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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 care ordinarily provided by competent professional engineers, architects, or consultants practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent, considering the ordinary professional skill and care of a competent engineer, architect, or other consultant.

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 Procurement Program: Professional Services, Chapter 2-9B, 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.

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)

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.

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.

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.

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.

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

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*

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.

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.

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 Capital Contracting Office. 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.

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, Capital Contracting Office, 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. In addition, any limitation in paragraph 11.6 below, notwithstanding, when the CONSULTANT names the City as an additional insured party under its general liability policy, the CONSULTANT require that the policy provides any defense provided by the policy.

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.

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.

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 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.

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 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);
.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.

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 Indemnification. To the extent allowed by Section 271.904 of the Texas Local Government Code, the Consultant shall indemnify, protect, and save harmless the City and its officials, agents, and employees from and against all claims, demands, suits, causes of action, loss, damage, attorney's fees, costs, expenses, and liability of every kind and nature whatsoever, for personal injury or death or property damage to the extent that such injury, death or damage is caused by, results from, or arises in whole or in part from any negligent act, error or omission of the Consultant or any of its subconsultants or any other party for whom Consultant is responsible in connection with the performance of its services or failure to perform its services in conformance with the terms and conditions of this Agreement; provided, however, Consultant shall not be responsible for the negligence of any other parties.

THIS INDEMNITY SHALL BE BROADLY CONSTRUED TO APPLY TO ALL LIABILITY ATTRIBUTED TO THE CONCURRENT AND SOLE NEGLIGENCE OF CONSULTANT, INCLUDING GROSS NEGLIGENCE, WILFULL MISCONDUCT, AND STRICT LIAIBLITY, AND SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

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

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	*The QCP specifies how the organization's technical management philosophy supports its commitment to quality* *<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:* *(a) firm is committing adequate manpower and resources* *(b) Project Design Team (PDT) is accountable to Independent Technical Review Team (ITRT)* *(c) Management and the PDT will emphasize quality control during the production of design documents* *(d) Management and the PDT will establish internal quality checks and reviews* *(e) Management and the PDT will assess independent quality control's contribution to the quality of design documents*

Management / Organization Structure	
2	*The QCP specifies:* • 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 *<u>Needed</u>:* *(a) 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* *(b) Resumes for members of the ITRT*
Quality Control Procedures	
3	*The QCP specifies* • management and control of design and QCP documents *<u>Needed</u>:* *(a) Statement that access to design and QCP documents will be controlled* *(b) Procedures are defined to identify and track versions of documents* *(c) Document control plan* *(d) Also refer to "Documentation" section below*
4	• internal and external communications, including an Issue Follow-Up Plan *<u>Needed</u>:* *(a) description of management of QCP communications with all parties* *(b) Issue Follow-Up Plan to track problems identified and their resolution*
5	• design coordination *<u>Needed</u>: Procedure must describe:* *(a) relationships, accountability, authority, and responsibilities within the Project Design Team* *(b) efforts to achieve interdisciplinary coordination*
6	• design checks and reviews, specifically addressing: ▪ correct application of methods ▪ validity of data and assumptions ▪ accuracy of calculations

	▪ 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 <u>*Needed*</u>*:* *(a) types, intervals and frequency of reviews* *(b) identification of applicable guidance, standards, codes, specifications and laws* *(c) methodology for addressing constructability* *(d) description of testing, modeling, development of assumptions, calculations, and presentation methods in design documents to meet design criteria and standards of professional practice* *(e) methodology for identifying and addressing all appropriate environmental requirements*
7	• independent technical reviews, specifically ensuring: ▪ 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 <u>*Needed*</u>*:* *(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* *(b) Identification of any design components that will require special quality reviews* *(c) checklists for review of each design element*
8	• managerial plan to maintain continuity of QCP effort <u>*Needed*</u>*:* *(a) description of how management will maintain required level of effort and quality*

	resources *(b) contingency plan for replacement of key PDT and/or ITRT staff*
Documentation	
9	*The QCP specifies:* • records control plan for all internal review documents, associated comments and responses, describing that: ▪ 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 *<u>Needed</u>: Details on all items listed above*
10	• upon project completion, the consultant will certify compliance with the QCP *<u>Needed</u>: Consultant submits draft Consultant Statement of Technical Review* *(a) verifying compliance with the QCP and* *b) agreeing to identify and assess issues that arise during later project phases with respect to the QCP* *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*
Schedule	
11	*The QCP specifies that:* • a design schedule showing the sequence of tasks to be completed within the time period specified by the City; must include ▪ 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 *<u>Needed</u>: Items as described above*