGREEMENT, within fourteen (14) calendar days of OWNER's rejection of the CONSULTANT's formal response.

8.3 The CONSULTANT may be required to revise bid documents and re-advertise the PROJECT at the CONSULTANT's sole cost (including printing) if, in the OWNER's judgment, the CONSULTANT generates excessive addenda, either in terms of the nature of the revisions or the actual number of changes due to the CONSULTANT's errors or omissions.

8.4 Decisions to Withhold Payment

8.4.1 OWNER may withhold or nullify the whole or part of any payment to such extent as may be necessary because of conditions outlined in paragraph 5.3.3 "Payments Withheld".

SECTION 9 - CONSULTANT REMEDIES

9.1 If the CONSULTANT is prevented from completing any part of the PROJECT within the time established in the RAP due to delays beyond the reasonable control of either the OWNER or the CONSULTANT, an extension of the PROJECT schedule in an amount equal to the time lost due to such delay shall be the CONSULTANT's sole and exclusive remedy. Performance interrupted by an act of god or the result of war, riot, civil commotion, sovereign conduct, or the conduct of a third party, will be excused for the period of time necessary to remedy the effect of the precipitating occurrence. In such cases, a conference will be held within three (3) working days of the end of the occurrence to establish a revised schedule in the RAP.

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

9.2 CONSULTANT's requests for remedies arising from the terms of this AGREEMENT for conditions other than those specified in subsection 9.1 must be done in accordance with the following:

9.2.1 Within thirty (30) calendar days after the CONSULTANT could be reasonably expected to know of the occurrence prompting the request for an extension of time, the CONSULTANT must deliver a preliminary written notice to the OWNER describing the general nature of the request. Within thirty (30) calendar days after the preliminary notice, the CONSULTANT must provide the OWNER written supporting documentation stating all known time extensions to which the CONSULTANT is entitled.

9.2.2 Within thirty (30) calendar days of receipt of notice of the amount of the requested remedy with supporting data, OWNER and CONSULTANT will meet to discuss the request, after which an offer of settlement or notification of no settlement offer will be made to CONSULTANT. If CONSULTANT is not satisfied with the proposal presented, CONSULTANT will have thirty (30) calendar days in which to

- (1) submit additional supporting data requested by the OWNER;
- (2) modify the initial request for remedy; or
- (3) request Alternative Dispute Resolution.

SECTION 10 - DISPUTE RESOLUTION

10.1 Filing of Claims

10.1.1 Claims arising from the circumstances identified in this AGREEMENT, or other occurrences or events, shall be made by Written Notice delivered by the party making the Claim to the other party within thirty (30) calendar days after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered in writing within thirty (30) calendar days after Written Notice of Claim is delivered by claimant and shall represent that the adjustment claim covers all known amounts and/or extension of time to which claimant is entitled.

10.1.2 Within thirty (30) calendar days of receipt of notice of the amount of the Claim with supporting data, the OWNER and CONSULTANT shall meet to discuss the Claim, after which an offer of settlement or notification of no settlement offer will be made to claimant. If claimant is not satisfied with the proposal presented, claimant shall have thirty (30) calendar days in which to: (i) submit additional supporting data requested by the other party; (ii) modify the initial Claim; or (iii) request Alternative Dispute Resolution.

10.2 Alternative Dispute Resolution

10.2.1 If a dispute exists concerning a CONSULTANT or OWNER, the parties agree to use the following procedure prior to pursuing any other available remedies.

10.2.2 Negotiating with Previously Uninvolved Personnel

Either party may make a written request for a meeting to be held between representatives of each party within fourteen (14) calendar days of the request or such later period that the parties may agree to. Each party shall endeavor to include, at a minimum, one (1) previously uninvolved senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. If a previously uninvolved senior level decision maker is unavailable due to the size of the CONSULTANT's organization or any other reason, the CONSULTANT shall nonetheless provide an appropriate senior level decision maker for the meeting. The

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

purpose of this and any subsequent meetings will be good faith negotiations of the matters constituting the dispute. Negotiations will be concluded within thirty (30) calendar days of the first meeting, unless mutually agreed otherwise.

10.3 Mediation

10.3.1 If the procedure described in 10.2.2 proves unsuccessful or is waived pursuant to its terms, the parties shall initiate the mediation process. OWNER and CONSULTANT agree to select within thirty (30) calendar days a mediator trained in mediation skills and knowledgeable of the CONSULTANT's professional discipline, to assist with resolution of the dispute. OWNER and CONSULTANT agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this AGREEMENT prevents the parties from relying on the skills of a person who also is trained in the subject matter of the dispute and/or a contract interpretation expert. Should the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the parties agree to ask the Travis County Dispute Resolution Center to select a qualified individual, which selection is binding on the parties.

10.3.2 Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. The parties hereby agree that mediation, at a minimum, shall provide for

- (1) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes;
- (2) a meeting of all parties for the exchange of points of view; and
- (3) separate meetings between the mediator and each party to the dispute for the formulation of resolution alternatives.

The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session, unless mutually agreed otherwise. Should the parties fail to reach a resolution of the dispute through mediation, then each party is released to pursue other remedies available to them.

10.4 Resolution of Disputes between CONSULTANT and Subconsultant:

The CONSULTANT agrees to follow the procedures paralleling those outlined in subsections 10.1, 10.2, and 10.3 in the event of a dispute with a subconsultant. The OWNER is not a party to the dispute resolution process between the CONSULTANT and subconsultants. However, if the OWNER is notified of a subconsultant claim, the OWNER will withhold payments to the CONSULTANT in accordance with subparagraph 5.3.3.2 until receiving notification that the claim has been resolved.

SECTION 11 - MISCELLANEOUS PROVISIONS

11.1 Owner's Right to Audit

11.1.1 "Records" means all records generated by or on behalf of CONSULTANT and each subconsultant, whether paper, electronic, or other media, which are in any way related to performance of or compliance with this Agreement, including, without limitation:

- .1 accounting records;
- .2 written policies and procedures;
- .3 subcontract files;
- .4 correspondence;
- .5 supplemental amendments to this AGREEMENT (as appropriate);

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

- .6 agreements between CONSULTANT and any subconsultant;
- .7 records necessary to evaluate contract compliance and any claim submitted by CONSULTANT or any of its subconsultants;
- .8 any other CONSULTANT record that may substantiate any charge related to this Agreement; and
- .9 technical work products in accordance with the approved PROJECT RAP.

11.1.2 CONSULTANT shall allow OWNER's agent or its authorized representative to inspect, audit, and/or reproduce all Records generated by or on behalf of CONSULTANT and each subconsultant, upon OWNER's written request. Further, CONSULTANT shall allow OWNER's agent or authorized representative to interview any of CONSULTANT's employees, all subconsultants, and all their respective employees.

11.1.3 CONSULTANT shall retain all its Records, and require all its subconsultants to retain their respective Records, during this Agreement and for the longest of these specified periods: (i) three (3) years after final payment, (ii) until all audit and litigation matters that OWNER has brought to the attention of CONSULTANT are resolved, or (iii) longer if required by law. OWNER's right to inspect, audit, or reproduce Records (at no cost to OWNER), or interview employees of CONSULTANT or its respective subconsultants exists for the same period described in the preceding sentence.

11.1.4 CONSULTANT must provide sufficient and accessible facilities during its normal business hours for OWNER to inspect, audit, and/or reproduce Records, and to interview any person about the Records.

11.1.5 CONSULTANT shall insert these requirements in each written agreement between CONSULTANT and any subconsultant and require each subconsultant to comply with these provisions.

11.2 Ownership and Use of Documents

11.2.1 All PROJECT Drawings and Specifications produced by the CONSULTANT under this AGREEMENT are the property of the OWNER. The CONSULTANT shall also provide the OWNER high quality mylar and digital computer copies on CD or other OWNER-approved media of updated drawings and reproducible copies of specifications as specified in paragraph 1.4.2 of the **Supplemental Terms and Conditions of this AGREEMENT**. The cost of such copies will be paid as specified in Section 5 of this AGREEMENT. The CONSULTANT may not provide copies of or otherwise use the work products covered by this subsection 11.2 without the express prior written approval of the OWNER.

11.2.2 The CONSULTANT agrees that items such as plans, drawings, photos, designs, studies, specifications, computer programs, schedules, technical reports, or other work products which is/are specified to be delivered under this AGREEMENT, and which is/are to be paid for by the OWNER, is/are subject to the rights of the OWNER in effect on the date of this AGREEMENT. These rights include the right to use, duplicate and disclose such items in whole or in part, in any manner and for whatever purpose, and to have others do so. The CONSULTANT shall not copyright or otherwise claim ownership of the work products covered by this subsection 11.2. The CONSULTANT shall include in its subconsultant contracts appropriate provisions to achieve the purpose of this subsection 11.2.

11.2.3 All such items furnished by the CONSULTANT pursuant to this AGREEMENT are considered instruments of its services in respect to the PROJECT. It is understood that the CONSULTANT does not represent such items to be suitable for reuse on any other project or for any other purpose(s). If the OWNER reuses such items without the CONSULTANT's specific written verification or adaptation, such reuse will be at the risk of the OWNER, without liability to the CONSULTANT.

**PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS OF THE AGREEMENT**

11.2.4 Should the CONSULTANT be terminated under this AGREEMENT, the OWNER may continue the PROJECT and receive copies of the Drawings, Specifications, or other documents within fourteen (14) calendar days of the termination notice. Copies will be in the format designated by the OWNER, as specified in 1.4.2 or 1.4.5 of the **Supplemental Terms and Conditions of this AGREEMENT** (depending on the PROJECT's status at time of termination). The OWNER may have these documents completed, corrected, revised or added to by another design professional in accordance with Title 22, Chapter 137.33(i) of the Texas Administrative Code.

11.2.5 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the PROJECT is not to be construed as publication in derogation of the CONSULTANT's rights.

11.3 Venue

11.3.1 In the event of any suit at law or in equity involving the AGREEMENT, venue will be exclusively in Travis County, Texas and the laws of the State of Texas shall apply to the interpretation and enforcement of this AGREEMENT.

11.4 Definitions

11.4.1 Terms in this AGREEMENT will have the same meaning as those in the standard purchasing and construction documents for the City of Austin, Texas. The applicable definitions may be viewed at <http://www.ci.austin.tx.us/purchase/downloads/ifb0100.pdf> and <http://www.ci.austin.tx.us/aeservices/toc.htm> respectively.

11.5 Severability

11.5.1 If any word, phrase, clause, sentence or provisions of this instrument, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding only effects such word, phrase, clause, sentence or provision, and such finding does not effect the remaining portions of this instrument; this being the intent of the parties in entering into this instrument; and all provisions of this instrument are declared to be severable for this purpose.

11.6 Indemnification

11.6.1 The CONSULTANT shall indemnify and hold harmless the OWNER, and its officers, agents and employees, from and against all claims, demands, costs, causes of action, and liability of every kind and nature, including reasonable attorney's fees for the defense of any and all claims and demands, arising directly or indirectly from, or in any way connected with, the negligent performance of or failure to perform services in conformance with this AGREEMENT by CONSULTANT, its officers, agents, employees, and parties with whom it contracts.

11.7 Notices

11.7.1 Any and all notices under this AGREEMENT must be in writing and shall be delivered to the party entitled to receive the same by hand or U.S. Certified Mail, return receipt requested, addressed as specified in subparagraph 11.7.1.1 of the **Supplemental Terms and Conditions of this AGREEMENT**.

11.7.2. Mailed notice will be deemed effective three (3) business days after such notice is mailed by Certified Mail with return receipt requested. Hand delivered notice will be effective when received and acknowledged by signed receipt.

11.8 Successors and Assigns

11.8.1 The OWNER and the CONSULTANT bind themselves, their partners, successors, assigns and legal representatives to the other party to this AGREEMENT with respect to all covenants of this AGREEMENT. Neither the CONSULTANT nor the OWNER may assign, sublet or transfer any interest in this AGREEMENT without the prior written consent of the other party.

11.9 Extent of Agreement

11.9.1 This AGREEMENT represents the entire and integrated agreement between the OWNER and the CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended only by written instrument signed by authorized representatives of both OWNER and CONSULTANT.

END

DRAFT

SECTION 1 - CONSULTANT'S RESPONSIBILITIES

1.1 Performance of Services

Delete Paragraph 1.1.8 in its entirety and replace with the following:

1.1.8 The CONSULTANT will attend and draft complete minutes of each PROJECT meeting between CONSULTANT and OWNER, CONSULTANT and Construction Manager at Risk (CMR) and CONSULTANT and other agencies; and submit them to OWNER for review and approval, within seven (7) calendar days after each PROJECT meeting.

Insert the following Paragraph 1.1.14:

1.1.14 The CONSULTANT will prepare separate bid documents for the OWNER'S use in bidding and awarding contracts for the procurement of furniture and shelving for the PROJECT. It is the OWNER's intent to issue multiple procurement package(s), which may include a package to purchase from State of Texas furniture contracts available to the OWNER. The fixed budget for the furniture and shelving will be established at the end of the schematic design phase with the assistance of the CONSULTANT and its subconsultants. This budget is in addition to the PROJECT Fixed Construction Budget. These services will be provided at the appropriate time to allow installation of materials immediately following the issuance of Substantial Completion for the PROJECT. The CONSULTANT and its subconsultants will also provide the OWNER assistance in evaluating the bids and awarding the contracts, and equivalent contract administration services for their installation.

Insert the following 1.1.13 through 1.1.30:

1.1.13 The CONSULTANT shall perform the basic services in relation to the design of the project described in Exhibit A - Scope of Services.

1.1.14 The CONSULTANT shall assist the OWNER with the selection of colors for finishes, furniture, equipment, etc. included in the Work. The CONSULTANT shall prepare and submit a color board for the OWNER's review and approval that clearly illustrates the CONSULTANT'S recommended color scheme.

1.1.15 If directed by OWNER, CONSULTANT shall update OWNER provided record documents.

1.1.16 If the OWNER provided record documents to be updated that have been sealed by another Engineer, the CONSULTANT shall notify the Engineer of record of the agreement to update said documents. All updates and revisions to existing sealed documents shall be made as directed by OWNER and in accordance with the Texas Board of Professional Engineers rules.

1.1.17 The CONSULTANT agrees that record documents provided by the OWNER are to be used only for the intended purpose and to meet this contract's obligations. Use of these record documents for any other purpose not explicitly authorized by the OWNER is strictly prohibited.

1.1.18 The CONSULTANT shall incorporate sustainable principles and elements in accordance with the Leadership in Energy and Environmental Design (LEED™) Green Building Rating System as outlined in Council Resolution 20071129-045.

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

1.1.19 The CONSULTANT shall review the Council Resolution Implementation form and instructions with the project manager for determining the achievement of an appropriate certification by LEED™ Green Building Rating System Silver or incorporation of the Baseline Sustainability Standards. The CONSULTANT is responsible for preparing all documentation required for LEED™ certification. The OWNER will pay all application and certification fees.

1.1.20 The CONSULTANT shall use an integrated design approach, where the evaluation of any PROJECT element, material or system is not viewed solely on the basis of its own isolated merit, but is designed and then appraised as an integrated part of the entire PROJECT. This approach will require team members from all disciplines, during each stage of the design process, to investigate alternatives, question assumptions and research approaches to optimize building performance.

1.1.21 The CONSULTANT shall provide a written status report of implementation of the Council Resolution.

1.1.22 The CONSULTANT shall monitor the PROJECT during construction to verify and ensure that intended and specified elements as specified on the LEED™ Check List or the Baseline Sustainability Standards are being incorporated into the PROJECT. The CONSULTANT shall coordinate all relevant items with the Building Commissioning Agent.

1.1.23 For construction activities performed by the CONSULTANT or Subconsultants, workers shall be paid not less than the prevailing wage rates, in accordance with Exhibits B (Section 00830) and C (Section 00830HH).

1.1.24 The CONSULTANT will incorporate all applicable federal, state, and local design requirements and guidelines into its work products, including but not limited to Federal Aviation Administration, City of Austin Urban Design Guidelines, Commercial Design Standards, Core Transit Corridor streetscape standards, green infrastructure and innovative stormwater facilities as outlined in Council Resolution 20071129-046. The CONSULTANT will prepare presentations to the Design Commission during the preliminary phase to ensure compliance with city design and sustainability standards for the building and site development.

1.1.25 Construction Manager at Risk Delivery Method. The delivery method for this PROJECT is Construction Manager at Risk (CMR), authorized under Chapter 2269 of the Texas Government Code. The CONSULTANT'S responsibilities related to this process are further described in Section 12.1, "Construction Manager at Risk Delivery Method".

1.1.26 Under a separate AGREEMENT the OWNER will hire a Building Commissioning Agent (CA) to ensure that all PROJECT elements are designed, installed, functionally tested, documented and capable of being maintained to perform in conformity with the OWNER'S PROJECT requirements. The CONSULTANT will coordinate its services and professional services schedule ("Schedule") with the CA. The CONSULTANT will be provided with a copy of the agreement between the OWNER and the CA ("CA Agreement"). Nothing in the CA Agreement will confer direct responsibility on the CA for the CONSULTANT'S services, nor will anything contained in the CA Agreement diminish the CONSULTANT'S responsibility for its services as described in this AGREEMENT.

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

1.1.27 The CONSULTANT will participate in the City's Arts in Public Places process and responsibilities may include participation on the panel to advise on the selection of the artist(s); working with the artist(s) to identify design elements/art for the site; assisting the artist(s) with design aspects of the art/design elements; working with the CMR to oversee possible fabrication, and installation of art/design elements.

1.1.28 The CONSULTANT will participate in up to six meetings (6) which may include Austin Airport Advisory Commission, City Council and other Boards and Commissions as directed by OWNER.

1.1.29 The CONSULTANT will coordinate the exchange of electronic documents, other than those made through use of email services, via a File Transfer Protocol (FTP) site that will be created, operated, and managed by the CONSULTANT.

1.1.30 The CONSULTANT has signed the Non-Discrimination Certificate (Exhibit D).

Insert the following Paragraphs 1.4.1 et seq:

1.4.1 Phase A: Preliminary Phase Services

If authorized by OWNER, the CONSULTANT shall perform the Phase A: Preliminary Phase Services as described below and in Attachments 1 (RAP) and 4:

1.4.1.1 As part of the Preliminary Phase, the CONSULTANT shall establish and provide to OWNER an architectural design program narrative describing major functional elements, space requirements and relationships between the elements, requirements within each space (environmental, acoustical, lighting, electrical, communications, cabinetry, security, etc.), site development requirements, code requirements, aesthetic requirements and other special considerations. The program document must incorporate Owner's Project Requirements. Basic Services of the CONSULTANT will include programming efforts such as reviewing existing building and site conditions, making measured drawings of existing construction, interviewing personnel, reviewing inventories of furniture, equipment and materials, attending meetings and taking other actions as necessary to establish the scope of the PROJECT as dictated by the OWNER'S needs and the Fixed Construction Budget as described in Section 3.

1.4.1.2 The CONSULTANT shall provide a preliminary evaluation of the OWNER'S operating program and the PROJECT preliminary construction cost estimate (Class 5 as described in the AACE® International Recommended Practice No. 56R-08) each in terms of the other, and shall review with the OWNER and CMR alternative approaches to design and construction of the PROJECT.

1.4.1.3 For all Phase A services, the CONSULTANT shall follow the approved schedule and meet all milestone requirements specified in the PROJECT RAP.

1.4.1.3.1 The schedule for the performance of the CONSULTANT's professional services for this Agreement will be prepared by the CONSULTANT in coordination with the OWNER and the CMR and will be approved by OWNER before the first progress payment will be made to the CONSULTANT. Any changes to the PROJECT's professional services Schedule must be approved in writing by OWNER and acknowledged by the CMR.

1.4.1.3.2 A separate CMR Project schedule for the development of the CMR's

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

pre-construction and construction phase services (the "CMR Project Schedule") will also be prepared by the CMR in coordination with the OWNER and the CONSULTANT and will be approved by the OWNER before the first progress payment will be made to the CMR. Any changes to the CMR Project Schedule must be approved in writing by OWNER and acknowledged by the CONSULTANT.

1.4.1.3.3 The CONSULTANT, the City and the CMR will take cognizance of the critical activities and milestones necessary for the CONSULTANT's, the CMR's, and the OWNER's performance of the services necessary for the design, permitting, construction and commissioning of the Project in the development and approval of their respective schedules, with a recognition of the different purposes such schedules are intended to serve and an acknowledgment of the shared purpose of coordinating both schedules to achieve maximum Project efficiencies and control.

1.4.1.3.4 In addition, while an approved change to one schedule may appear to require a change to the other schedule, the OWNER will review any potential cross schedule impacts and have final approval over any changes to either schedule. In any case, a change in one schedule will not necessarily result in any adjustment to that party's or the other party's schedule or compensation, unless approved by OWNER.

1.4.1.4 For all Phase A services, the CONSULTANT shall provide all required QCP documentation.

1.4.1.5 The schedule for the performance of the CONSULTANT's professional services for this Agreement will be prepared by the CONSULTANT in coordination with the OWNER and the CMR and will be approved by OWNER before the first progress payment will be made to the CONSULTANT. Any changes to the PROJECT's professional services Schedule must be approved in writing by OWNER and acknowledged by the CMR.

1.4.1.6 A separate CMR Project schedule for the development of the CMR's pre-construction and construction phase services (the "CMR Project Schedule") will also be prepared by the CMR in coordination with the OWNER and the CONSULTANT and will be approved by the OWNER before the first progress payment will be made to the CMR. Any changes to the CMR Project Schedule must be approved in writing by OWNER and acknowledged by the CONSULTANT.

1.4.1.7 The CONSULTANT, the City and the CMR will take cognizance of the critical activities and milestones necessary for the CONSULTANT's, the CMR's, and the OWNER's performance of the services necessary for the design, permitting, construction and commissioning of the Project in the development and approval of their respective schedules, with a recognition of the different purposes such schedules are intended to serve and an acknowledgment of the shared purpose of coordinating both schedules to achieve maximum Project efficiencies and control.

1.4.1.8 In addition, while an approved change to one schedule may appear to require a change to the other schedule, the OWNER will review any potential cross schedule impacts and have final approval over any changes to either schedule. In any case, a change in one schedule will not necessarily result in any adjustment to that party's or the other party's schedule or compensation, unless approved by OWNER.

1.4.2 Phase B: Design Phase Services

If authorized by OWNER, the CONSULTANT shall perform the Phase B services as described below and in Attachments 1 (RAP) and 4:

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

1.4.2.1 Schematic Design Phase

1.4.2.1.1 Based on mutually agreed upon architectural design program and PROJECT Class 4 estimate requirements, the CONSULTANT shall prepare, for approval by the OWNER, Schematic Design Documents consisting of (i) site plan, (ii) architectural floor plans, (iii) building sections, (iv) exterior elevations, (v) mechanical/electrical floor plans, (vi) subconsultant schematic drawings, (vii) description of project components, (viii) Sustainability Checklist, (ix) an Opinion of Probable Construction Cost (Class-4 cost estimate as described in the AACE® International Recommended Practice No. 56R-08) based on current area, volume or other unit costs, life cycle and maintenance cost and (ix) preliminary utility use analysis and energy modeling analysis. The CONSULTANT's opinion of construction costs shall be based on materials and labor process prevailing at the time of the preparation of the Schematic Design without consideration of inflationary increases in costs and will be indexed to the *Engineering News Record* (ENR) Construction Cost Index prevailing at the time of the preparation of the estimate for this phase of the project. The CONSULTANT shall comply with the OWNER's CADD Standards. The Class 4 estimate must be approved by CMR and OWNER prior to proceeding to the next project phase.

1.4.2.1.2 The CONSULTANT shall prepare and submit an electronic editable (pdf) copy of preliminary plans and specifications for the OWNER's and CMR's review and comment.

1.4.2.1.3 The CONSULTANT shall prepare a preliminary checklist of items relating to LEED™ or sustainability goals for the PROJECT.

1.4.2.1.4 CONSULTANT with input and assistance from the Owner and the CMR shall submit a construction management plan to the Federal Aviation Agency (FAA). In addition, the CONSULTANT shall meet all other FAA requirements, including, but not limited to construction safety planning requirements and phasing plans included with the project plans, and the other Form 7460 information and documentation required by the FAA.

1.4.2.1.5 For all Design Phase services, the CONSULTANT must design for compliance with the applicable laws, rules, and regulations of City, State and federal governments. The CONSULTANT must request variances or waivers of any such requirements as appropriate.

1.4.2.1.6 CONSULTANT with input and assistance from the Owner and the CMR shall submit a construction management plan to the Federal Aviation Agency (FAA). In addition, the CONSULTANT shall meet all other FAA requirements, including, but not limited to construction safety planning requirements and phasing plans included with the project plans, and the other Form 7460 information and documentation required by the FAA.

1.4.2.2 Design Development Phase

1.4.2.2.1 Based on the accepted Schematic Design Documents and any adjustments authorized by the OWNER in the program or Fixed Construction Budget as described in Section 3, the CONSULTANT shall prepare for OWNER's review and comment, design development documents consisting of further development of the Schematic Design Documents and additional documents to fix and describe the size and character of the entire PROJECT as to the architectural design intent for all components and elements. The CONSULTANT must comply with the OWNER's CADD Standards. Consultant shall prepare and submit an electronic pdf copy of the Design Development documents to the OWNER and CMR for review and comment.

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

1.4.2.2.2 The CONSULTANT shall provide an updated LEED or Sustainability Checklist and submit building energy modeling calculations (lighting, HVAC, building envelope, etc.), and other documentation to the OWNER for review and comment, to determine whether the targeted sustainability goals and building permit requirements of the City of Austin will be met.

1.4.2.2.3 The CONSULTANT shall prepare a complete Project Manual that includes, City Standard Front-end Documents (Division 0 & Division 1) and detailed specifications using the OWNER'S standard specifications for elements of the PROJECT that relate to horizontal construction and work in the right-of-way. Any revisions or special provisions to these standard specifications must be submitted to the OWNER for written approval. The CONSULTANT may use MasterSpec or CSI for vertical construction elements of the PROJECT as special specifications. The CONSULTANT shall submit the special specifications to the OWNER for review and comment.

1.4.2.2.4 The CONSULTANT shall submit to the OWNER and CMR an updated written Opinion of Probable Construction Cost (Class 3 estimate as described in the AACE® International Recommended Practice No 56R-08). If this estimate exceeds the Fixed Construction Budget as described in Section 3, the CONSULTANT shall consult with the OWNER and CMR as to what action is to be taken if the OWNER requires revisions to the PROJECT scope to reduce the PROJECT cost as required to stay within the Fixed Construction Budget. The CONSULTANT shall then make such revision to the PROJECT construction documents at no additional cost to the OWNER. The Class 3 estimate must be approved by OWNER and CMR prior to proceeding to the next project phase.

1.4.2.2.5 The CONSULTANT shall prepare a Draft Storm Water Pollution Prevention Plan (SWPPP) using the standard City template and submit to the OWNER for review and comment. All engineering computations shall be certified by a Licensed Professional Engineer with competence in this area as required by Title 22, Chapter 137 of the Texas Administrative Code. All SWPPPs shall be signed by a Licensed Professional Engineer (TX) or a Certified Professional in Erosion and Sedimentation Control [(CPESC)(<http://cpesc.org>)]. If the SWPPP itself contains engineering calculations, then a Licensed Professional Engineer must seal and sign the SWPPP. All drainage calculations shall be done in accordance with the guidelines in the Drainage Criteria Manual. The final SWPPP will address all OWNER's comments provided on the Draft SWPPP.

1.4.2.3 Construction Documents Phase

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

1.4.2.3.1 Based on the accepted design development documents and any further adjustments in the scope or quality of the PROJECT or in the Fixed Construction Budget authorized by the OWNER, the CONSULTANT shall prepare for approval by OWNER and review by CMR, construction documents in compliance with the OWNER's requirements, conforming to all applicable design standards specifically including, but not limited to the FAA Design (Series 150) and Construction Standards (AC 150/5370-10). The CONSULTANT shall prepare a Project Manual that includes all required "Front End" Division 0 & 1 sections and standard and special specifications required for the scope of work. The CONSULTANT shall also prepare drawings including plan views, sections and details clearly defining and describing the full scope of work of the improvement, limits of work, sequencing requirements, access routes, environmental-protection requirements, and contractor staging and storage areas. The CONSULTANT shall comply with the OWNER's CADD Standards. The OWNER's relevant Standard Details shall be included in the drawings if sufficient for the PROJECT. The CONSULTANT shall prepare any Special Details required for the project and submit them to the Owner for review and comment. Details describing the scope of the PROJECT shall be sufficient such that no additional details are required from the CONSULTANT after the bidding phase is complete.

1.4.2.3.2 Construction Document Drawings will be prepared with computer aided design and drawing technology utilizing one of the following standard formats: Arc/Info (export), DXF (.DXF), or IGDS (.DGN) and in compliance with Austin-Bergstrom International Airport (ABIA) Standard CADD Guidelines. The guidelines established in the United States National CAD Standard[®] published by the National Institute of Building Sciences, will be used for sheet layering. Drawing sheet size will be 24" X 36" and minimum lettering size will be 3/32" unless otherwise approved by OWNER.

1.4.2.3.3 The CONSULTANT shall design barrier-free buildings and facilities in accordance with the Americans with Disabilities Act, Texas Accessibility Standards, and all applicable laws and regulations. The CONSULTANT shall record in writing the major proceedings of each planning conference with the Architectural Barriers Office, Texas Department of Licensing and Registration and submit reports, including written Variances of Requirements, to the OWNER for filing. The OWNER will be responsible for payment of required permit fees and the costs of variances.

1.4.2.3.4 The CONSULTANT shall provide an updated LEED or Sustainability Checklist and submit building energy modeling calculations (lighting, HVAC, building envelope, etc.), and other documentation to the OWNER for review and comment, to determine whether the targeted sustainability goals and building permit requirements of the City of Austin will be met.

1.4.2.3.5 CONSULTANT shall provide one (1) printed set and one (1) electronic editable pdf format copy, and if requested by OWNER five (5) renderings and three dimensional illustrations of the proposed Construction Documents (review sets) at the CONSULTANT'S expense, for OWNER'S review and comment at the 90% and 100% CD phase, prior to reproducing copies for bidding purposes. The CMR shall also receive a set of the 65% Construction Documents for its review and comments. It is presently anticipated that the CMR will base its GMP Proposal on the approved 65% complete set of Construction Documents. Subject to reasonable extensions of time, the CMR will have up to 60 days from the receipt of approval by the City of the 65% complete Construction Documents in which to submit a GMP Proposal, the OWNER will have 30 days in which to review, comment, and accept or reject the Proposal, with a possible extension for further negotiations.

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

1.4.2.3.6 If the OWNER and the CMR have not been able to negotiate the GMP for the construction of the Project or a component thereof within 90 days, CONSULTANT shall provide to the OWNER and CMR a written Opinion of Probable Construction Cost (Class 1 estimate as described in the AACE® International Recommended Practice No. 53R-08) based upon prevailing market conditions within one week from date of submittal. One (1) printed set and one (1) electronically editable copy of the final 100% Construction Documents will be provided to the OWNER. If this Class 1 construction cost estimate exceeds the Fixed Construction Budget as described in Section 3, the CONSULTANT shall consult with the OWNER and CMR as to what action is to be taken if the OWNER requires revisions to the PROJECT scope to reduce the PROJECT cost as required to stay within the Fixed Construction Budget. The CONSULTANT shall then make such revision to the PROJECT construction documents at no additional cost to the OWNER. Otherwise, if the Class 1 estimate construction cost estimate does not exceed the Fixed Construction Budget, then the CONSULTANT will be entitled to additional services compensation for any revisions to the Project construction documents requested by the OWNER. The Class 1 estimate must be approved by OWNER and CMR prior to proceeding to the next project phase.

1.4.2.3.7 Following the return of marked up Construction Documents (or separate comment list) from the OWNER, the CONSULTANT shall make final modifications and corrections to Construction Documents as called to the CONSULTANT'S attention by the OWNER; the CONSULTANT shall resubmit corrected Construction Documents to the OWNER in the same format and number prescribed in 1.4.2.3.6 for review and comment. If implementation of the OWNER'S review comments will have an adverse effect (schedule, budget, safety or other) on the PROJECT, the CONSULTANT shall immediately notify the OWNER in writing with an explanation of such adverse effect; the OWNER shall respond to the CONSULTANT's comments in writing.

1.4.2.3.8 Final Subcontractor Bid Documents, which incorporate the OWNER's comments described in 1.4.2.3.7, will be furnished to the OWNER and CMR at least fourteen (14) calendar days prior to the CMR advertising the PROJECT for subcontractor bids. Bid Documents will not be printed until OWNER authorizes the CONSULTANT to do so.

1.4.2.3.9 Acceptance of the Construction Documents by the OWNER will not constitute nor be deemed a release of the responsibilities and liability of the CONSULTANT for the accuracy and competency of its designs, Drawings, Specifications or other documents and services performed under this AGREEMENT. No approvals or acceptance by or on behalf of the OWNER will be deemed an assumption of such responsibility by the OWNER for any defect, error or omission in said designs, Drawings, Specifications or other documents prepared by the CONSULTANT. The CONSULTANT agrees at its own expense to rework documents as necessary to correct its designs, Drawings, Specifications or documents found to be in error.

1.4.2.3.10 Unless otherwise stipulated, the CONSULTANT shall, upon completion of Construction Documents, provide drawings for the OWNER'S use in publicizing the PROJECT. Drawings will be 8-1/2" X 11" electronic pdf format, and, if requested by OWNER, one (1) electronic pdf renderings and three dimensional illustrations of the following: (1) location map; (2) floor plan(s) naming major spaces and noting the total square footage; (3) major building elevation; and (4) site plan.

1.4.2.4 The CONSULTANT shall, following the OWNER'S approval of the Construction Documents and the Class 1 estimate, assist the OWNER in determining what additional information on Contractor qualifications may be required to be submitted by the bidders with their bids. The CONSULTANT agrees that the OWNER may post the CONSULTANT'S Bidding Documents on-line for bidding purposes.

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

1.4.2.5 For all Phase B services, the CONSULTANT must design for compliance with the applicable laws, rules, and regulations of City, State and federal governments. The CONSULTANT must request variances or waivers of any such requirements as appropriate.

1.4.2.6 For all Phase B services, the CONSULTANT shall follow the approved schedule and meet all milestone requirements specified in the PROJECT RAP. The schedule will be prepared by CONSULTANT in coordination with the CMR and approved in writing by OWNER. Any schedule changes must be approved in writing by OWNER.

1.4.2.7 For all Phase B services, the CONSULTANT shall provide all required QCP documentation.

1.4.2.8 The CONSULTANT shall respond with appropriate and agreed actions to comments from the OWNER's quality assurance and risk management review staff.

1.4.3 Phase C: Bid-Award-Execution Phase Services

If authorized by OWNER, the CONSULTANT shall perform the Phase C services as described below and in Attachments 1 (RAP) and 4:

1.4.3.1 CONSULTANT will assist the OWNER and CMR in the subcontractor bid and/or competitive sealed proposals process. CONSULTANT services will include receiving and resolving questions about bid documents, preparing and issuing necessary addenda to bid documents, participation in or conducting pre-bid conferences, and attending bid openings.

1.4.3.2 For all Phase C services, the CONSULTANT shall coordinate with the OWNER and CMR and follow the approved schedule milestone requirements specified in the CMR PROJECT schedule.

1.4.3.3 If LEED certification is required, CONSULTANT shall submit "Design Phase Submittal" to LEED online within 30 days after construction notice-to-proceed.

1.4.4 Phase D: Construction Phase Services

If authorized by OWNER, the CONSULTANT shall perform the Phase D services as described below and in Attachments 1 (RAP) and 4:

1.4.4.1 The CONSULTANT will be the OWNER's Representative during the Construction Phase, and shall advise and consult with the OWNER. Instructions to the CMR will be forwarded through the CONSULTANT. The CONSULTANT will have authority to act on behalf of the OWNER only to the extent provided in this Section 1.4.4 Phase D Construction Phase Services.

1.4.4.2 The Construction Phase will commence with the execution of the first GMP Amendment to the CMR Agreement or as applicable, the execution of the construction contract. This phase will terminate on the date of final completion of the construction PROJECT, based on the completion milestones established for the construction contract time. The expiration date includes any time extensions granted to the CMR by the OWNER, but in no case will time extensions exceed the approved time extensions identified in the CMR Project Schedule, including the commissioning phase and the warranty phase.

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

1.4.4.3 The CONSULTANT will participate in and document the proceedings of preconstruction conferences with the CMR.

1.4.4.4 The CONSULTANT will visit the site to observe the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. The CONSULTANT'S visits to the site will be at intervals appropriate to the stage of construction, but in no case less than weekly. The CONSULTANT will record observations made on each job site visit, including regularly scheduled project meetings, and will submit a written weekly field report to the OWNER.

1.4.4.5 Reports must include: list of subcontractors on-site by week as reported by CMR, trades at work, approximate manpower, temperature/weather conditions, any variations from Contract Documents, any defective Work, percentage of contract time used compared with percentage of completion of construction, estimated contract completion date, and other meaningful information. Reports for periods when no Work is in progress will state "No Work in Progress".

1.4.4.6 The CONSULTANT will furnish reports to the OWNER within five (5) calendar days of the end of each week of the observations or the report will be considered late. As stated in subsection 5.3.3, the OWNER may withhold payment until the reports are received.

1.4.4.7 In addition, the CONSULTANT'S subconsultants will visit the site at appropriate stages of the Work related to their area of specialty, will record observations made on each job site visit and will submit reports to the CONSULTANT to be incorporated in the CONSULTANT'S reports to the OWNER. The CONSULTANT'S subconsultants will also attend those progress meetings when the CMR's Application for Payment includes requests for areas of Work related to their discipline.

1.4.4.8 The CONSULTANT will review the CMR's Applications for Payment, based on CONSULTANT'S observations on site, evaluate the request, and recommend to OWNER the amount to be paid to the CMR.

1.4.4.9 The CONSULTANT'S approval signature on the Application for Payment constitutes a representation by the CONSULTANT to the OWNER that the work is proceeding in general accordance with the Contract Documents, and that the CMR has progressed to the construction schedule point indicated and is entitled to payment in the amount certified. The CONSULTANT is not responsible for work that is the CMR's responsibility as defined in the CMR's contract with the OWNER.

1.4.4.10 The CONSULTANT will respond within seven (7) calendar days (unless the OWNER grants a time extension), to all requests for information, claims, disputes and other matters in question between the OWNER and the CMR relating to the execution or progress of the work or the interpretation of the Contract Documents. Interpretations and decisions of the CONSULTANT will be in written form, accompanied by drawings as appropriate.

1.4.4.11 If any work does not conform to the Contract Documents, the CONSULTANT will, within 24 hours of the CONSULTANT'S observation, recommend the rejection of any such work to the OWNER in writing. At any point during the Construction Phase, the CONSULTANT may recommend that the OWNER require special inspection or testing of the Work in accordance with the provisions of the Contract Documents.

1.4.4.12 The CONSULTANT will review, approve, or take other appropriate action upon

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

CMR submittals such as Shop Drawings, product data and samples. The CONSULTANT will provide a written response to the CMR within fourteen (14) calendar days (unless a time extension is granted in writing by the OWNER) to avoid a delay in the WORK.

1.4.4.13 The CONSULTANT's review is for the limited purpose of confirming conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT is not responsible for the Work or other requirements that are the CMR's responsibility as defined in the CMR's contract with the OWNER.

1.4.4.14 Unless otherwise specifically stated by the CONSULTANT, the CONSULTANT's review will not constitute approval of safety precautions, construction means, methods, techniques, sequences or procedures.

1.4.4.15 The CONSULTANT may rely upon professional certifications of performance characteristics of materials, systems or equipment if such certifications are required by the construction Contract Documents.

1.4.4.16 Upon receipt of CMR's notification that the Work has been substantially completed, the CONSULTANT and its subconsultants will work with the CMR to verify the PROJECT is ready for the OWNER's inspection within seven (7) calendar days unless the OWNER approves a time extension. The CONSULTANT after determining the contract requirements for substantial completion have been met, will provide written notification to the OWNER that the Work has been completed and is ready for the OWNER's inspection. The OWNER will schedule an OWNER inspection to be attended by the CONSULTANT and its subconsultants. Written documentation of the inspection will be prepared by CONSULTANT and its subconsultants.

1.4.4.17 Within seven (7) calendar days of the completion of the OWNER's inspection, the CONSULTANT will provide the CMR a draft written punch list of items that need to be addressed prior to the Final Completion date specified in the construction contract.

1.4.4.18 Within fourteen (14) calendar days of the completion of the OWNER's inspection, the CONSULTANT will prepare and issue a Certificate of Substantial Completion, utilizing AIA document G704, stating the PROJECT is in substantial compliance with the requirement of the Contract Documents. Attached to the Certificate of Substantial Completion will be the CONSULTANT final written punch list.

1.4.4.19 The CONSULTANT will review all warranties, guarantees, bonds, equipment operating instructions, and similar required material and documents for general compliance with the Contract Documents and will present them to the OWNER. Upon receipt of CMR's written notice that the Work is ready for final inspection and acceptance and receipt of a final Application for Payment from the CMR, the CONSULTANT will make an on-site review within seven (7) calendar days. When the Work is found to be acceptable by the OWNER, the CONSULTANT will, within seven (7) calendar days, sign the final Application for Payment signifying that the Work has been completed in general accordance with the terms and conditions of the Contract Documents and that final payment is due the Contractor.

1.4.4.20 For all Construction Phase services, the CONSULTANT will follow the approved Schedule and meet all milestone requirements specified in the CMR Project Schedule.

1.4.4.21 The CONSULTANT and its subconsultants will participate in the project partnering process including attendance at all Partnering Workshops/Meetings.

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

1.4.4.22 The CONSULTANT will coordinate with the CMR in the preparation and maintenance of the CMR Project Schedule.

1.4.4.23 Unless otherwise notified by OWNER, the CONSULTANT, will be on site during the Commissioning process to offer support to the OWNER and the Commissioning Agent by way of witnessing testing, reviewing results, receiving and resolving questions about design issues, observing training, reviewing documentation, etc.

1.4.4.15 *Construction Project Representation Beyond Basic Services*

1.4.4.15.1 If the OWNER and CONSULTANT agree that more extensive representation at the site is needed, the CONSULTANT shall provide one or more PROJECT Representatives to assist the CONSULTANT in carrying out such responsibilities at the PROJECT or work site. The PROJECT RAP must be revised accordingly.

1.4.4.15.2 Such PROJECT Representatives will be selected with the written approval of the OWNER, employed and directed by the CONSULTANT, and the CONSULTANT will be compensated as mutually agreed between the OWNER and the CONSULTANT.

1.4.5 *Phase E: Post-Construction Phase Services*

If authorized by OWNER, the CONSULTANT shall perform the Phase E services as described below and in Attachments 1 (RAP) and 4:

1.4.5.1 The scope of assistance referenced in this Paragraph 1.4.5 will include, but not be limited to, the following: (1) producing Construction Record Documents for the OWNER; (2) notifying the CMR of defective Work and requesting corrective action; (3) preparing correspondence and other written data as necessary to document, clarify, and resolve discrepancies; and (4) meeting with the CMR at the PROJECT site or other local places when requested by the OWNER.

1.4.5.2 Upon receipt from the CMR of details of deviations from Contract Documents, CONSULTANT shall produce Record Documents for the OWNER'S use within thirty (30) calendar days. The CONSULTANT shall be entitled to rely on the accuracy and completeness of the CMR's details of deviations from the Contract Documents, except for the details of deviations that to Consultant's actual knowledge do not accurately reflect changes from the Contract Documents. The CONSULTANT will ensure that the record drawings of construction incorporate all compiled change orders, change directives, and field orders. The CONSULTANT will ensure that a Professional Architect's seal is affixed and signed on each document, stamped and identified as "RECORD DOCUMENTS", that signifies the recorded changes have been transferred.

1.4.5.2.1 The CONSULTANT shall submit electronic files of PROJECT drawings that are considered Record Documents to OWNER on CD-ROM or other comparable durable electronic media. CONSULTANT shall include Computer-Aided Design electronic files of Record Documents in a format usable by the OWNER (e.g. AutoCAD or Revit files) as well as a pdf copy, signed and sealed by the CONSULTANT. Drawings will be accurate in scale and dimensions and will reflect the final as-constructed condition of the PROJECT, based in part upon any as-constructed information/documentation provided to CONSULTANT by the CMR and/or its subcontractors.

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

1.4.5.2.2 For projects that include improvements or modifications to OWNER's Austin Water Utility system or facilities, drawings included in the Record Documents will include all dimensions and calculations in English units.

1.4.5.2.3 For projects that include improvements or modifications to facilities or resources owned by the Austin Water Utility, the CONSULTANT shall provide the OWNER updated Asset Retirement Request Form(s) based on project as-built drawings. For projects involving new taggable assets, the CONSULTANT shall also provide to OWNER an updated list of new assets installed or delivered as part of the PROJECT. These form(s) and information will be provided to OWNER at the time of the as-built submittal.

1.4.5.3 Under Basic Services, the CONSULTANT shall assist and represent the OWNER through the post-construction period on matters involving defective Work. The CONSULTANT shall communicate with and assist the CMR as necessary to correct all deficiencies within seven (7) calendar days of notification by the CONSULTANT for a specific correction.

1.4.5.4 The CONSULTANT shall require its subconsultants to provide assistance as necessary during the post-construction period stipulated in the approved CMR PROJECT schedule.

1.4.5.5 The CONSULTANT shall perform an on-site review of the Work, accompanied by its subconsultants, no less than thirty (30) calendar days before the one year anniversary of the date of Substantial Completion. Based on the site review, the CONSULTANT shall prepare, within seven (7) calendar days, a list of items needing correction and direct the Contractor to resolve them within a specified time frame. After determining that deficiencies have been corrected, the CONSULTANT shall so notify the OWNER in writing within seven (7) calendar days. This notification by the CONSULTANT does not release the CMR from its responsibilities set forth in the Contract Documents and will not be construed as an implied or express warranty or representation by the CONSULTANT that there are not other deficiencies on the PROJECT.

1.4.5.6 Under Basic Services, the CONSULTANT and its subconsultants agree to provide Post-Construction Phase services as specified in the approved PROJECT RAP. The CONSULTANT shall provide accounting for time expended under Basic Services at the time these services are provided. Additional time for extended warranty period services not included in Basic Services will be considered Additional Services in accordance with Paragraph 1.4.6 and paid for in accordance with the RAP.

1.4.5.7 For all PHASE E services, the CONSULTANT shall follow the approved CMR Project schedule.

1.4.5.8 For Projects that require LEED certification, submit "Construction Phase Submittal" within 30 days of Certificate of Occupancy.

1.4.6 Additional Services

Unless otherwise stated in this AGREEMENT, the Services listed in subparagraphs 1.4.6.1 through 1.4.6.6 are Additional Services. Additional Services authorized in writing by the OWNER will be paid for by the OWNER as provided in this AGREEMENT, in addition to the compensation for Basic Services. Additional Services authorized by the OWNER in writing will be incorporated in the PROJECT RAP, and all applicable articles of the AGREEMENT will apply to the Additional Services. If CONSULTANT identifies a need for Additional Services, the CONSULTANT will submit a proposal for those services to the OWNER within fourteen (14) calendar days of identifying the need. The following are **not** Additional Services:

PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT

(a) Any revisions required for failure to adhere to the Fixed Construction Budget
(b) Minor requests for information by the OWNER that clearly do not require
extensive work by the CONSULTANT.

1.4.6.1 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment, other than those services included in Paragraph 1.1.12.

1.4.6.2 Making revisions in Drawings, Specifications, or other documents in connection with Change Orders, unless such Change Orders are caused by errors, omissions or other factors within the CONSULTANT's control.

1.4.6.3 Making revisions in Drawings, Specifications or other documents when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.

1.4.6.4 Providing design services of subconsultants not included in original scope for the PROJECT.

1.4.6.5 Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with generally accepted, regional consulting practices, including but not limited to, the following items:

- Land development and feasibility studies.
- Contacts with neighborhood associations, boards, and/or committees related to land acquisition issues, beyond that described in Section 1.
- Engineering of and coordination of off-site construction.
- Special subconsultant services (environmental, archaeological, acoustical, asbestos removal, hydrological, traffic, computer and audio/visual design, etc.)
- Special investigations, including environmental impact studies, that involve detailed consideration of operation, maintenance and overhead expenses; rate schedules; earnings and expense statements; special feasibility studies; appraisals; evaluations; and material audits or inventories required for certifications of force account construction performed by CMR or OWNER.
- Detailed mill, shop and/or laboratory inspection of materials and/or equipment
- Legal proceedings, unless the CONSULTANT is a party to the proceedings.

1.4.6.6 Revising Drawings, Specifications or other documents when such revisions are inconsistent with, or contradict, prior approvals or instructions given to the CONSULTANT by the OWNER.

1.4.6.7 For all Additional Services, the CONSULTANT shall follow the approved schedule and meet all milestone requirements specified in the PROJECT RAP.

1.4.6.8 If the OWNER and the CMR have not been able to negotiate the Guaranteed

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

Maximum Price within the 90 day period of time identified in paragraph 1.4.2.3.5 the CONSULTANT will provide to the OWNER an updated written Class 1 construction cost estimate. If this Class 1 construction cost estimate exceeds the Fixed Construction Budget as described in Section 3, the CONSULTANT shall consult with the OWNER as to what revisions to the PROJECT scope to reduce the PROJECT cost OWNER requires to stay within the Fixed Construction Budget. The CONSULTANT shall then make such revision to the PROJECT construction documents at no additional cost to the OWNER. However, if the Class 1 estimate construction cost estimate does not exceed the Fixed Construction Budget, then the CONSULTANT will be entitled to additional services compensation for any revisions to the Project construction documents requested by the OWNER.

1.4.6.9 If the OWNER and the CMR have not been able to negotiate the Guaranteed Maximum Price by the end of the Design Phase services, OWNER may ask the CONSULTANT to assist the OWNER in obtaining bids. If so, the CONSULTANT will assist the OWNER in determining what additional and/or recent information on Contractor qualifications may be required to be submitted by the bidders with their bids.

1.4.6.9.1 The CONSULTANT will issue Bid Documents to potential bidders, plan rooms, etc., resolving questions about bid documents, issue Addenda, participate in a pre-bid conference, maintain a list of recipients of documents on a form acceptable to OWNER, and attend bid opening. All Addenda will be issued at least one week before the specified bid date, unless the OWNER approves an extension of the bid period as part of the Addendum. Bid deposit checks will be made payable to the OWNER and those deposits not returned to bidders will be given to the OWNER.

1.4.6.9.2 The CONSULTANT will provide to the OWNER no later than the time of bidding a list of all entities that have obtained Bid Documents from its office in connection with the PROJECT.

1.4.6.9.3 Following the OWNER'S receipt of bids and Contractor's post-bid information, the CONSULTANT will assist the OWNER in obtaining and analyzing Contractor qualifications and will make a recommendation to the OWNER.

SECTION 2 - OWNER'S RESPONSIBILITIES

Insert the following language:

2.2 The OWNER may pay for or provide surveys describing physical characteristics, legal limitations for the site of the PROJECT, and a written legal description of the site. The surveys and legal information will include, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees, and other special data or conditions. The CONSULTANT may reasonably rely upon such information in the performance of their services under this AGREEMENT unless CONSULTANT'S on-site review shows encroachments or other legal impediments.

2.3 The OWNER may pay or provide for the services of soil engineers or other subconsultants when such services are deemed necessary by the CONSULTANT and have the OWNER'S written concurrence. Such services shall include test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations for determining subsoil, air and water conditions, with reports and appropriate professional recommendations.

PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT

2.4 The OWNER will review and provide comments on periodic plan and specifications submittals within forty two (42) calendar days.

SECTION 3 - FIXED CONSTRUCTION BUDGET (in General Conditions of the AGREEMENT)

Insert the following subparagraph 3.1.1

3.1.1 The PROJECT Fixed Construction Budget is **Xxxxx Dollars (\$xxxx)**

SECTION 4 - RESOURCE ALLOCATION PLAN (RAP) (in General Conditions of the AGREEMENT)

Delete Section 4.3 and replace with the following:

4.3 If the OWNER sustains actual damages as a result of willful or negligent failure of the CONSULTANT to furnish services in compliance with the applicable standard of care and the approved PROJECT RAP described in this Section 4 and subsequent approved amendments to the RAP in accordance with Subsection 4.2, the CONSULTANT agrees to compensate the OWNER for the cost of such damages in accordance with Section 8, itemized costs of which will be provided to the CONSULTANT by the OWNER. The OWNER agrees to provide the CONSULTANT written notification of such damages as soon as it reasonably believes the cost is being incurred. The OWNER will update the itemized costs as they are incurred

Delete Section 4.4 and replace with the following:

4.4 The CONSULTANT is not liable or responsible for OWNER delays or suspensions of services or delays caused by third-parties except to the extent that such delays are avoidable with the exercise of CONSULTANT'S reasonable diligence, provided that subconsultants are not considered third parties. If the CONSULTANT is delayed through no fault of its own, written time extension requests may be submitted to the OWNER for approval. These requests will be reviewed only if submitted to OWNER within (14) calendar days of the Consultant's reasonable determination that an occurrence has in fact delayed in its services unless force majeure conditions exist.

SECTION 5 - COMPENSATION

Add items 5.1.1.2.1 through 5.1.1.2.3.

5.1.1.2.1 Compensation for Basic Services for the PROJECT will be determined either on a Standard Hourly Rate with a Not-to-Exceed-Maximum-Amount (Standard Hourly Rate) fee basis or as a Stipulated Sum fee basis, as shown in the approved PROJECT RAP.

5.1.1.2.2 *Standard Hourly Rate:* Compensation for Basic Services as described in paragraphs 1.4.1 through 1.4.5 is as follows:

5.1.1.2.2.1 The hourly rate for each class of employee includes all labor, overhead, and profit necessary to perform the requested services. The hourly rate schedule is shown in Attachment 2. Attachment 2 documents the methodology for calculating the CONSULTANT's overhead rate.

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

5.1.1.2.2.2 The Not-to-Exceed-Maximum-Amount for the PROJECT shall include the estimated cumulative hours needed to perform the services multiplied by the appropriate rate schedule in Attachment 2 plus the estimated allowance for Reimbursable Expenses.

5.1.1.2.2.3 Phases of services and the Not-to-Exceed-Maximum-Amount must be included in Attachment 4.

5.1.1.2.2.4 Progress payments for each phase shall not exceed the Not-to-Exceed-Maximum-Amounts established for that phase in Attachment 4.

5.1.1.2.3 *Stipulated Sum*

For Basic Services as described in paragraphs 1.4.1 through 1.4.5 is as follows:

5.1.1.2.3.1 The Stipulated Sum includes all labor, overhead, and profit necessary to perform the requested services. Payments will be made on the basis of the proportion of services performed for each phase as a percentage of all PROJECT services.

5.1.1.2.3.2 Phases of services and percentages of the total Basic compensation payable per Phase will be included in the approved RAP.

Insert the following subparagraph 5.1.2.1

5.1.2 *Basic Compensation*

5.1.2.1 The total amount of compensation to be paid the CONSULTANT will not exceed:

Xxxxx Dollars (\$xxxxx)

Add item 5.1.3.1.1

5.1.3.1.1 Compensation for Additional Services will be determined either on a Standard Hourly Rate with a Not-to-Exceed-Maximum-Amount (Standard Hourly Rate) fee basis or as a Stipulated Sum fee basis, as shown in Attachments 2 and 4.

Add item 5.1.4.3

5.1.4.3 An allowance for Reimbursable Expenses described in Subsection 5.2 will be determined and included in the approved RAP. The CONSULTANT shall not exceed the allowance amount without prior written approval by OWNER.

Insert the following paragraph 5.1.7

5.1.7 *Payment Applications*

5.1.7.1 Payment applications must be submitted on a monthly basis.

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

5.1.7.2 For PROJECTS that are compensated on a Standard Hourly Rate basis, the CONSULTANT's statement of services must show the name of all employees and subconsultants charging time to the PROJECT, the amount of time billed, the hourly rates, and the activities performed by each person listed. If requested by OWNER, payroll time sheets shall be provided.

5.1.7.3 For PROJECTS that are to be compensated on a Stipulated Sum basis, the CONSULTANT's statement of services must include a brief summary of the progress and completion of tasks to substantiate the percentage of completion of services by Phase during the time period covered by the payment application.

5.1.7.4 Each payment application from the CONSULTANT will be reviewed to ensure the following information is included and/or is correct. Without this information, the OWNER will not approve the payment. CONSULTANT will be notified, within fourteen (14) calendar days after OWNER's receipt of the payment application, if the payment application is inaccurate and/ or incomplete. An "accurate and complete payment application" means:

- That the critical figures included on the payment application have been accurately calculated;
- That the labor rates, reimbursables, fixed fee, subconsultant's rates, overhead and fringe benefits listed on the payment application are consistent with the terms of the AGREEMENT or the most recent Supplemental Amendment.
- That the charges included on the payment application reflect activity for which the CONSULTANT has actually performed work.
- That the charges included on the payment application are for work included in the AGREEMENT or an amendment, and the charges are tied directly to tasks outlined in the AGREEMENT.
- That the CONSULTANT's principals are billing at staff rates when acting in that capacity.
- That for subconsultant activity, the subconsultant is recognized as an approved subconsultant in the approved MBE/WBE compliance plan for the AGREEMENT or amendment.
- That for subconsultant activity, the subconsultant approved for a specific discipline is being used/ paid when the work in that discipline is performed.
- That for subconsultant or subcontractor activity on federally funded projects is being reimbursed at invoice cost.
- That any reimbursable expenses claimed are permitted by the terms of the AGREEMENT.
- That for any allowed reimbursable expense, supporting documentation is attached to the invoice.
- That the CONSULTANT is billing the City for all work performed by both the CONSULTANT and subconsultants within 45 calendar days of when the work was performed.

5.1.7.5 The OWNER shall review the first payment application in detail with the CONSULTANT to explain OWNER's payment requirements and to ensure payment application is accurate and complete.

5.1.7.6 Any costs incurred in excess of approved maximum not-to-exceed contract amount(s) incurred prior to OWNER's written consent will be at CONSULTANT's risk and OWNER will not pay such costs unless such costs were incurred at the OWNER's direction or the OWNER failed to respond

PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT

to the CONSULTANT's request within seven (7) calendar days. The OWNER is not required to increase the approved maximum not-to-exceed contract amount(s) established under this AGREEMENT.

SECTION 6 - INSURANCE REQUIREMENTS

Insert subparagraph 6.1.4.1:

6.1.4.1 CONSULTANT's Professional Liability Insurance with a minimum limit of **<insert amount (\$)>** dollars per claim and in aggregate.

SECTION 7 - TERMINATION OF AGREEMENT (in General Conditions of the AGREEMENT)

SECTION 8 - REMEDIES (in General Conditions of the AGREEMENT)

SECTION 9 - CONSULTANT REMEDIES (in General Conditions of the AGREEMENT)

SECTION 10 - DISPUTE RESOLUTION (in General Conditions of the AGREEMENT)

SECTION 11 - MISCELLANEOUS PROVISIONS

11.2 Ownership and Use of Documents

11.2.1 All engineering work product produced by the Consultant for this Project including but not limited to: Drawings, Specifications, manuals, databases, application files, listings, etc. are to be delivered to OWNER and become the property of the OWNER. The CONSULTANT shall provide the OWNER with the electronic source files for these documents and work product in a format and storage media directed by OWNER or otherwise acceptable to the OWNER to allow the OWNER to subsequently update, modify, or amend said documents and work product. In addition, the CONSULTANT shall also provide a digital copy of all new and updated Drawings, Specifications and manuals on CD or other OWNER-approved media. The cost of providing the source files and copies will be paid as specified in Section 5 of this AGREEMENT. The CONSULTANT may not provide copies of or otherwise use the subject documents or work products on any other project without the prior written approval of the OWNER.

11.7 Notices

Insert subparagraph 11.7.1.1:

11.7.1.1 Notices shall be addressed as follows (or as amended in writing in the future):

Mailed Notices to OWNER:

Contract Management Department
City of Austin
P.O. Box 1088

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

Austin, Texas 78767

Hand Delivered Notices to OWNER:

Contract Management Department
City of Austin
505 Barton Springs Road, Suite 1045
Austin, Texas 78704

Mailed Notices to CONSULTANT:

Hand Delivered Notices to CONSULTANT:

Insert the following:

SECTION 12 – CONSTRUCTION MANAGER AT RISK DELIVERY METHOD

12.1 CMR Delivery Method

12.1.1 General: The delivery method for this PROJECT is Construction Manager at Risk (“CMR”). The CONSULTANT will provide all services described in this AGREEMENT consistent with the CMR delivery method. Whenever the Agreement refers to the “CONTRACTOR,” the term will be interpreted to mean the CMR. Under a separate agreement with the OWNER, the CMR will provide Pre-construction Phase Services including, but not limited to preparation of cost estimates for the Cost of the Work, systems value engineering, systems life cycle cost analysis, and constructability reviews. The CMR will also provide construction management/administration services with a Guaranteed Maximum Price (“GMP”) for the construction of the PROJECT. Partnering will include the CMR and all major subcontractors.

12.1.2 Coordination: The CONSULTANT will coordinate its services and schedule with the CMR. The OWNER may direct the CONSULTANT to recognize the CMR as its representative for the performance of various duties which are defined in this AGREEMENT as the responsibility of the OWNER. The CONSULTANT agrees to honor such appointment. The CONSULTANT will be provided with a copy of the agreement between the OWNER and the CMR (“CMR Agreement”). Nothing in the CMR Agreement will confer direct responsibility on the CMR for the CONSULTANT’S services, nor will anything contained in the CMR Agreement diminish the CONSULTANT’S responsibility for its services as described in this AGREEMENT.

12.1.3 Independent Inspection, Testing, & Verification Services CONSULTANT: In addition, the Construction Manager at Risk delivery method requires independent inspection services, testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the OWNER. The CONSULTANT will coordinate as reasonable and necessary with the independent inspection, testing, and verification CONSULTANT(s) in the performance of its services.

12.1.4 Constructability Reviews: The CMR will perform constructability reviews at appropriate intervals, during the Design Phase to ensure that the PROJECT is buildable, cost-effective, biddable, and maintainable. The CMR will produce reports summarizing these constructability reviews for review and approval by OWNER and the CONSULTANT. Based on the approved constructability reports, the CONSULTANT will redesign the PROJECT, as required under the Agreement, in an effort to further conform to the Fixed Construction Budget. The CONSULTANT will provide interim construction cost

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

estimates, as identified in Paragraphs 1.4.1.2 and 1.4.1.7 (Class 4) 1.4.3.1 (Class 3) and 1.4.4.4 (Class 2) and, if required, 1.4.5.6 (Class 1), to verify that the PROJECT is within the Fixed Construction Budget as further described below.

12.1.5 Alternative Design Approaches: The CONSULTANT and the CMR will review alternative approaches to the design and construction of the PROJECT during the development of the PROJECT design documents at intervals appropriate to the progress of the work. CONSULTANT will recommend any alternatives to the OWNER and CMR.

12.1.6 Review Process: The CONSULTANT will participate in reviews of all CONSULTANT work product, including but not limited to designs, program narratives, studies, reports, analyses, cost estimates, recommended alternatives, subcontractor bid packages, and specifications (the Work Product) with the OWNER and when appropriate the CMR. Prior to the OWNER'S approval of the work, CONSULTANT will incorporate such changes as are necessary to satisfy the OWNER's review comments, any of which may be appealed for good cause, provided that, after the consideration of any such appeal, the determination of OWNER will be final and binding upon CONSULTANT.

12.1.7 Cost Estimates: The CONSULTANT will compare its construction cost estimate with the construction cost estimate prepared by the CMR, and will reconcile any differences between the construction cost estimates and the Fixed Construction Budget or, as applicable, the GMP in coordination with the CMR and OWNER. If the CONSULTANT is unable to reconcile all differences between the two construction cost estimates and the Fixed Construction Budget with the CMR, then the CONSULTANT will promptly provide a detailed written explanation to the OWNER and attend a meeting scheduled by OWNER

12.1.8 Copies: The CONSULTANT will provide electronic or, as directed by OWNER, hard copies of the Work Product, as it is being prepared at intervals appropriate to the progress of the Project and identified in the Schedule, to the OWNER and CMR for review at CONSULTANT'S expense.

12.1.9 Development of GMP Proposal: At appropriate intervals during the development of the design, the CONSULTANT will participate in the development and review of the CMR's IGMP and GMP Proposal. This GMP Proposal will include the qualifications, clarifications, assumptions, exclusions, value engineering, and all other requirements identified in the agreement between the OWNER and the CMR.

12.1.10 GMP Proposal: At the approval of the sixty five percent (65%) Construction Documents, or such other time as OWNER may specify, OWNER will furnish a GMP Proposal to the CMR for the GMP Proposal to be prepared by CMR based upon the 65% Construction Documents prepared by the CONSULTANT and approved by the OWNER. The CONSULTANT will assist the OWNER in the review of any IGMP and/or GMP Proposal, as applicable, and will further advocate the OWNER'S interests in the OWNER'S negotiations with CMR in an effort to develop a GMP proposal acceptable to the OWNER.

12.1.11 GMP Analysis: The CONSULTANT will analyze the initial guaranteed-maximum-price (IGMP) and GMP Proposal document, together with its supporting assumptions, clarifications, and contingencies, and will submit a detailed written analysis of the document to the OWNER. Such analysis will include, without limitation, reference to and explanation of any inaccurate or improper assumptions and clarifications.

12.1.12 GMP Cost: The OWNER will accept a GMP proposal which does not exceed the Fixed Construction Budget. If the proposed GMP exceeds the Fixed Construction Budget, the CONSULTANT will provide the Class 1 estimate required above and the CONSULTANT will participate with the OWNER and CMR in constructability reviews and, as approved by OWNER, value engineering, in

**PROFESSIONAL SERVICES AGREEMENT
SUPPLEMENTAL TERMS AND CONDITIONS OF THE AGREEMENT**

an effort to reach an agreement on the GMP; and OWNER may direct the CONSULTANT at its expense to revise the documents so the GMP Proposal does not exceed the Fixed Construction Budget. If it is determined to be in the OWNER'S best interest, the OWNER may accept a GMP Proposal that exceeds the stipulated Fixed Construction Budget.

12.1.13 Failure to Accept GMP Proposal: If the OWNER and the CMR do not reach an agreement, the OWNER may either (1) negotiate with an alternate CMR, (2) go out for bids, or (3) abandon the PROJECT. If an alternate CMR is chosen, the CONSULTANT, at its cost will modify the drawings and specifications as necessary to comply with the Fixed Construction Budget provided that the alternate CMR proposes a GMP within six (6) months. If the alternate CMR proposes the GMP after six (6) months, the CONSULTANT will be entitled to additional compensation.

12.1.14 GMP Proposal Incorporation: Following the OWNER's approval of the GMP Proposal, the CONSULTANT will develop the final Construction Documents, consistent with the elements in the GMP Proposal. The CONSULTANT and the CMR will provide a joint monthly status report stating the progress of the incorporation of the GMP qualifications, clarifications, assumptions, exclusions, and value engineering and all other requirements into the design.

12.1.15 Conformance of Design and GMP Proposal: The plans, drawings and specifications will be prepared such that the PROJECT does not exceed the Fixed Construction Budget and, as applicable, the GMP accepted by the OWNER. The CONSULTANT will manage the design to stay within such accepted GMP Proposal or Fixed Construction Budget. The CONSULTANT will review the Construction Documents at intervals appropriate to the progress of the PROJECT with the OWNER and CMR.

12.1.16 Subcontractor Buy-Out Phase: The CONSULTANT will assist the OWNER and CMR in the preparation of the necessary subcontractor bidding and request for proposal (RFP) information. As applicable, the CONSULTANT must, at no additional cost to OWNER, prepare plans and specifications for discrete portions of the Work to be incorporated into separate bid packages for the various subcontractors on separately phased portions of the Work. Such subcontracts may be awarded concurrently with other subcontracts or individually, at different points in time, which may result in CONSULTANT completing portions of the design after commencement of construction of the PROJECT and before completion of all design phase services. The design work for any separate bid/work packages will be subject to all requirements applicable to the various phases set forth in this AGREEMENT and will be performed in a manner consistent with the CMR Project Schedule, the Fixed Construction Budget or, as applicable, the GMP. The Phase C Bid Award Execution Phase Services will consist of those services required to assist the OWNER and the CMR in the subcontractor buy-out phase.

END

ATTACHMENT 1: RESOURCE ALLOCATION PLAN

Note: PM will advise Consultant of level of detail and payment benchmarks desired for Task Descriptions

Task Description	Budget	Start Date	End Date	% Complete	% Paid	% Time
A. Preliminary Phase	\$0.00					
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
<i>Phase Total</i>				0.0%	0.0%	0.0%
B. Design Phase	\$0.00					
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
<i>Phase Total</i>				0.0%	0.0%	0.0%
C. Bid-Award Execution Phase	\$0.00					
				0.0%	0.0%	0.0%
<i>Phase Total</i>				0.0%	0.0%	0.0%
D. Construction Phase	\$0.00					
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
				0.0%	0.0%	0.0%
<i>Phase Total</i>				0.0%	0.0%	0.0%
E. Post-Construction Phase	\$0.00					
				0.0%	0.0%	0.0%
<i>Phase Total</i>				0.0%	0.0%	0.0%
Project Total	\$0.00			0.0%	0.0%	0.0%

APPROVED FIXED CONSTRUCTION BUDGET: DATE OF CURRENT FCB:

ATTACHMENT 2: HOURLY RATES

DOCUMENTATION OF PROVISIONAL / OVERHEAD RATES

Overhead rate documentation, calculated in compliance with FAR Part 31, has been provided to the City of Austin and was utilized by the COA in reviewing and approving the loaded hourly rates below.

PRIME CONSULTANT (<Enter Name of Prime Firm>)

KEY PERSONNEL:

TX Registration Number

	Hourly Rate	
Project Manager -	\$ / hr	_____
Project Professional -	\$ / hr	_____

Professional Staff:

<Example Titles- ADD ADDITIONAL STAFF TITLES AS NEEDED- delete instructions>

Civil Engineer I	\$ / hr
Civil Engineer II	\$ / hr
Electrical Engineer I	\$ / hr
Electrical Engineer II	\$ / hr
Architect I	\$ / hr
Architectural Drafter II	\$ / hr
GIS Analyst I	\$ / hr

Administrative Staff:

<Example Titles- ADD ADDITIONAL STAFF TITLES AS NEEDED- delete instructions>

Administrative Assitant I	\$ / hr
Project Administrator II	\$ / hr



SUBCONSULTANT (<Enter Name of Subconsultant Firm>)

Professional Staff:

<Example Titles- ADD ADDITIONAL STAFF TITLES AS NEEDED- delete instructions>

Project Manager	\$ / hr
Civil Engineer I	\$ / hr
Civil Engineer II	\$ / hr
Electrical Engineer I	\$ / hr
Electrical Engineer II	\$ / hr
Architect I	\$ / hr
Architectural Drafter II	\$ / hr
GIS Analyst I	\$ / hr

Administrative Staff:

<Example Titles- ADD ADDITIONAL STAFF TITLES AS NEEDED- delete instructions>

Project Administrator II	\$ / hr
--------------------------	---------

<ADD ADDITIONAL SUBCONSULTANTS AS NEEDED- delete instructions>

ATTACHMENT 3

QUALITY CONTROL PLAN (QCP)

Definitions

Quality Assurance

A comprehensive program that verifies a facility, structure, system or component will perform satisfactorily and safely in service. A recognized benchmark for quality assurance programs is ISO 9000/9001.

Quality Control

The process of identifying and applying appropriate technical and professional standards when producing project design documents that meet or exceed the user's requirements.

Constructability

A review process using experienced personnel with extensive construction knowledge early and throughout the design phase to ensure projects are buildable, practical, and consistent with current construction practices while also being cost effective, biddable, and maintainable.

Due Date:

The Consultant must submit the QCP plan for the Owner's approval within fourteen (14) calendar days following the Owner's issuance a Notice to Proceed to the Consultant.

Required Elements of QCP Plan (Sec. 1.3 of PSA)

Management Philosophy	
1	<p><i>The QCP specifies how the organization's technical management philosophy supports its commitment to quality</i></p> <p><i><u>Needed:</u> Certification by consultant firm's Board of Directors, president, owner, managing partner, or other executive-level staff that, to ensure quality of design products:</i></p> <ul style="list-style-type: none"><i>(a) firm is committing adequate manpower and resources</i><i>(b) Project Design Team (PDT) is accountable to Independent Technical Review Team (ITRT)</i><i>(c) Management and the PDT will emphasize quality control during the production of design documents</i><i>(d) Management and the PDT will establish internal quality checks and reviews</i><i>(e) Management and the PDT will assess independent quality control's contribution to the quality of design documents</i>

Management / Organization Structure	
2	<p><i>The QCP specifies:</i></p> <ul style="list-style-type: none"> • who manages the Independent Technical Review Team (ITRT) (internal or external to the design consulting firm) • if the ITRT is internal to the design consulting firm, that the ITRT is independent of the Project Design Team (PDT) • the ITRT reports to a management level the same or higher than the PDT • interrelationships of management, PDT, and ITRT (including all consultants) <p><u>Needed:</u></p> <p>(a) <i>An organization chart depicting the relationships of all parties noted above, identifying them by name and describing each person's responsibilities on the design project</i></p> <p>(b) <i>Resumes for members of the ITRT</i></p>
Quality Control Procedures	
3	<p><i>The QCP specifies</i></p> <ul style="list-style-type: none"> • management and control of design and QCP documents <p><u>Needed:</u></p> <p>(a) <i>Statement that access to design and QCP documents will be controlled</i></p> <p>(b) <i>Procedures are defined to identify and track versions of documents</i></p> <p>(c) <i>Document control plan</i></p> <p>(d) <i>Also refer to "Documentation" section below</i></p>
4	<ul style="list-style-type: none"> • internal and external communications, including an Issue Follow-Up Plan <p><u>Needed:</u></p> <p>(a) <i>description of management of QCP communications with all parties</i></p> <p>(b) <i>Issue Follow-Up Plan to track problems identified and their resolution</i></p>
5	<ul style="list-style-type: none"> • design coordination <p><u>Needed: Procedure must describe:</u></p> <p>(a) <i>relationships, accountability, authority, and responsibilities within the Project Design Team</i></p> <p>(b) <i>efforts to achieve interdisciplinary coordination</i></p>
6	<ul style="list-style-type: none"> • design checks and reviews, specifically addressing: <ul style="list-style-type: none"> ▪ correct application of methods ▪ validity of data and assumptions ▪ accuracy of calculations

	<ul style="list-style-type: none"> ▪ complete documentation ▪ testing, modeling, assumptions, calculations, text & graphical presentations in all documents ▪ special project components ▪ compliance with all applicable guidance, standards, regulations, codes & laws ▪ ensuring project is biddable, constructible and operable as well as environmentally compliant <p><i>Needed:</i></p> <p><i>(a) types, intervals and frequency of reviews</i></p> <p><i>(b) identification of applicable guidance, standards, codes, specifications and laws</i></p> <p><i>(c) methodology for addressing constructability</i></p> <p><i>(d) description of testing, modeling, development of assumptions, calculations, and presentation methods in design documents to meet design criteria and standards of professional practice</i></p> <p><i>(e) methodology for identifying and addressing all appropriate environmental requirements</i></p>
7	<ul style="list-style-type: none"> • independent technical reviews, specifically ensuring: <ul style="list-style-type: none"> ▪ seniority and technical qualifications of Independent Technical Review Team (ITRT) members and their separation from the Project Design Team (PDT) ▪ concepts, assumptions and procedural details are accurate, appropriate and fully coordinated ▪ examination of appropriate alternatives ▪ definition and scoping of problems, issues and opportunities ▪ validity of analytical methods ▪ results and recommendations are reasonable, comply with all requirements, and are supported by the documents ▪ any deviations from policy, guidelines or standards have been identified and approved by the appropriate parties ▪ design documents result in project that is biddable, constructible, operable, environmentally sound, and cost-effective ▪ design products meet City's needs <p><i>Needed:</i></p> <p><i>(a) Description of how the Independent Technical Review Team (ITRT) will validate the quality of the Project Design Team's (PDT) products prior to submission to the PM</i></p> <p><i>(b) Identification of any design components that will require special quality reviews</i></p> <p><i>(c) checklists for review of each design element</i></p>
8	<ul style="list-style-type: none"> • managerial plan to maintain continuity of QCP effort <p><i>Needed:</i></p> <p><i>(a) description of how management will maintain required level of effort and quality</i></p>

	<p><i>resources</i></p> <p><i>(b) contingency plan for replacement of key PDT and/or ITRT staff</i></p>
Documentation	
9	<p><i>The QCP specifies:</i></p> <ul style="list-style-type: none"> • records control plan for all internal review documents, associated comments and responses, describing that: <ul style="list-style-type: none"> ▪ all documents retained in consultant's files ▪ files are auditable and available to the City upon request ▪ files are identified by document type and compiled according to a file index system <p><i><u>Needed:</u> Details on all items listed above</i></p>
10	<ul style="list-style-type: none"> • upon project completion, the consultant will certify compliance with the QCP <p><i><u>Needed:</u> Consultant submits draft Consultant Statement of Technical Review</i></p> <p><i>(a) verifying compliance with the QCP and</i></p> <p><i>b) agreeing to identify and assess issues that arise during later project phases with respect to the QCP</i></p> <p><i>The Statement must be signed by the Project Design Team (PDT), the Independent Technical Review Team (ITRT), and the Principal (or other executive-level official) of the consultant. The consultant will provide the City all Issues analyses from later phases</i></p>
Schedule	
11	<p><i>The QCP specifies that:</i></p> <ul style="list-style-type: none"> • a design schedule showing the sequence of tasks to be completed within the time period specified by the City; must include <ul style="list-style-type: none"> ▪ design submittal dates to City ▪ project design team (PDT) reviews ▪ Independent Technical Review Team (ITRT) reviews ▪ time for revisions prior to submittals to City ▪ time for City review of submittals • how all QCP measures will be tracked to avoid project delays <p><i><u>Needed:</u> Items as described above</i></p>

ATTACHMENT 4: MAXIMUM NOT-TO-EXCEED CONTRACT AMOUNTS BY PHASE

<i>PHASE A: PRELIMINARY PHASE</i>		
Agreed Upon Fixed Fee Dollar Amount		
Maximum Cost		
	<i>PHASE A TOTAL</i>	
<i>PHASE B: DESIGN PHASE</i>		
Agreed Upon Fixed Fee Dollar Amount		
Maximum Cost		
	<i>PHASE B TOTAL</i>	
<i>PHASE C: BID-AWARD-EXECUTION PHASE</i>		
Agreed Upon Fixed Fee Dollar Amount		
Maximum Cost		
	<i>PHASE C TOTAL</i>	
<i>PHASE D: CONSTRUCTION PHASE</i>		
Agreed Upon Fixed Fee Dollar Amount		
Maximum Cost		
	<i>PHASE D TOTAL</i>	
<i>PHASE E: POST-CONSTRUCTION PHASE</i>		
Agreed Upon Fixed Fee Dollar Amount		
Maximum Cost		
	<i>PHASE E TOTAL</i>	
<i>ADDITIONAL COSTS</i>		
	<i>ADDITIONAL COSTS TOTAL</i>	
<i>REIMBURSABLE COSTS</i>		
	<i>REIMBURSABLE COSTS TOTAL</i>	
MAXIMUM NOT-TO-EXCEED CONTRACT AMOUNT		

DRAFT