

**REQUEST FOR QUALIFICATIONS
FOR
PROFESSIONAL ENGINEERING SERVICES
GROUNDWATER AVAILABILITY STUDY AND
SUPPLY WELL
CITY OF MERCEDES, TEXAS**

The City of Mercedes is seeking written responses to a Request for Qualifications (RFQ) to retain an Engineering firm for design services necessary for a Groundwater Availability Study and a Groundwater Supply Well to be located at a site to be determined as described in scope of services consistent with standards, procedures, and best management practices in Texas. The well will have a capacity to pump approximately 1400 gallons per minute (GPM) of potable water. The well shall be located, designed and constructed in accordance with applicable City, State, and Federal Standards. This well will be associated with City of Mercedes Water Plant and the engineering for the facilities (piping, valves, controls, etc.) to connect the well to the plant are all inclusive to this scope.

Sealed responses addressed to the City of Mercedes must be received **BEFORE THURSDAY, May 2, 2024, 4:00 PM, CDT**, at City Hall, 400 S. Ohio Ave., Mercedes, TX 78570. All Responses must be in the City of Mercedes's possession and stamped received on or before the scheduled date and time (no late responses will be considered). Responses submitted to the City of Mercedes must be received before the due date and time. **The City of Mercedes is not open for weekend or holiday deliveries.**

The response documents can be obtained either by contacting City Hall, 400 S. Ohio Ave, Mercedes, TX 78570 or by calling the Contract Specialist at (956) 565-3114 or on the City of Mercedes website: www.cityofmercedes.com

The contract will be awarded to the Respondent(s) on the basis of demonstrated competence and qualifications to perform the goods/services.

The City of Mercedes reserves the right to refuse and reject any or all responses, waive any or all formalities or technicalities, accept the response or portions of the response determined to be the best value and most advantageous to the City of Mercedes, and may hold the responses for a period of 120 days without taking action. Respondents are required to hold their responses firm for the same period of time.

Hand-delivered & Courier Submissions:

Contract Specialist
400 S. Ohio Ave, Mercedes, TX 78570

LABELING INSTRUCTIONS: Envelopes must be clearly marked:

**REQUEST FOR QUALIFICATIONS 2024-014
For Professional Engineering Services
GROUNDWATER STUDY & WELL
[NAME OF FIRM]
[PHONE NUMBER OF FIRM]
[NAME OF PROJECT MANAGER FOR FIRM]**

PART I
GENERAL INFORMATION

1. Project Description:

The purpose of this RFQ is to provide prospective firms, with essential information to enable them to prepare and submit qualifications to provide engineering services to the City of Mercedes.

These services will primarily be performed for:

- Groundwater Availability Modeling/Study
- Well Site Selection and Aquifer and Well Production Evaluation
- Final Site Survey and Legal Description for City Acquisition (as necessary)
- Preparation of bid documents for the following:
 - Groundwater Well Design for construction including all Site Improvements,
 - Transmission Pipeline Route Selection and Design
- Assistance with solicitation of construction bids

The groundwater availability study is intended to identify the location of the proposed water well and future water well development sites. The new well is expected to be constructed at a separate property close to the Water Plant and will perform a supply function similar to the Existing Well which supplies water to the Water Plant. The new well is estimated to be 10-inch in diameter with a depth at approx. 300-feet. Based on the existing well in the same aquifer the well capacity is expected to be 1400 GPM. A new well pump and the use of the existing system will maintain the adequate blend ratios at the existing water plant and storage tank facilities. It should be noted that the land purchased for this well installation should evaluate the feasibility of locating a new chemical treatment facility for the well water.

Solicitation Release Date	April 10, 2024
Second Notification Date	April 17, 2024
Pre-Submittal Meeting (4:00 PM)	April 24, 2024
Deadline for Questions (4:00 PM)	April 26, 2024
City's Response to Questions (4:00 PM)	April 30, 2024
Submittal Deadline (4:00 PM)	May 2, 2024
Anticipated Selection Date	May 7, 2024

2. Project Timeline:

Design and construction documents for this project shall be completed by September 2024. Construction of this project shall begin in January 2025 and be completed by May 2025.

3. CONFLICT OF INTEREST:

Effective March 1, 2006, Chapter 176 of the Texas Local Government Code (House Bill 914) requires that any vendor or person considering doing business with a local government entity disclose the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. The Conflict-of-Interest Questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us. Completed Conflict of Interest

Questionnaires may be mailed or delivered by hand to the City Secretary. If mailing a completed form, please mail to:

**City of Mercedes
Contract Specialist
400 S. Ohio Ave
Mercedes, TX 78570**

- 3.1.** Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest may automatically result in the disqualification of the vendor's Submittal.

PART II
STANDARD TERMS AND CONDITIONS

See Attachment A

PART III
SUBMITTAL INSTRUCTIONS

1. SUBMITTAL SCHEDULE:

It is the City's intent to comply with the following Submittal timeline:

Solicitation Release Date	<u>April 10, 2024</u>
Second Notification Date	<u>April 17, 2024</u>
Pre-Submittal Meeting (4:00 PM)	<u>April 24, 2024</u>
Deadline for Questions (4:00 PM)	<u>April 26, 2024</u>
City's Response to Questions (4:00 PM)	<u>April 30, 2024</u>
Submittal Deadline (4:00 PM)	<u>May 2, 2024</u>
Anticipated Selection Date	<u>May 7, 2024</u>

NOTE: These dates represent a tentative schedule of events. The City reserves the right to modify these dates at any time, with appropriate notice to prospective Responders.

1.1. All questions regarding the Request for Qualifications shall be submitted in writing electronically by 4:00 PM CST on April 26, 2024 to:

<u>Javier A. Ramirez</u>	<u>Rey Trevino</u>
<u>City of Mercedes</u>	<u>City of Mercedes</u>
<u>Assistant City Manager</u>	<u>Contract Specialist</u>
<u>956-532-0576</u>	<u>956-532-0576</u>
<u>jramirez@cityofmercedes.com</u>	<u>rtrevino@cityofmercedes.com</u>

All registered participating firms will be provided with a copy of the questions submitted and the City's response by RFQ Addendum.

2. SUBMITTAL DUE DATE:

Sealed Submittals are due no later than **4:00 PM** on May 2, 2024 to the City of Mercedes. Submittals received after this time and date will not be considered. Mail or carry sealed Submittals to:

**City of Mercedes
Contract Specialist
400 S. Ohio Ave
Mercedes, TX 78570**

2.1. Sealed Submittals shall be clearly marked:

REQUEST FOR QUALIFICATIONS 2024-014
For Professional Engineering Services
GROUND WATER STUDY & WELL
[NAME OF FIRM]
[PHONE NUMBER OF FIRM]
[NAME OF PROJECT MANAGER FOR FIRM]

- 2.2. Facsimile or electronically transmitted Submittals are **not acceptable**.
- 2.3. Each Submittal shall contain one (1) original and one (1) digital copy (PDF) on a USB drive, and three (3) copies.

It is intended that this RFQ describe the requirements and submittal format in sufficient detail to secure comparable submittals. Interested and qualified firms shall:

- 2.4. Submit one (1) original, one (1) digital copy of materials, and three (3) copies that demonstrate experience in performing projects of this scale and complexity.
 - 2.4.1. Submittal document shall not exceed ten (10) single sided pages (excluding transmittal letter, index sheets, insurance certificates, financial statements, litigation summaries, and supporting appendices, if any). A page is considered 8.5" x 11", single-sided, 11-point font size (or larger), 1.5 line-spaced and in portrait orientation.
- 2.5. Submittals to the RFQ shall require the consultant to provide sufficient information to determine that the Responder understands the City of Mercedes's general requirements for the scope of work. **Responding firms shall deliver Submittals in the following format and sequence:**

Proposal

Firm Introduction, Approach & Profile:

- 2.5.1. Briefly introduce your firm, providing a summary of the administration, organization and staffing of your firm, including local offices, if applicable.
- 2.5.2. Provide an organizational chart indicating the positions and names of the core management team which will undertake this engagement.
- 2.5.3. Firm's understanding and approach to performing all of the Scope of Services being proposed.
- 2.5.4. A statement of the existence of or potential for any conflict of interest with any work the firm might perform for the City.

Project Personnel:

- 2.5.5. Core project personnel should include a Project Manager/Client Service Manager, a Groundwater Hydrology Technical Lead, a Water Quality Technical Lead, and a Water Transmission Line Design Technical Lead. Demonstrate project experience, technical competency, qualifications and compliance with legal requirements for each member.
- 2.5.6. Demonstrate project experience, technical competency, qualifications and compliance with legal requirements for each member that include the following:
 - Technical expertise in groundwater availability studies, water well design & construction, and well water treatment requirements (understanding the current drinking water source and potential issues with blending with new well sources).
 - Hydrogeology, electrical and mechanical capabilities for studies and ancillary design components associated with wells or will list the specific subs that will be used.

Past Project Experience:

- 2.5.7. Firm should demonstrate experience with 5 projects (2 groundwater availability studies and minimum of 3 water well construction projects within the State of Texas) meeting the proposed project criteria which have been completed within the last five years.
- 2.5.8. Include the project description, name of the team leader, description of the Firm's role, year of the work, and name and phone number of the agency contact who can respond to questions about the work.
- 2.5.9. Experience working with Hydrogeologists for groundwater availability studies, well design, construction, performance, and data interpretation.
- 2.5.10. Experience in water pipeline modeling for the design of water transmission mains, proven history of pipeline design, sizing, and routing.

Insurance:

- 2.5.11. Certificates of insurance evidencing minimum coverage for the types and limits of liability specified in this RFQ. [Not included in 10-page limit for proposal]

Litigation Summary:

- 2.5.12. Summary of current or past project-necessitated litigation pursued by or brought against the firm in the previous five (5) years. [Not included in 10-page limit for proposal]

- 2.6. Submission of a Response to this RFQ shall affirm that the vendor shall not discriminate against any employee or applicant for employment because of race, religion, sex, sexual orientation, color, or national origin and that the firm will make efforts to ensure that employment is offered to applicants without regard to race, religion, sexual orientation, color, and national origin.
- 2.7. A Responder may withdraw their Submittal by submitting a written request for its withdrawal by the signature of an authorized individual as described above, to the City Secretary any time prior to the submission deadline. The prospective Responder may thereafter offer a new Submittal prior to the deadline. Modifications offered in any manner will not be considered if submitted after the deadline.

3. CONFIDENTIALITY OF RESPONSE CONTENT:

All Submittals offered in response to this RFQ shall be held confidential until an agreement is awarded. Following the agreement award, Submittals are subject to release as public information unless the Submittal or specific parts of the Submittal can be shown to be exempt from the Texas Public Information Act. Responders are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Responders.

- 3.1. If a Responder believes that a Submittal or parts of a Submittal are confidential, then the Responder shall so specify. The Responder shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Submittal, which the Responder believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Submittals and parts of Submittals that are not marked as confidential will be automatically considered public information after the agreement is awarded.
- 3.2. All Submittals become the property of the City and will not be returned to the vendor.

4. **CLARIFICATION OF SUBMITTAL:**

The City, in its sole discretion, expressly reserves the right to request and/or require any additional information from the Responder(s) that it deems relevant with respect to this RFQ. The contents of the Submittal and any clarification or counter Submittal thereto submitted by the successful vendor shall become part of the contractual obligation and incorporated by reference into the ensuing contract.

5. **EVALUATION CRITERIA:**

Firms submitting Qualifications to perform drinking water well design and related water infrastructure design will be evaluated based upon the firm's experience, proposed personnel experience, personnel, knowledge, and familiarity with projects in the typical scope of work.

Sub-consultants associated with electrical, SCADA or other design must be listed in the Statement of Qualifications.

6.1. Firm Introduction, Approach & Profile (35 points)

Briefly introduce your firm, providing a summary of the administration, organization and staffing of your firm, including local offices, if applicable. Provide an organizational chart indicating the positions and names of the core management team which will undertake this engagement. Firm's understanding and approach to performing all of the Scope of Services being proposed.

6.2. Project Personnel (35 points)

City of Mercedes is interested in the competence and qualifications of the individuals who will be directly responsible for the management and delivery of the proposed work. Core project personnel should include a Project Manager/Client Service Manager, a Groundwater Hydrology Technical Lead, a Water Quality Technical Lead, and a Water Transmission Line Design Technical Lead. Demonstrate project experience, technical competency, qualifications and compliance with legal requirements for each member. Knowledge or expertise in well water treatment requirements (understanding the current drinking water source and potential issues with blending with new well sources). The engineering firm should have hydrogeology, electrical, and mechanical capabilities for studies and ancillary design components associated with wells or will list the specific subs that will be used.

6.3. Relevant Experience (30 points)

City of Mercedes is interested in the Firm's history with similar projects or studies as described in the solicitation. Firm should demonstrate experience with 5 projects (2 groundwater availability studies and minimum of 3 water well construction projects within the State of Texas) meeting the proposed project criteria which have been completed within the last five years. Include the project description, name of the team leader, description of the Firm's role, year of the work, and name and phone number of the agency contact who can respond to questions about the work. Experience working with Hydrogeologists for groundwater availability studies, well design, construction, performance, and data interpretation. Experience in water pipeline modeling for the design of water transmission mains, proven history of pipeline design, sizing, and routing.

6. **EVALUATION PROCESS:**

A committee selected by the City will review the Submittals to the RFQ and may develop a shortlist of firms/teams. Interviews may be conducted with any responding firms/teams to discuss their qualifications, resources, and availability to provide the services requested.

- 6.1. If selection committee deems that no qualified firms have responded, the RFQ will be reissued at a later date.
- 6.2. The City will not provide compensation or defray any cost incurred by any firm related to the Submittal of this request.
- 6.3. The City reserves the right to negotiate with any and all persons or firms.
- 6.4. The City also reserves the right to reject any or all Submittals, or to accept any Submittal deemed most advantageous, or to waive any irregularities or informalities in the Submittal received, and to revise the process and/or schedule as circumstances require.

7. **EX PARTE COMMUNICATION:**

Please note that to insure the proper and fair evaluation of a Submittal, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Responder to a City Official or Employee evaluating or considering the Submittal prior to the time a formal decision has been made. Questions and other communication from vendors will be permissible until **4:00 PM** on the day specified as the deadline for questions. Any communication between Responder and the City after the deadline for questions will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Submittal. Ex parte communication may be grounds for disqualifying the offending Responder from consideration or award of the solicitation then in evaluation, or any future solicitation.

PART IV
SCOPE OF WORK

1. PROJECT SCOPE:

The City of Mercedes is requesting Statements of Qualifications from qualified firms who can demonstrate that they have the resources, experience, and qualifications to enter into Professional Services Agreement, pursuant to Texas Government Code to perform a Groundwater Availability Study and the permitting, design, bidding, and construction administration services for the design of a 1400 gpm water well, wellhead, and associated piping to connect the new well to the exiting water plant to be located at a new property to be determined as a portion of this project.

Professional services for this project include, but are not limited to:

- a. Groundwater availability study to cover the City and its service area
- b. Selection or confirmation of the Site for the water well
- c. Providing site acquisition assistance (as necessary) including Topographic and Boundary Surveying for the site. Topographic Survey shall occur after site acquisition (if necessary)
- d. Providing topographic survey for the discharge piping route after site selection
- e. Coordination with a Hydrogeologist to determine the appropriate aquifer and depth for the well
- f. Determining the appropriate size and material settings for a well to produce 1400 gallons per minute
- g. Determine if there are water compatibility issues between existing well and the new well and provide recommendations for remediation of any issues
- h. Design of the required facilities for the new well site which will include an Access road, fencing, power supply, drainage, chlorination, buildings, emergency generator, lighting, security, and SCADA.
- i. Design of the well pump discharge transmission pipe from the new well site to the water plant ground storage tank.
- j. Obtain the required Texas Commission on Environmental Quality (TCEQ) permits and approvals
- k. Provide complete bid package(s) to solicit competitive bids
- l. Provide assistance during bidding.
- m. Provide engineering and construction management services during construction.
- n. Complete the required State of Texas documentation placing the well into public service
- o. Provide As-Built Drawings

PROJECT MANAGEMENT:

The selected responder shall provide a Project Manager for the duration of the Project. The Project Manager shall work closely with the City to develop a project plan, statement of work and other documents required of the successful construction contractor for this project.

ATTACHMENT A

CITY OF MERCEDES
ENGINEERING SERVICES CONTRACT

This Contract made and signed this _____ day of _____, 2022 by and between the City of Mercedes, Texas (“City”) and _____ (“Consultant”) whose place of business is in _____. The City and the Consultant for the consideration stated herein agree as follows:

Section 1. General Requirement:

The Consultant hereby agrees to provide a full variety of engineering and consulting services on an as-needed basis, described in the Request for Qualifications No. 2022-13, which is not attached hereto, but are incorporated by reference on to this Contract. Due to the nature of as-needed services, it is not feasible to define the exact scope of work in advance. Once the qualified pool of consultants is established, the City will assign projects based upon the consultant’s specialized expertise, experience, and availability to perform and complete the services in a timely manner at a fair and reasonable price

Section 2. Scope of Work:

Engineering services to be provided may include:

- 21 Preparation of plans and specifications for construction projects varying in complexity. Services may include preliminary plans and cost estimates, necessary fieldwork, drafting, design, surveying, bid assistance, construction inspection, project management, preliminary reports, and identification of alternatives, the Engineer will also secure all necessary permits for the project.
- 22 Preparation of specialized engineering studies on a variety of subjects including, but not limited to structural design and structural analysis of buildings, bridges, drainage studies, master planning, water and wastewater, and construction feasibility studies.
- 23 Construction administration and engineering including, but not limited to, review and approval of material submittals, daily construction observation, as needed, and documentation, coordinating contractor’s work.
- 24 Development and subdivision reviews that conform with City’s approved zoning ordinances, design standards, and any applicable ordinances related developments, subdivisions, and building codes.
- 25 Surveying activities including, but are not limited to, topographic survey, title search, easement legal description preparation, construction staking, and cut-sheet preparation.
- 26 Engineering or project management services may include, but not limited to sanitary sewer, storm sewer, water mains, street paving, sidewalks, bridges,

drainage projects, building repairs, stormwater detention pond design, lift station design, plan reviews, geotechnical, mechanical, electrical, plumbing, and road design drainage studies, in accordance with city standards and procedures.

Possible projects could include:

- a. Site and utility plans at any City facilities and City parks;
- b. Detention ponds;
- c. Road engineering projects;
- d. Facility remodels;
- e. Subdivision and development reviews;
- f. Projects identified in the Parks Master Plan;
- g. Projects identified in the City of Mercedes Capital Improvement Plan; and
- h. Thoroughfare projects;
- i. Land Use Analysis;
- j. Feasibility studies;
- k. Water and Wastewater Master Planning
- l. Water and Wastewater Plants;
- m. Hydraulic modeling;
- n. Water wells;
- o. Owner's representative.

- 27 Consultants may perform various topographical surveying tasks as requested for the preparation of civil engineering construction plans. Services may include but not be limited to, the gathering of topographical survey data and providing digital submissions. It is understood that the final work product will be a complete survey that will contain all known site features and will be ready for use as a base drawing for final engineering plans.
- 28 Services may include construction supervision and full-time inspection services on all construction work on which this task is assigned to the consulting engineer. Sufficient personnel as agreed upon by the City shall be assigned to the construction project to assure that each element of the project is constructed in keeping with the plans and specifications approved by the City. Activities task will be dedicated to verifying that all materials provided and work performed is in conformance with the project plans and specifications.
- 29 Engineering Firm shall furnish its inspectors with equipment and materials and any incidentals necessary to properly perform their work.
- 210 The Engineering Firm, at its own expense, may enter contracts with joint contractors, sub-consultants, or employ additional personnel to the extent deemed necessary for the required work. The firm acknowledges that such contracts made with these sub-contractors are not contracted by the City.

Section 3.0 Terms:

- 3.1 This Contract shall be in force upon acceptance in accordance with the City's procurement policy for professional services and a start date of the notice to proceed with two (2) optional annual renewals. Annual renewals are predicated on sufficient budgetary allocation by the City Council for the renewal of the awarded Contract. City Council shall be under no obligation to make such budgetary allocation.
- 3.2 This Contract may be terminated at any time by the City or the Consultant upon receipt of thirty (30) days' prior written notice.
- 3.3 Any Work outside the scope of this Contract must be in writing and authorized, in advance, by the City.
- 3.4 Any variations from this Contract must be in writing and agreed upon by both the City and the Consultant.
- 3.5 In the event that additional or removed services from a particular group, Consultant may give the City a revised price in writing. The City shall have thirty (30) days to accept or reject the price revision.

Section 4. Payment Terms:

- 4.1 City agrees to pay Consultant for the Work performed under this Contract, and Consultant agrees to accept, as his full and only compensation thereof, a sum mutually agreed upon and authorized by the City be paid for each authorization on the following terms: Each payment will be based on the receipt of a monthly invoice from the Consultant which details the exact location, date, and type of services rendered during the previous month.
- 4.2 If the Consultant fails to perform any of its obligations under this Contract or any other contract between the City and the Consultant, including its obligation to the City to pay any subcontractor or workmen or other person which arises out of or in connection with the performance of this Contract or any other contracts with the City, then the City shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the City Manager of the City may deem ample to protect the City against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the City Manager may deem proper to secure such protection or satisfy such claims.

Section 5. Miscellaneous:

These Contract, together with the documents and attached Professional Services General Terms of the Agreement are fully a part of this agreement.

THE CITY OF MERCEDES:

Alberto Perez, City Manager

ATTEST:

Joselynn Castillo, City Secretary

CONSULTANT:

Signature: _____

Printed Name: _____

Address: _____

Phone Numbers:

Office: _____

Cell: _____

Fax: _____

Federal Taxpayer Identification Number: _____

**PROFESSIONAL SERVICES
GENERAL TERMS OF THE AGREEMENT**

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I. CONSULTANT'S RESPONSIBILITIES

A. General

The Consultant will perform engineering and consultant, as needed, in relation to the design of the identified projects. The Consultant will serve as the City's (City of Mercedes) professional consultant and will advise the City during the performance of the Consultant's services. The City agrees to compensate the Consultant for those services in accordance with Section V - Compensation. Consultant shall report to City's designated Project Manager which can and will vary depending on the nature of the identified project.

B. 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.

The City is agreeing to contract with the Consultant on basis of its qualifications and proposal, including its proposed Key Personnel, who are the employees of the Consultant responsible for performing major aspects of the services to be provided under this Agreement, and its' designated Subconsultants, the other professional service providers, who will provide specialized services under this Agreement.

1. The Consultant's Key Personnel, including its Project Manager, and the Consultant's associated Subconsultants to be employed in the performance of the Project professional services shall not be changed except with the City's prior written approval.

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.

3. The Consultant agrees not to modify any Subconsultant's design after Subconsultant's seal has been affixed, except with the written consent of the Subconsultant. The Consultant is fully responsible for the Subconsultants' performance and obligations under this Agreement.

4. The Consultant shall obtain City's written approval prior to terminating, adding or substituting Subconsultants.

5. If the City 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 City's prior written consent and approval must be obtained before any such person may be reinstated. The City may report any breaches of professional codes of ethics to the appropriate licensing board.

6. The Consultant will attend and draft complete minutes of each Project design and construction meeting between Consultant, City and Construction Contractor and/or Consultant and other agencies, and submit them to City for approval within seven (7) calendar days after each Project conference.

7. The Consultant shall prepare and submit all appropriate permit applications and supporting drawings, specifications and other documents in the name of the City of Mercedes 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 or as otherwise specified by City. Development and permitting fees due to the City of Mercedes will be waived.

8. Consultant agrees to attend and make presentations, as Basic Services, including (i) Council and Committee meetings, (ii) public meetings, and (iii) internal City of Mercedes meetings. Any other presentations required by City will be considered Additional Services.

9. The Scope of Services generally consists of all elements of work, material and equipment required for the professional development of the Project satisfactory to the City and in compliance with all applicable laws, rules, regulations, and ordinances and in accordance with the requirements, policies, and general practices of the City.

10. The Consultant shall not knowingly specify, request or approve for use any asbestos containing materials or lead-based paint without the City'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, both prior to design and upon completion of the Construction Documents Phase.

11. If directed by City, Consultant shall update City provided record documents. If the City provided record documents to be updated 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 City and in accordance with the Texas Board of Professional Engineers rules.

12. The Consultant agrees that record documents provided by the City 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 City is strictly prohibited.

13. 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.

14. Confidentiality: In order to provide the Deliverables to the City, Consultant may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Consultant acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensor's and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Consultant (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Consultant promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Consultant agrees to use protective measures no less stringent than the Consultant uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

15. The Consultant shall assist the City 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 City's review and approval that clearly illustrates the Consultant's recommended color scheme.

16. 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 performance.

17. Non-Infringement: The Consultant represents to the City that: (1) the Consultant shall provide the City good and indefeasible title to the Deliverables and (2) the Deliverables supplied by the Consultant in accordance with the specifications in the Contract will not infringe, directly or contributory, and patent, trademark, copyright, trade secret or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Consultant does not know of any valid basis for such claims. The Consultant shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (1) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of Deliverables infringes the intellectual property rights of any third party; or (2) the Consultant's breach of any of Consultant's representations stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Consultant agrees that the City's specifications regarding the Deliverables shall in no way diminish Consultant's obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact Consultant.

C. Laboratory Services

If laboratory services are provided for the Project by the Consultant or its Subconsultant(s) through this Agreement, those services must be performed by a properly accredited laboratory. The Consultant will provide evidence to the City of such accreditation on an annual basis for the duration of this Agreement.

D. Quality Control Plan (QCP)

1. The Consultant will develop a Quality Control Plan (QCP) form and agrees to perform quality assurance-quality control/ constructability reviews. The approved QCP will be incorporated by reference and will include any subsequent revisions approved by City. In addition to providing the reports required by the QCP, the Consultant agrees to address any QCP comments from the City and provide resolution to the City's satisfaction. In the event the City retains a separate consultant to perform additional QCP services for the City, the Consultant will provide all necessary information to the City, address any comments from the City's consultant, and provide resolution to the City's satisfaction. The Consultant shall include this language in all its Subconsultant contracts to ensure Subconsultants understand their responsibility for complying with the City's or City's consultant's QCP requirements.

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.

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.

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 Preliminary Construction Budget. The Consultant will provide interim construction estimates to verify that the Project is within the Preliminary Construction Budget as further described in the phase descriptions in this Agreement.

5. Acceptance and/or approval of the Consultant's QCP documentation by the City 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.

E. Basic Services:

The Consultant will perform the basic Scope of Services described in this Agreement. This Scope of Services shall be performed only as authorized by the City.

1. Phase A: Preliminary Phase Services

If authorized by City, the Consultant shall perform the Phase A: Preliminary Phase Services as described below and in Resource Allocation Plan (RAP) for each subsequent written authorization.

a. Attend and, if requested by the City, conduct preliminary conferences and public meetings with the City and other interested or involved entities regarding the alternatives for the Project. Report progress of this phase to the City relative to approved Project Resource Allocation Plan (RAP) as prescribed by the City.

b. Obtain and review existing plans, maps, records, traffic (vehicular and pedestrian), water and wastewater studies, planning studies, zoning, land use, other utility, population, and other available information relevant to the development of the Project. With approval from the City, perform or contract with other licensed professionals to perform geotechnical investigations and engineering, or any tests, investigations or studies that are required for the proper execution of Phase A of the Project.

c. Prepare, conduct and document studies, analyses and reports of the Project alternatives in sufficient detail to clearly indicate the problems involved and reasonable solutions available to the City. Such studies, analyses and reports may include, but are not limited to: preliminary layouts, maps, exhibits, sketches, construction materials and methods evaluations, schedules, utility coordination plans, design criteria, environmental reviews, compatibility with existing and proposed systems and/or processes, and other investigations pertinent to the evaluation of the Project alternatives.

d. Collect all pertinent information concerning proposed public or private projects and/or proposed improvements in the Project area. Coordinate with City and other entities as necessary to comply with the Project RAP and minimize Project impacts and to communicate Project details to minimize impact to other projects in the area.

e. Prepare preliminary Project construction schedule estimate of the probable Project construction, life cycle and maintenance costs for all alternative solutions. The Consultant's opinion of construction costs shall be based on materials and labor process prevailing at the time of the preparation of the preliminary report with consideration of inflationary increases in costs. The Consultant shall apply reasonable consideration and knowledge to the preliminary cost estimate development.

f. Conduct preliminary field surveys, and determine site constraints and permitting requirements.

g. Prepare an environmental report for the recommended Project alternative(s) that addresses appropriate environmental issues, which may include, but are not limited to, impacts to air, noise, and water quality, historical features, vegetation, environmental and geological features, and endangered species.

h. Prepare a geotechnical report and other technical reports for the recommended Project alternatives that may include, but are not limited to: subsurface utility engineering

(SUE) findings, delineation of geologically sensitive areas, hydrologic issues, soils formation, and information necessary to identify contractor's probable or recommended means of construction.

i. Prepare, present, and publish details and a summary of findings for the recommended Project in a Preliminary Engineering and Investigations Report. This report will be drafted upon conclusion of the Consultant's reviews, investigations, and preliminary evaluations and shall include, but not be limited to, cost estimates (as outlined in Subsection I.E.1(e), alternate routes, identification of permanent and temporary easements, identification of need for additional right-of-way, evaluations of and of Project construction contracts to be bid, and design recommendations for construction methods and materials, including recommendations on the number and construction phase schedules.

j. For all Phase A services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

k. For all Phase A services, the Consultant shall provide all required Quality Control Plan (QCP) documentation.

2. *Phase B: Design Phase Services*

The accepted recommendations from the Preliminary Engineering Report will define the Scope of work for the Design of the Project. If authorized by the City, the Consultant shall perform the Phase B services as described below and in RAP for each subsequent written authorization.

a. Attend and/or arrange for conferences, at periodic intervals not to exceed **fourteen (14) calendar days**, with the City for the purposes of explaining completed design activities and review of Project RAP for completion of remaining activities.

b. Conduct or otherwise acquire the necessary field surveys, soils tests, geotechnical tests, and additional analysis that, in the opinion of the Consultant, are required for the proper execution of the design of the Project.

c. Provide for field surveys, which may include photogrammetry, and perform related office computations and drafting for collecting information required for design. Such surveys must include horizontal and vertical control adequately documented on the final plans. Field surveys must also include the staking and referencing of points of intersection (PI's), points of curvature (PC's), points of tangency (PT's), and benchmarks (BM's) necessary to establish the Project construction in the field. If necessary, establish Static GPS Control Monuments with U.S. Geological Survey (USGS) NAD 83 and NAVD 88. Horizontal control for facilities shall be on the *Texas State Grid Coordinate System* Central Zone Grid Coordinates carried to second-order accuracy to permit actual construction staking to third order accuracy. The vertical control shall be based on the USGS NAVD 88 datum, specify the Geoid Model, and BM's shall be established not more than 1000 feet apart at accuracy of 0.01 feet. Visible topographic features will be tied to the Project centerline(s) and will include, but not necessarily be limited to, existing property or lease lines, property or lease corners, utilities and appurtenance, roadways, structures, railroad structures, trees over eight inches in diameter, and other features within the limits of construction and twenty-five (25) feet beyond. Project control must be complete and staked in the field at the time of advertisement for bid so that construction staking can be accomplished immediately thereafter.

d. The Consultant shall prepare a Draft Storm Water Pollution Prevention Plan (SWPPP) using a standard template and submit to the City 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 City's comments provided on the Draft SWPPP.

e. Update construction cost estimates of authorized Project construction.

If the estimated construction cost exceeds the Preliminary Construction Budget as established in Section III, the Consultant shall consult with the City as to what action is to be taken. If the City requires revisions to the Project scope to reduce the Project construction cost as required to stay within the Preliminary Construction Budget, the Consultant shall, at no additional cost to the City, make such revision to the Project construction document.

f. Provide City:

(i) One (1) electronic editable and searchable copy of 30%, 60%, 90% and 100% design complete submittals for review and comment.

(ii) Address the City's comments on each submittal.

(iii) One (1) electronic editable and searchable copy of Final Bidding Documents (consisting of plans, details and the Project Manual) and, one (1) electronic editable set of final design criteria and calculations of principal elements of final design.

g. Prepare information for any permits or approvals required by regulatory agencies for which the City must apply. The Consultant shall realize and acknowledge that all necessary permits are identified in the approved Preliminary Engineering Report (PER). The Consultant will be responsible for obtaining any additional permits that are not required by Contractor to obtain and are not identified in the PER at no additional cost to the City.

h. Provide final bid documents, which incorporate the City's comments, to the City at least fourteen (14) calendar days prior to advertising the Project for bids. Bid documents will not be printed until the City authorizes the Consultant to do so.

i. Obtain the City's acceptance of the Project bidding documents and provide one (1) electronic pdf set of final Project bidding documents for distribution to contractors. The Consultant agrees that the City may post the Consultant's Bidding Documents on-line for bidding purposes.

j. Update construction cost estimates of authorized Project construction. If the estimate exceeds the Preliminary Construction Budget described in Section III, the Consultant shall consult with the City as to what action is to be taken. If the City requires revisions to the Project scope to reduce the Project construction cost as required to stay within the Preliminary Construction Budget, the Consultant shall, at no additional cost to the City, make such revision to the Project construction documents.

k. Only if requested by the City, the Consultant shall assist the City in determining what additional information on Contractor qualifications may be required to be submitted by the bidders with their bids.

l. For all Phase B services, the Consultant shall submit written progress reports at least monthly. If the required reports are not received within seven (7) calendar days of the end of the month, the City may withhold payment, in accordance with Subsection V.B.3, until the reports are received.

m. 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.

n. For all Phase B services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

o. For all Phase B services, the Consultant shall provide all required QCP documentation.

3. *Phase C: Bid-Award-Execution Phase Services*

If authorized by the City, the Consultant shall perform the Phase C services as described below:

a. Only if requested by the City, the Consultant shall assist the City in the advertisement of the Project for construction bids. Consultant services may include distributing bid documents, maintaining a record of bid document issuance and receipt, and receiving bid document deposits. Bid deposit checks shall be made payable to the City and those deposits not returned to bidders shall be given to the City.

b. The Consultant shall participate in or conduct a pre-bid conference, prepare and issue addenda, and attend bid opening.

c. Following the City's receipt of bids and bidders' post-bid information, the Consultant shall assist the City in analyzing Contractor bids and qualifications. The Consultant shall furnish to the City a recommendation regarding the responsibility of the bidder(s) within seven (7) calendar days following bid opening. Should the apparent lowest responsible bidder's construction cost of the Project (or component thereof) be greater than the Preliminary Construction Budget (or appropriate portion thereof) and the City elects not to award the Project (or component thereof) construction contract, the Consultant will consult with the City to determine revisions to the Project to reduce the Project cost as required to stay within approved or authorized cost limitations. The Consultant shall then make such revision to the Project construction documents at no additional cost to the City.

d. For all Phase C services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

e. The Consultant shall prepare a conformed (construction) set of contract documents that incorporates all addenda, alternates and clarifications to both the Project Manual and the Plans. The Consultant shall submit a pdf of the conformed Project Manual and Plans to the City prior to City Council award of the construction contract.

4. *Phase D: Construction Phase Services*

If authorized by the City, the Consultant shall perform the Phase D services as described below:

a. The Consultant will be a representative of the City's Representative during the Construction Phase, and shall advise and consult with the City. Instructions to the Contractor will be forwarded through the Consultant. The Consultant will have authority to act on behalf of the City only to the extent provided in this Subsection I.E.4, Phase D: Construction Phase Services.

b. The Construction Phase will commence with the construction contract execution and will terminate on the date of final expiration completion of the construction Project, based on the completion milestone established for the construction Contract Time. The expiration date includes any time extensions granted to the Contractor by the City, but in no case will time extensions exceed approved Project Resource Allocation Plan (RAP).

c. Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Consultant shall administer the construction contract as set forth below and in the City's General Conditions of Agreement.

d. The Consultant shall participate in and document the proceedings of the preconstruction conference.

e. The Consultant shall 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 shall be at intervals appropriate to the stage of construction, but in no case less than **weekly**. The Consultant shall record observations made on each job site visit, including regularly scheduled Project meetings, and shall submit a written within 48 hours of site visit report to the City.

(i) Reports should include: list of subcontractors on-site by week as reported by Contractor, 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, updates to the Project RAP, estimated contract completion date, and other meaningful information. Reports for periods when no Work is in progress will state "No Work in Progress."

(ii) The Consultant will furnish reports to the City within five (5) calendar days of the end of the work week of the observations or the report will be considered late. As stated in Subsection V.B.3, the City may withhold payment until the reports are received.

(iii) In addition, the Consultant's subconsultants shall visit the site at appropriate stages of the Work related to their area of specialty, shall record observations made on each job site visit and shall submit reports to the Consultant to be incorporated in the Consultant's reports to the City. The Consultant's subconsultants shall also attend those progress meetings when the Contractor's Application for Payment includes requests for areas of Work related to their discipline.

f. The Consultant shall review the Contractor's Application for Payment, based on Consultant's observations on site, evaluate the request, and recommend to the City the amount to be paid to the Contractor.

g. The Consultant's approval signature on the Application for Payment constitutes a representation by the Consultant to the City that the work is proceeding in general

accordance with the Contract Documents, and that the Contractor 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 Contractor's responsibility as defined in the Contractor's contract with the City.

h. The Consultant shall provide a draft response to the City for review and comment within seven (7) calendar days (unless the City grants a time extension), to all requests for information, claims, disputes and other matters in question between the City and the Contractor relating to the execution or progress of the work or the interpretation of the Contract Documents. After acceptance by the City, Consultant shall provide to the Construction Contractor the interpretations and decisions in written form, accompanied by signed and sealed drawings as appropriate.

i. If any Work does not conform to the Contract Documents, the Consultant shall, within 24 hours of the Consultant's observation, recommend the rejection of any such work to the City in writing. At any point during the Construction Phase, the Consultant may recommend that the City require special inspection or testing of the Work in accordance with the provisions of the Contract Documents.

j. The Consultant shall review and take other appropriate action upon Contractor submittals such as Shop Drawings, product data and samples following the requirements in the City Front End documents. The Consultant shall provide a written response to the Contractor (with a copy to the City) within seven (7) calendar days (unless a time extension is granted in writing by the City) to avoid a delay in the work.

(i) The Consultant's review is for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant is not responsible for work or requirements that are the Contractor's responsibility as defined in the Contractor's contract with the City.

(ii) The Consultant's review will not constitute approval of safety precautions, construction means, methods, techniques, sequences or procedures.

(iii) The Consultant may rely upon professional certifications of performance characteristics of materials, systems or equipment if such certifications are required by the Contract Documents.

k. The Consultant shall prepare Change Orders Documentation for the City's approval and execution in accordance with the Construction Contract Documents. The Consultant will recommend to the City accepting minor changes in the Work which are consistent with the intent of the Contract Documents, but do not involve an adjustment to the Contract Amount or an extension of the Contract Time. The City shall review the recommendation and if acceptable issue a Field Order to the Contractor.

l. Upon receipt of Contractor's notification that the Work has been substantially completed, the Consultant and its subconsultants shall work with the Contractor to ensure the Project is ready for the City's inspection within seven (7) calendar days unless the City approves a time extension. The Consultant shall provide written notification to the City that the Work has been substantially completed and is ready for the City's inspection. The City shall schedule a City inspection to be attended by the Consultant and its subconsultants.

(i) Within twenty-four (24) hours of the City's inspection, the Consultant shall provide the Contractor a draft written punchlist of items that need to be addressed prior to the Final Completion date specified in the construction contract. The Consultant shall provide the Contractor a final written punchlist within three (3) calendar days of the City's inspection.

(ii) If requested by the City, Consultant shall prepare and issue a Certificate of Substantial Completion no later than three (3) calendar days after the contract requirements for substantial completion have been met.

m. The Consultant shall review all warranties, guarantees, bonds, equipment operating instructions, and similar required material and documents for general compliance with the Contract Documents and shall present them to the City. Upon receipt of Contractor's written notice that the work is ready for final inspection and acceptance and receipt of a final Application for Payment from the Contractor, the Consultant shall make an on-site review within seven (7) calendar days. When the work is found to be acceptable by the City, the Consultant shall, within seven (7) calendar days, sign the final Application for Payment and provide a Letter of Concurrence to the City signifying that the work has been completed in general conformance to the requirements of the construction contract documents and that final payment is due the Contractor.

n. For all Phase D services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

a. *Construction Project Representation Beyond Basic Services*

(i) If the City and Consultant agree that more extensive representation is needed at the site, 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.

(ii) Such Project Representatives will be selected with the written approval of the City, employed and directed by the Consultant, and the Consultant will be compensated as mutually agreed between the City and the Consultant.

5. *PHASE E: POST-CONSTRUCTION PHASE SERVICES*

If authorized by the City, the Consultant shall perform the Phase E services as described below:

a. The scope of assistance referenced in this Paragraph 5 will include, but not be limited to, the following: (1) producing Record Documents for the City; (2) notifying the Contractor of deficiencies or failures in labor and materials and requesting corrective action; (3) preparing correspondence and other written data as necessary to document, clarify, and resolve discrepancies; and (4) meeting with the Contractor at the Project site or other local places when requested by the City.

b. Upon receipt from the Contractor of details of deviations from Contract Documents, Consultant shall produce Record Documents for the City's use within thirty (30) calendar days. The Consultant will ensure that the Record Documents of construction incorporate all compiled change orders, change directives, and field orders. The Consultant will ensure that a Professional Engineer's seal is affixed and signed on each document, stamped and identified as "RECORD DOCUMENTS", that signifies the recorded changes have been transferred.

(i) The Consultant shall submit electronic files of Project drawings that are considered Record Documents to the City 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 City (e.g. AutoCAD or Revit files) as well as a pdf copy, signed and sealed by the Consultant.

c. Under Basic Services, the Consultant shall assist and represent the City through the post-construction period on matters involving malfunctions or deficiencies of the Work. The Consultant shall communicate with and assist the Contractor as necessary to correct all deficiencies within seven (7) calendar days of notification by the Consultant for a specific correction.

d. The Consultant shall require its subconsultants to provide assistance as necessary during the post-construction period stipulated in the approved Project Resource Allocation Plan (RAP).

e. 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 City in writing within seven (7) calendar days. This notification by the Consultant does not release the Contractor 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 no other deficiencies on the Project.

f. 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 I.E.6 and paid for in accordance with the RAP.

g. For all Phase E services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

F. Additional Services:

1. Unless otherwise stated in this Agreement, the Services listed in Subsections (a) through (e) below are Additional Services. Additional Services authorized in writing by the City will be paid for by the City as provided in this Agreement, in addition to the compensation for Basic Services. Additional Services authorized by the City in writing will be incorporated in the 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 City within fourteen (14) calendar days of identifying the need.

a. 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.

b. 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.

c. Providing design services of subconsultans not included in original scope of the Project.

d. Providing any other services not otherwise included in the Agreement.

e. Legal proceeding, unless the Consultant is a party to the proceedings.

2. For all Additional Services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the RAP.

3. The following are **not** Additional Services

a. Any revisions required for failure to adhere to the Preliminary Construction Budget.

b. Minor requests for information as determined by the City that clearly do not require extensive work by the Consultant.

c. Any revisions to Drawings, Specifications or other documents when the item requiring revision is inconsistent with or contradicts prior approvals or instructions given by the City, when the revision is required due to Consultant's failure to adhere to prior approvals or instructions given by the City, or when the revision corrects or revises any errors or deficiencies.

II. CITY'S RESPONSIBILITIES

A. The City will:

1. Provide its requirements for the Project.

2. Designate the City's Designated Representative.

3. Provide a "Preliminary Construction Budget for each Project" as defined in Subsection III A.

4. Assist Consultant by providing access to 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.

5. Assist Consultant in gaining entry to public property and private property, only when reasonably necessary, as may be required by the Consultant in the performance of their services under this Agreement.

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 City

will review and provide written comments on periodic plan and specifications submittals within fourteen (14) calendar days. The City shall immediately notify the Consultant if additional time is needed.

7. Give prompt written notice to the Consultant whenever the City observes or otherwise becomes aware of any defect in the Consultant's work product or services.

8. Direct Consultant, through an Amendment to this Agreement, to provide any necessary Additional Services beyond those authorized in the approved Scope of Services and Project RAP or as stipulated in the Terms and Conditions of this Agreement.

B. The City 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.

C. The City 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 City'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.

III. PRELIMINARY CONSTRUCTION BUDGET

A. The "Preliminary Construction Budget" means the amount allocated by the City for the Project construction contract, which can only be adjusted by the City's prior written approval.

1. The Preliminary Construction Budget will be determined for each specific assignment.

B. Preliminary 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 City.

C. Responsibility for Preliminary Construction Budget

1. Consultant is responsible for designing the Project to be constructible within the Preliminary 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 City's consent, and, with the City's approval, develop bid alternates.

2. Consultant shall promptly advise the City, in writing, if the Consultant finds that the project being designed will exceed or is likely to exceed the Preliminary Construction Budget

and the Consultant is unable to design the Project within the Preliminary Construction Budget. The Consultant shall provide the City with a written revised estimate of construction costs, recommended changes in scope or quality to reduce the construction cost, and a description of any recommended bid alternates. If, after reviewing the Consultant's revised estimate of construction cost and recommendations, the City determines that award of a construction contract within the Preliminary Construction Budget is improbable, the City may:

- a. give written approval of an increase in the Preliminary Construction Budget;
 - b. cooperate in revising the Project scope and quality as required to reduce the construction cost;
 - c. direct the Consultant to prepare the bid documents to include bid alternates; or
 - d. authorize any combination of 2.a, 2.b, and 2.c.
3. If the Preliminary Construction Budget is exceeded by the lowest responsive bid submitted by a responsible bidder, the City shall either:
- a. give written approval of an increase in the Preliminary Construction Budget;
 - b. cooperate in revising the Project scope and quality as required to reduce the construction cost;
 - c. abandon the Project; or,
 - d. authorize rebidding of the Project within a reasonable time.

In the case of 3.b and/or 3.d, above, the Consultant, without additional compensation, shall perform those services to produce the Drawings and Specifications as necessary to comply with the Preliminary 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 the City, unless the City finds, after consultations with Consultant, that unforeseeable changes in market conditions materially affected the bids. If the bidding or rebidding processes occur after that six (6) month period, or if the City finds that unforeseeable changes in market conditions materially affected the bids, the Consultant will be entitled to additional compensation for performing those services to produce the Drawings and Specifications as necessary to comply with the Preliminary Construction Budget.

4. Bid Alternates

a. If, under the City's direction, the Consultant prepares the bid documents to include bid alternates as a means to keep the Project cost within the Preliminary 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 Preliminary Construction Budget,

Subsection III.C.3 of this Agreement governs. The City's acceptance of the base bid or bid alternates will not change the Consultant's fee amount.

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

(i) If the bid for the alternates requested by the City is within the Preliminary Construction Budget, there is no change in the fee.

(ii) 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 V.A.3 of this Agreement.

IV. SCOPE OF SERVICES AND RESOURCE ALLOCATION PLAN (RAP)

A. The City will issue a request for proposal to the Consultant for each project to be negotiated. The request for proposals will include a description of the requested Scope of Services, a schedule for the submittal of the proposal, and a proposed schedule for the performance of the services. The Consultant will submit its proposal to the City on a timely basis for its review and approval. Approved proposals will become a part of this Agreement.

B. The Consultant agrees to complete the phases of services in accordance with the applicable standard of professional care, the approved proposal(s), the Project's Resource Allocation Plan ("RAP"). The RAP describes the major tasks to be performed and work products to be delivered by the Consultant, the estimated time to complete the tasks and work products, the amount of compensation allocated for the respective tasks and work products, and an estimated allowance for reimbursable expenses. A specific time period will be set for the completion of each phase in the accepted proposal for the applicable services.

C. 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 City is a tax exempt entity and will not reimburse the Consultant for any tax expenses. The City will consider exceptions on a case- by-case basis. Reimbursable Expenses are limited to these specific items:

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

a. 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/category/26429>. Amounts in excess of the Travel Policy or GSA Rates will not be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets).

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

c. 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 South Texas area to be included in Consultant's overhead rate and not billed separately as a reimbursable expense.

2. Fees paid for securing approval of authorities having jurisdiction over the Project.

3. Reproduction expenses for drawings, specifications and all other documents required for bidding, City submittals, and for file copies of Consultant, Contractor, and City, and other parties approved by the City.

4. Expense of renderings, models and mock-ups requested by the City. Expense of reproducing record drawings for the City on sepiia, mylars or plastic.

5. 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.

D. Amendments

1. Before additional work may be performed or additional costs incurred beyond what is specified in the approved Scope of Services and Project RAP, both parties must execute a written Amendment. The City 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 Amendment. Any additional work must be performed within the time period established in the Project RAP.

a. 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 request to the City for approval. The City may, at its sole discretion, extend the authorized Project period.

b. Changes in Scope. Changes that would modify the scope of work authorized for the Project must be established by a 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 City's approval.

2. The City 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 Amendment and revise the RAP.

E. If the City sustains actual damages as a result of willful or negligent failure of the Consultant to furnish services in compliance with the approved Scope of Services and Project RAP described in this Section IV and subsequent approved amendments in accordance with Subsection IV.E, the Consultant agrees to compensate the City for the cost of such damages in accordance with Section VIII, itemized costs of which will be provided to the Consultant by the City. The City agrees to provide the Consultant written notification of such damages as the cost is being incurred.

F. The Consultant is not liable or responsible for City 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 City for approval. These requests will be reviewed only if submitted to the City within (14) calendar days of the occurrence unless force majeure conditions exist.

G. If the Consultant fails to meet the approved Project RAP schedule, including subsequently approved amendments, the City may elect to invoke remedies outlined in Section VIII of this Agreement.

H. Time required by the City to review and return documents to the Consultant following their submittal during and after each phase will be included in the approved Project RAP.

V. COMPENSATION

A. Basis of Compensation

1. General. The City will compensate the Consultant for the Scope of Services described in the approved Project RAP, as it may be subsequently amended, in accordance with Subsection V.B, Payments to the Consultant, and the other Terms and Conditions of this Agreement, as follows:

a. No advance payment will be paid to the Consultant prior to rendering services.

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

(i) Basic Compensation

The total amount of compensation to be paid to the Consultant during the term of this Agreement will not exceed in the amount negotiated.

c. Basic Services for Subconsultants may be billed by a Consultant a multiple of up to one and five hundredth (1.05) times the amount billed to the Consultant for such services.

2. Total Compensation. The total amount of compensation to be paid to the Consultant will not exceed the amount stated in Subsection V.A.1.b(i).

a. 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.

b. *Standard Hourly Rate*: Compensation for Basic Services described in Subsection I.E. is as follows:

(i) The Consultant's hourly rate for each standard job title includes all labor, overhead, and profit necessary to perform the requested services.

(ii) 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 plus the estimated allowance for Reimbursable Expenses.

c. *Stipulated Sum*

For Basic Services, as described in Subsection I.E., is as follows:

(i) 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.

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

3. Compensation for Additional Services

a. For Project representation beyond Basic Services as described in Subsection I.F. of this Agreement, compensation will be made for Additional Services in accordance with the basis for compensation established in the Project RAP.

b. 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.

4. 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. Compensation for Reimbursable Expenses

a. Reimbursable Expenses, as described in Subsection IV.C, may be billed at 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.

b. The City is a tax-exempt organization as defined by Chapter 11 of the Property Tax Code of Texas. The City 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 City for any such costs incurred.

c. An allowance for Reimbursable Expenses described in Subsection IV.C will be determined and included in the approved RAP. The Consultant shall not exceed the allowance amount without prior written approval by the City.

6. The City and the Consultant agree in accordance with the Terms and Conditions of this Agreement that:

a. If the City determines the scope of the Project or Consultant's Services are changed materially, compensation will be equitably adjusted through negotiation.

b. If the City 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.

B. Payments to the Consultant

1. Payments for Basic Services

Payments for Basic Services, including Reimbursable Expenses, will be made monthly in accordance with the approved Project RAP on the basis set forth in Subsection V.A. Consultant shall submit the application for payment using the forms supplied by the City.

2. Payments for Additional Services

Payments for the Consultant's Additional Services as defined in Subsection I.F may be made no more often than monthly upon presentation by Consultant of an acceptable statement of Additional Services rendered and/or expenses incurred.

3. Payments Withheld

The City may withhold, amend, or nullify any request for payment by the Consultant under those conditions described below.

a. Failure of the Consultant to follow the approved schedule and meet all phase and milestone requirements specified in the Project RAP.

b. The City'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 the City within ten (10) calendar days of Consultant's receipt of payment from the City.

c. Failure of the Consultant to submit timely and complete records of Project conference proceedings as specified in Subsection I.B.8.

d. Failure of the Consultant to submit timely and complete weekly reports of its job site observations containing detailed information as specified in Subsection I.E.4.e. of this Agreement.

e. Failure of the Consultant to provide updated record drawings and Contractor's record contract documents to the City 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.

4. Prompt Payments

a. The City shall make payment to Consultant of the sum named in a payment application within thirty (30) calendar days after the day on which the City received the mutually acceptable payment application.

b. The City 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 City receives a corrected payment application.

5. Payment for Project Suspension or Termination

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 City 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, the City may terminate the Agreement in accordance with Subsection VII.F.

C. Payment Applications

1. Payment applications must be submitted on a monthly basis.

2. 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.

a. Each payment application from the Consultant will be reviewed to ensure the following information is included and/or is correct. Without this information, the City will not approve the payment. Consultant will be notified, within fourteen (14) calendar days after the City'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.

b. That the labor rates, reimbursable, 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 Amendment.

c. That the charges included on the payment application reflect activity for which the Consultant has actually performed work.

d. 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.

e. That the Consultant's principals are billing at staff rates when acting in that capacity.

f. That the subconsultant activity, the subconsultant approved for a specific discipline being used paid when the work is the discipline is performed.

g. That for any reimbursable expenses, supporting documentation is attached to the invoice.

h. 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.

3. The City may review the first payment application in detail with the Consultant to explain the City's payment requirements and to ensure payment application is accurate and complete.

4. Any costs in excess of approved maximum not-to-exceed contract amount(s) incurred prior to the City's written consent will be at Consultant's risk and the City will not pay such costs unless such costs were incurred at the City's direction. The City is not required to increase the approved maximum not-to-exceed contract amount(s) established under this Agreement.

VI. INSURANCE REQUIREMENTS

A. The Consultant shall carry insurance in the types and amounts indicated below for the duration of the Agreement:

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 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 City.

2. Commercial General Liability Insurance with a minimum combined bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B 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. The City listed as an additional insured, endorsement Commercial General Liability Form), or equivalent.
- d. 30-day Notice of Cancellation in favor of the City, endorsement CG 0205, or equivalent.
- e. Waiver of Transfer Right of Recovery Against Others in favor of the City, endorsement CG 2404, or equivalent.
- f. Aggregate limits of insurance per Project, endorsement CG 2503, or

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 of this Agreement. The policy shall contain the following endorsements in favor of the City:

- a. Waiver of Subrogation endorsement CA 0444, or equivalent.
- b. 30-day Notice of Cancellation endorsement CA 0244, or equivalent.
- c. Additional Insured endorsement CA 2048, or equivalent.

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 City.

a. Consultant's Professional Liability Insurance with a minimum limit of **One (1) Million Dollars** per claim and in aggregate.

B. General Insurance Requirements

1. The Consultant must complete and forward to the City before the Agreement is executed, as verification of coverage required in the agreement The Consultant shall not commence services until the required insurance has been obtained and until such insurance has been reviewed by the City. Approval of insurance by the City 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.

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 City with a certificate of insurance as evidence of such insurance.

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 of this Agreement.

4. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the certificate of insurance will indicate: City of Mercedes, 400 S. Ohio Ave, Mercedes, TX 78570.

5. The "other" insurance clause will not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and the Consultant, be considered primary coverage as applicable. In addition, any limitation in Subsection XI.F below, notwithstanding, when the Consultant names the City as an additional insured party under its general liability policy, the Consultant will require that the policy provides any defense provided by the policy. In addition, any limitation in Subsection VI.B.6 below, notwithstanding, when the Consultant names the City as an additional insured party under its general liability policy, the Consultant will require that the policy provides any defense provided by the policy.

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.

7. The City 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. Certified copies may include redactions of proprietary information including executive salaries, proprietary revenue information, and client endorsements.

8. The City 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 City 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.

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.

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.

11. The Consultant shall provide the City thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

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

13. The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of the Consultant.

C. 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.

VII. TERMINATION OF AGREEMENT

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

B. This Agreement may be terminated by the Consultant upon at least thirty (30) calendar days written notice should the City substantially fail to perform in accordance with the City's responsibilities through no fault of the Consultant.

C. Notice to Cure.

The City 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 City 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 City at least three (3) business days prior to the required Notice to Cure meeting with the City.

D. This Agreement may be terminated by the City upon at least thirty (30) calendar day's written notice to the Consultant in the event that the Project is abandoned or indefinitely postponed.

E. This Agreement may be terminated by the City for cause upon thirty (30) calendar day's written notice. In the event the City terminates the Agreement for cause, the City 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" The City may terminate for cause due to the occurrence of any one of the following:

1. If Consultant persistently fails to perform the work in accordance with the Agreement, in particular the approved Project RAP;
2. If Consultant disregards laws or regulations of any public body having jurisdiction;
3. If Consultant makes fraudulent statements;
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;
5. Consultant's failure under this Section includes failure of Subconsultants to meet contractual obligations; or
6. If Consultant otherwise violates in any substantial way any provisions of the Agreement.

F. This Agreement may be terminated at the City's convenience upon thirty (30) 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, and the City retains the right to continue the Project.

G. 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 City, 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.

VIII. CITY'S REMEDIES

The City and Consultant agree that in the event of a delay in completion or other cause for which the City suffers actual damages, the City may elect to pursue its actual damages and any other remedy

allowed by law. Conditions under which the City may seek other damages include, but are not limited to: VII.E.4 above.

A. Failure of the Consultant to make adequate progress in accordance with Subsection

1. Failure of the Consultant to design in compliance with the laws of City, State and federal governments as specified in Subsection I.E.2, 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 City's financial losses for those non-value added compliance costs.

2. 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 City would have originally paid had there not been defects, errors and omissions in the documents. The Consultant will financially participate in the City's financial losses for those non-value added work costs.

B. Pursuant to Subsection VI.A.4, the City 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 City incurs non-value added work costs for change orders due to design errors or omissions the City 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 City;and,
4. Deadline for Consultant's response.

The Consultant will provide a preliminary response to the City'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 City within fourteen (14) calendar days of the date of the preliminary response. The Consultant will provide the payment requested by the City within thirty (30) calendar days of the City's acceptance of the Consultant's formal response or the Consultant will request alternative dispute resolution, as described in Subsection X.B of this Agreement, within fourteen (14) calendar days of the City's rejection of the Consultant's formal response.

C. 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 City'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.

D. If the Consultant materially fails to furnish services in compliance with the approved Project RAP schedule or any subsequently approved amendments to the schedule or the Consultant's services, or deliverables are unusable for their intended purpose and these failures are a material breach of this Agreement, then the City, in its reasonable discretion may contract with another consultant to complete the services or work product, and Consultant shall pay the City for the difference between the balance under Consultant's Agreement with the City had Consultant completed its services and the amount charged by the replacing consultant to complete Consultant's scope of work. The City will provide Consultant with the itemized costs as they are being incurred. Prior to contracting with another consultant, the City shall provide Consultant with a Notice to Cure, as described in Subsection VII.C.

E. Decisions to Withhold Payment

The City may withhold or nullify the whole or part of any payment to such extent as may be necessary because of conditions outlined in Subsection V.B.3 "Payments Withheld."

IX. CONSULTANT'S REMEDIES

A. 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 City 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 seven (7) working days of the end of the occurrence to establish a revised schedule in the RAP.

B. Consultant's requests for remedies arising from the terms of this Agreement for conditions other than those specified in Subsection IX.A must be done in accordance with the following:

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 City describing the general nature of the request. Within thirty (30) calendar days after the preliminary notice, the Consultant must provide the City written supporting documentation stating all known time extensions to which the Consultant is entitled.

2. Within thirty (30) calendar days of receipt of notice of the amount of the requested remedy with supporting data, the City 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

- a. Submit additional supporting data requested by the City;
- b. Modify the initial request for remedy; or

- c. Request Alternative Dispute Resolution.

X. DISPUTE RESOLUTION

A. Filing of Claims

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.

2. Within thirty (30) calendar days of receipt of notice of the amount of the Claim with supporting data, the City 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.

B. Alternative Dispute Resolution

1. If a dispute exists concerning a Consultant or the City, the parties agree to use the following procedure prior to pursuing any other available remedies.

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 (the City, 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.

C. Mediation

1. If the procedure described in X.B.2 proves unsuccessful or is waived pursuant to its terms, the parties shall initiate the mediation process. The City 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. The City 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 mediate with Scott McClain. The parties agree that any mediation will occur in Hidalgo County, Texas which is the choice venue of law.

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 actgathering

D. Resolution of Disputes between Consultant and Subconsultant:

The Consultant agrees to follow the procedures paralleling those outlined in Subsections X.A, X.B, and X.C in the event of a dispute with a Subconsultant. The City is not a party to the dispute resolution process between the Consultant and Subconsultants. However, if the City is notified of a Subconsultant claim, the City will withhold payments to the Consultant in accordance with Subsection V.B.3.b until receiving notification that the claim has been resolved.

XI. MISCELLANEOUS PROVISIONS

A. The City's Right to Audit

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:

- a. Accounting records;
- b. Written policies and procedures;
- c. Subcontract files;
- d. Correspondence;
- e. Amendments to this Agreement (as appropriate);
- f. Agreements between Consultant and any Subconsultant;
- g. Records necessary to evaluate contract compliance and any claim submitted by Consultant or any of its Subconsultants; technical work products in accordance with the approved Project RAP.

2. Consultant shall allow the City'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 the City's written request. Further, Consultant shall allow the City's agent or

authorized representative to interview any of Consultant's employees, all Subconsultants, and all their respective employees.

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 the City has brought to the attention of Consultant are resolved, or (iii) longer if required by law. The City's right to inspect, audit, or reproduce Records (at no cost to the City), or interview employees of Consultant or its respective Subconsultants exists for the same period described in the preceding sentence.

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

5. Consultant shall insert these requirements in each written Agreement between Consultant and any Subconsultant and require each Subconsultant to comply with these provisions.

B. Ownership and Use of Documents

1. All Project Drawings and Specifications produced by the Consultant under this Agreement are the property of the City. The Consultant shall also provide the City high quality mylar and digital computer copies on CD or other City-approved media of updated drawings and reproducible copies of specifications as specified in Subsection I.E.2 this Agreement. The cost of such copies will be paid as specified in Section V of this Agreement. The Consultant may not provide copies of or otherwise use the work products covered by this Subsection XI.B without the express prior written approval of the City.

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 City, is/are subject to the rights of the City 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 XI.B. The Consultant shall include in its Subconsultant contracts appropriate provisions to achieve the purpose of this Subsection XI.B.

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 City reuses such items without the Consultant's specific written verification or adaptation, such reuse will be at the risk of the City, without liability to the Consultant.

4. Should the Consultant be terminated under this Agreement, the City 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 City, as specified in Subsections I.E.2 or I.E.5 of this Agreement (depending on the Project's status at time of termination). The City 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.

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.

C. Venue

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

D. Severability

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 affect 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.

E. INDEMNIFICATION

To the extent allowed by Section 271.904 of the Texas Local Government Code, the Consultant shall indemnify, protect, and save harmless City of Mercedes, Texas 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, WILLFUL MISCONDUCT, AND STRICT LIABILITY, AND SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

F. Notices

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 Subsection XI.G.1 of this Agreement.

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

Mailed Notices to the City:
City of Mercedes
City Secretary
400 S. Ohio Ave
Mercedes, Texas 78570

Mailed Notices to Consultant:
XXXXXXXXXXXXXXXXXXXX

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.

G. Successors and Assigns

The City 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 City may assign, sublet or transfer any interest in this Agreement without the prior written consent of the other party.

H. Extent of Agreement

This Agreement represents the entire and integrated Agreement between the City 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 the City and Consultant.