

REQUEST FOR QUALIFICATIONS

Sealed RFQ's will be received for:

PROFESSIONAL ENGINEERING SERVICES FOR 2021 CITY OF KINGSVILLE DRAINAGE IMPROVEMENTS

Project No. RFQ 21-02

December 22, 2020 – 2:00 PM



CITY OF KINGSVILLE

**SAM FUGATE – MAYOR
HECTOR HINOJOSA – MAYOR PROTEM
EDNA LOPEZ – COMMISSIONER
NORMA ALVARZ - COMMISSIONER
ANN MARIE TORRES - COMMISSIONER**

**Charlie Sosa
City of Kingsville PURCHASING MANAGER
400 WEST KING AVE.
Kingsville, TX 78363
Phone: 361-595-8025**

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RFQ NO. 21-02
Professional Engineering Services for
2021 CITY OF KINGSVILLE
DRAINAGE IMPROVEMENTS
December 22, 2020 – 2:00 PM

Notice To Proposers

The City of Kingsville Purchasing Manager, Charlie Sosa, will receive request for qualifications for Professional Engineering services for 2021 CITY OF KINGSVILLE DRAINAGE Project (RFQ No. 21-02) not later than 2:00 PM on December 22, 2020, and shall open at 2:00 PM on December 22, 2020 at, City of Kingsville City Hall, 400 West King Ave. Kingsville, TX 78363. Project is funded by the Texas Water Development Board (TWDB). This contract is subject to the Environmental Protection Agency's (EPA) "fair share policy", which includes EPA-approved "fair share goals" for Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) firms in the Construction, Supplies, Equipment, and Services procurement categories. EPA's policy requires that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to MBE and WBE firms. Although EPA's policy does not mandate that the fair share goals be achieved, it does require applicants and prime contractors to demonstrate use of the six affirmative steps. The current fair share goals for the State of Texas are as follows: **MBE: EQUIPMENT 7.12%; SERVICES 10.84%; SUPPLIES 9.68%; CONSTRUCTION 12.94%; WBE: EQUIPMENT 5.39%; SERVICES 5.72%; SUPPLIES 9.34%; CONSTRUCTION 8.72%**. The engineer/engineering firm must be registered to practice in the State of Texas to administer the contract, prepare all preliminary and final design plans and specifications, to conduct property surveys and soil tests, prepare design plans and specifications for bid packet, construction observation and inspections (interim and final), and other special services deemed necessary to this project. City of Kingsville reserves the right to negotiate with any and all individuals, engineers or firms that submit proposals, as per the Texas Professional Services Procurement Act and the Uniform Grant and Contract Management Standards. City of Kingsville encourages Minority Business Enterprise's (MBE's) and Woman Business Enterprise (WBE's) to participate. See proposal package for details. City of Kingsville will pay for this contract by check method. A copy of the RFQ can be obtained during regular working hours from: 8:00 AM to 12:00 PM and 1:00 PM to 5:00 PM in the Purchasing Office or call 361-595-8025. Notice is also located online at: www.cityofkingsville.com/purchasing/RFQ.

INSTRUCTIONS TO PROPOSERS

Article I. Nature of Project

The City of Kingsville (hereinafter called the "City") will accept sealed Qualifications for:

RFQ NO. 21-02
PROFESSIONAL ENGINEERING SERVICES FOR
2021 CITY OF KINGSVILLE DRAINAGE PROJECT

December 22, 2020 – 2:00 PM

In accordance with the Specifications and other Contract Documents prepared by the City of Kingsville.

City of Kingsville is seeking to contract with a state-registered engineer/engineering firm for services for various city-wide drainage projects. Based on a recent Master Drainage Plan the City of Kingsville has various drainage deficiencies throughout the city. The project consists of the installation of various size reinforced concrete pipes, drainage inlets, curb inlets, curb and gutter, and pavement replacement in various locations throughout the city. City of Kingsville requests the submission of Statement of Qualifications for engineering services as noted in Article IV Scope of Work, associated with underground drainage system. This RFQ solicits information that will enable the City to determine the highest qualified Engineering Firm that may provide professional engineering services for the project(s) funded through the Texas Water Development Board (TWDB).

This RFQ is issued in accordance with Section 2254 of the Texas Government Code (Professional Services Act) and Title 40 Code of Federal Regulations, Part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

Any loan award is contingent upon release of funds from the Texas Water Development Board (TWDB). This contract is subject to the Environmental Protection Agency's (EPA) "fair share policy", which includes EPA-approved "fair share goals" for Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) firms in the Construction, Supplies, Equipment, and Services procurement categories. EPA's policy requires that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to Minority Business Enterprise and Women-Owned Business Enterprise firms. Although EPA's policy does not mandate that the fair share goals be achieved, it does require applicants and prime contractors to demonstrate use of the six affirmative steps. The current fair share goals for the State of Texas are as follows:

MBE: EQUIPMENT 7.12%; SERVICES 10.84%; SUPPLIES 9.68%; CONSTRUCTION 12.94%

WBE: EQUIPMENT 5.39%; SERVICES 5.72%; SUPPLIES 9.34%; CONSTRUCTION 8.72%

Small, Minority, and Women Business Enterprises (SMWBE) are encouraged to submit qualification statements for consideration as are Small Business in a Rural Area (SBRA).

Article II. Eligibility of Proposers

Any Proposer, in order to be eligible to submit a qualification proposal, must be able to demonstrate to the satisfaction of the City that he has the financial capacity to carry on the work until such time as he receives the first payment under the Contract, and that he is able to finance the work between payments during the contract period.

In summary, the proposal shall be accompanied by statement of financial condition, in the form of a notarized letter of Financial Stability/recently audited financial statement. Failure to comply shall disqualify the Proposer.

Article III. Issuing Proposal Documents

Qualification proposal packets have been prepared for the purpose of: outlining the scope of work required by the City and evaluation criteria. City of Kingsville reserves the right to negotiate with Proposers who demonstrate competence and qualifications to perform the services.

Specifications are on file in the office of the **City of Kingsville Purchasing Manager, City of Kingsville, City Hall 400 West King Ave., Kingsville, Texas 78363** where they may be inspected by qualified Proposers without charge.

Article IV. Scope of Work

The Engineer or Engineering firm to be selected is to provide timely and professional contract-related engineering services for City of Kingsville, in accordance with all TWDB requirements, including, but not limited to, the following:

- All preliminary and final design plans and specifications;
- Geotechnical report, if available;
- Property surveys and soil tests;
- Prepare, submit, or arrange for any and all permits, approvals, or inspections required for the work
- Final Engineering Design Report prepared according to 30 TAC §290.39(e), if applicable;
- Preparation of design plans and specifications for bid packet;
- Construction observation and inspections (interim and final);
- Other special services deemed necessary to the project.

The selection of an Engineer or Engineering firm and award of a contract may be contingent upon the funding and approval through the TWDB.

Article V. Statement of Qualifications

A Statement of Qualifications (SOQ) submitted in response to the RFQ should comply with the requirements as described herein.

Proposer shall identify their experience and qualifications to provide engineering services for the 2021 City of Kingsville Drainage Project. The following outlines information to be included in the SOQ submittal. This outline is not all inclusive and respondents can add information as deemed appropriate.

A cover letter, which will be considered an integral part of the SOQ, must be signed by an individual who is authorized to bind the Proposer contractually and must certify that all statements in the SOQ are true and correct. The letter must indicate the title of position that the individual holds in the firm.

The City shall evaluate all of the SOQ's on the same basis. In order to ensure a uniform review process and to obtain the maximum degree of comparability, it is required that the SOQ's conform in all respects to the specifications outlined herein. Failure to comply may disqualify qualification proposals from consideration. SOQ's must be organized in the following manner:

1. General Information

- A. Include the name of Proposer's firm/entity/corporation/partnership/sole proprietor/joint venture/etc., address, telephone number, web address, name of contact person, email address, and the title of the RFQ.
- B. Provide a description of the proposing entity's current legal status (i.e., Corporation, Partnership, Sole Proprietor, Joint Venture, etc.). If the Owner is or is to be a newly formed corporation, please provide the following:
 - 1) Financial statement showing the amount of pledged or paid in capital pledged or paid in by the stockholders.
 - 2) List of stockholders and percent of stock held by each.
 - 3) Personal financial statements of individual stockholders.
 - 4) Personal and business references of individual stockholders.
- C. Provide a table of contents that includes a clear identification of the written material by section and by page number.
- D. Provide a transmittal letter that specifically states the Proposers understanding of the work to be accomplished and briefly outlines the Proposer's strengths in providing the required services. This letter should be signed by an authorized corporate officer for each entity included as a team proposal.
- E. Include a written assurance that no member, officer or employee of the Proposer or its designees or agent or public official exercising any functions or responsibilities with respect to the proposed services have any personal financial interest, direct or indirect, in any contract, subcontract or proceeds thereof, for work to be performed in connection with the proposed project.
- F. List past or present litigation in which your company is a defendant pertaining to TWDB projects in Texas.
- G. Provide a list of current customers in the area.

H. Provide references including Project name and Project contract information.

2. Proposer Background

- A. Provide a profile of your organization and describe its legal structure, principal officers and organizational structure. The Proposer must identify and distinguish between its own experience and qualifications and that of any parent entity, predecessor and/or wholly-owned or partially-owned subsidiary of the Proposer. Provide the location from where this project will be managed.
- B. Indicate how many years has the organization been in business under its present name and indicate all other names by which your organization has been known and length of time known by each name.
- C. Provide a copy of any organization profile, website, sales brochure, or other documentary information pertaining to your organization.
- D. Provide audited financial statements for your organization's operation. If the Proposer is a Joint Venture, a copy of the Joint Venture agreement must be submitted for each party.
- E. Provide a complete and detailed history of your organization's experience in providing engineering services, to include but not limited to the following: all preliminary and final design plans and specifications; property surveys and soil tests; preparation of design plans and specifications for bid packet; construction observation and inspections (interim and final); and other special services deemed necessary to the project. Information provided should include a description of services being offered for the scope of work in this RFQ.

3. Proposer Qualifications

- A. Provide resumes of key personnel and principals of the organization. Identify the extent to which each principal executive or staff member will be involved in the engineering services contract and whether such involvement will be on a fully informed daily basis or in an advisory capacity.
- B. Provide resumes of key executive personnel and staff who will be assigned to execute the terms of this proposal, including subcontract personnel. Included must be the resume of the Consultant who will be directly responsible for the management and delivery of the proposed work.
 - i. Resumes should describe each person's qualifications and experience as it relates to this project.
 - ii. Include a list of previous project(s), similar in size and complexity, in which each team member has played a significant role.

4. Management of Project

- A. Clearly identify who will have primary technical responsibility for review of preliminary and final design plans and specifications; property surveys and soil

tests; preparation of design plans and specifications for bid packet; construction observation and inspections (interim and final); and other special services deemed necessary to the project.

- B. Indicate how the responsibility and coordination will be assigned for the timely review of items noted in 4.A above.
- C. Identify the ability to adhere to schedules and complete all phases in a timely manner.

Article VI. Conflict of Interest Questionnaire

Chapter 176 of the Texas Local Government Code requires a person who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity or agent thereof to file a conflicts of interests disclosure statement with the governmental entity prescribed.

“Person” shall be defined as described in Attorney General Opinion No. GA-0446, which clarifies a partnership, corporation, or any other corporate entity, is a “person” subject to Chapter 176 requirement.

A Conflict of Interest Questionnaire Form (CIQ) must be submitted not later than the seventh (7th) business day after the date the Proposer submits their response to this RFP. Also, it may be submitted with the RFP.

Article VII. Evaluation Criteria

The City Manager shall appoint an Evaluation Committee for the purpose of evaluating and ranking all qualified submittals in accordance with the criteria specified in this Qualification proposal.

Qualifications of all Proposers that respond to this solicitation, including any subcontractors to be utilized, will be evaluated using the following criteria to rank each of the proposals. The Proposer that is ranked the highest will be considered by the City for negotiations. The criteria are not listed in any priority order. The evaluation committee will consider all criteria in performing a comprehensive evaluation of the proposal. Weights have been assigned to each criterion in the form of points.

<u>Criteria</u>	<u>Maximum Points</u>
Qualifications and General Experience	60
Work Performance	25
Capacity to Perform	15
<hr/> Total	<hr/> 100

Article VIII. Examining Documents

The Proposer should examine the Instructions to Proposers, the General Requirements and attachments before submitting a qualification proposal. Submitting a proposal which includes Statement of Qualifications will be considered evidence that the Proposer has performed this examination. Failure of a Proposer to acquaint himself adequately with such conditions, facilities, difficulties, restrictions and requirements will not relieve the Proposer of his obligation to perform the entire contract at the price set forth in his Agreement.

Article IX. Delivery of Qualification Proposal

Completed proposals, **one (1) original** and **four (4) copies** of proposals, shall be enclosed in a sealed envelope plainly marked showing the Project Name and RFQ Number for which the proposals are intended, and the name and address of the Proposer. **All forms in Proposal Packet are to be completed and returned and all requirements in Statement of Qualifications met. Proposals are to be addressed and delivered to the City of Kingsville Purchasing Manager, 400 West King Ave., Kingsville, Texas 78363 not later than 2:00 PM on December 22, 2020.**

The SOQ must be signed by the person or person authorized to bind the contract.

Proposer must verify whether addenda have been issued on a proposed Contract. Proposer may call the City Purchasing office at 361-595-8025 to confirm the number of addenda issued, and signed addenda must be included with SOQ.

City of Kingsville is a tax-exempt agency. An exemption certificate will be furnished upon request to the successful proposer.

Article X. Workers Compensation Certification

Proposer shall certify in writing that he provides Workers Compensation Insurance for all employees of the Proposer. The Proposer shall require all subcontractors to provide a similar certificate to the Proposer and the Proposer shall furnish such certificates to City of Kingsville.

A Proposer shall:

- (1) Provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
- (2) Provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
- (3) Provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the Proposer's current certificate of coverage ends during the duration of the project;

- (4) Obtain from each person providing services on a project, and provide the governmental entity:
 - a) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - b) no later than seven (7) days after receipt by the Proposer, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) Notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Proposer knows or should have known, of any change that materially affects the provisions of coverage of any person providing services on the project;
- (7) Post a notice on each project site informing all persons providing services on the project that they are required to be covered and stating how a person might verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30-point bold type and text in at least 19-point normal type and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text in Figure 2: 28 TAC 110.110(d) (7) of this section, provided by the commission on the sample notice without any additional words or changes; and
- (8) Contractually require each person with whom it contracts to provide services on a project to:
 - a) Provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all employees providing services on the project, for the duration of the project;
 - b) Provide a certificate of coverage to the contractor prior to beginning work on the project;
 - c) Include in all contracts to provide services on the project the language in subsection below;

“By signing this contract or providing or causing to be provided a certificate of coverage, the person signing this contract is representing to the governmental entity that all employees of the person signing this contract who will provide services on the project will be covered by workers’ compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of self-insured, with the commission’s Division of Self-Insurance Regulation. Providing false or misleading

information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.”

This rule is applicable for building or construction contracts advertised for bid by a government entity on or after September 1, 1994. This rule is also applicable for those building or construction contracts entered into on or after September 1, 1994, which are not required by law to be advertised for bid.

- d) Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- e) Obtain from each other person with whom it contracts, and provide to the contractor:
 - i. a certificate of coverage, prior to the other person beginning work on the project; and
 - ii. prior to the end of the coverage period, a new certificate of coverage showing extension of coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project; and
- f) Retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
- g) Notify the governmental entity in writing by certified mail or personal delivery, within thirty (30) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- h) Contractually require each other person with whom it contracts, to perform as required by subparagraphs (a) – (h) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

Article XI. Insurance and Liability

The work shall not be commenced by Contractor until after the policy, or policies, evidencing the insurance coverage herein required, or certificates of such insurance, providing that the insurer shall give City thirty (30) days written notice prior to cancellation, material revision or intention not to renew, have been filed with the City.

In the event the Insurer refuses to provide the City with notice as detailed, the Contractor agrees to provide notice in writing immediately, and shall suspend all work until insurance is restored and proof, in a form acceptable to the City, is provided.

The Contractor, at his/her expense, shall purchase and maintain in force at all times during the term of this Contract, until the Project is finally completed and accepted by City, the insurance with limits not less than indicated below.

No policy shall contain any exclusion for explosion, collapse, or underground coverage. Identify the **project number** and **name** in the Certificate of Liability.

A. Commercial General Liability:

Bodily Injury / Property Damage

Each Occurrence	Annual Aggregate
\$1,000,000	\$2,000,000

A designated Project or Premises Endorsement (CG 25 01 11 85) which applies the general aggregate to the project must be provided. **City of Kingsville is to be named as additional insured and a waiver of subrogation is required for this policy.**

B. Automobile Liability Covering:

Owned Automobiles

Non-owned Automobiles including Hired Automobiles and those of independent contractors. **All must be marked on Certificate of Liability Form as applicable to vehicles that will be utilized on the job site. Only those vehicles that are insured under the Certificate of Insurance are permitted at the job site.**

Bodily Injury / Property Damage

Per
Occurrence

\$1,000,000

City of Kingsville is to be named as additional insured and a waiver of subrogation is required for this policy.

C. Umbrella (excess liability policy) or additional limits on foregoing risks \$1,000,000.00. Policy must be a Commercial General Liability “follow form.”

D. Workers Compensation Insurance Certificate

Employer’s Liability Coverage Limit: \$500,000.

All insurance must be written by insurance companies which are rated in the A.M. Best Rating Guide – Property & Casualty with a policyholder’s rating of A, and a financial size category of Class VII. **A waiver of subrogation is required for this policy.**

E. Professional Liability Insurance shall protect the Proposer against claims for damages which may arise from operations under this contract, whether such operations be by the Proposer, or the Proposers staff. The minimum acceptable limits of liability to be provided by such professional liability insurance shall be as follows:

Each Occurrence	Annual Aggregate
\$1,000,000	\$1,000,000

F. Commercial Crime Coverage, to include:

- a) Form A, Employee Dishonesty: \$1,000,000
- b) Form B, Forgery: \$1,000,000
- c) Form C, Theft, Disappearance and Destruction: \$1,000,000

Article XII. Findings Confidential

All of the reports, information, data, etc., prepared or assembled by the Engineer under this contract are confidential and the Engineer agrees that they shall not be made available to any individual or organization without the prior written approval of the City.

Article XIII. Copyright

No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Engineer.

Article XIV. Equal Employment Opportunity

During the performance of this Contract, the Engineer agrees as follows:

- a. The Engineer will not discriminate against any employee or applicant for employment because of race, creed, sex, color, disability or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, disability or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, setting forth the provisions of this non-discrimination clause.
- b. The Engineer will, in all solicitation or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, disability or national origin.
- c. The Engineer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- d. The Engineer will include provisions (a.) through (c.) in every subcontract or purchase order, unless exempted.

Article XV. Civil Rights Act of 1964

Under Title VII of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Article XVI. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

Article XVII. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

- a. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Office of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns that are located in, or owned in substantial part by persons residing in the area of the project.
- b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 C.F.R. 135, and all applicable rules and orders of TDA issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.
- c. The Engineer will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 C.F.R. Part 135. The Engineer will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

Article XVIII. Section 503 (if \$10,000 or Over) Affirmative Action for Employment of Qualified Individuals with Disabilities (29 USC 793)

- a. The Engineer will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Engineer agrees to take affirmative action to employ, advance in employment and otherwise treat qualified

individuals with disabilities without discrimination in practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- b. The Engineer agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- c. In the event of the Engineer's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- d. The Engineer will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

Article XIX. Interest of Engineer and Employees

The Engineer covenants that it presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his/her services hereunder. The Engineer further covenants that in the performance of this Contract, no person having any such interest shall be employed.

CITY OF KINGSVILLE GENERAL REQUIREMENTS

It is understood that the City of Kingsville Commission, reserves the right to accept or reject in part or in whole any proposal submitted and to waive informalities for the best interest of the City. The award of this contract shall be made to the responsible Proposer, whose proposal is determined to demonstrate competence and qualifications and award the service for a fair and reasonable price resulting from negotiations, taking into consideration the relative importance of evaluation factors set forth in the RFQ, in accordance with the laws of the State of Texas.

City of Kingsville is aware of the time and effort you expend in preparing and submitting proposals to the City. Please let us know of any proposal requirements that are causing you difficulty in responding to our request for proposals. We want to make the process as easy as possible so that all responsible Proposers can compete for the City's business.

City of Kingsville will not be liable for any costs incurred by any Proposer in preparing a response to this RFQ. Proposers submit proposals at their own risk and expense. City of Kingsville makes no guarantee that any services will be purchased as a result of this RFQ, and reserves the right to reject any and all proposals. All proposals and their accompanying documentation will become the property of City of Kingsville.

Proposers shall thoroughly examine the specifications, schedule, instructions and all other contract documents. Proposers shall make all investigations necessary to thoroughly inform themselves regarding facilities for delivery of materials and equipment as required by this solicitation. No plea of ignorance by the Proposer of conditions that exist or that may thereafter exist as a result of failure to fulfill in every detail the requirements of the contract document, will be accepted as a basis for varying the requirements of the City or the compensations to the Proposer.

Oral explanations and oral instructions given during the pre-proposal process are not binding. Only requirements included in the proposal and associated specifications and plans in subsequent City-issued written addenda are binding.

If a Proposer is in doubt as to the meaning of any part of the Specifications or other Contract Documents, or if he discovers what he considers to be a discrepancy, omission or conflict in such Contract Documents, he shall immediately contact **City of Kingsville Purchasing Dept.** via email: csosa@cityofkingsville.com; and advise of such by written notice or request for an interpretation of same. If such written notice or request is delivered to **City of Kingsville Purchasing Department c/o Charlie Sosa, Purchasing Manager, City of Kingsville City of Kingsville City Hall, 400 West King Ave., Kingsville, Texas 78363** prior to five (5) calendar days before the time set for opening proposals, the **City of Kingsville Purchasing Manager** shall issue a written addenda, forwarded to all persons who, to the knowledge of City, are prospective Proposers, setting out any corrections to such Contract Document or City's interpretation thereof, as the case may be.

ADDENDA: Any interpretations, corrections or changes to this Request for Qualifications and specifications will be made by addenda. Charlie Sosa, Purchasing Manager, by Order from the City Manager, shall issue all addenda. Addenda's will be mailed to all that are known to have received a copy of this Request for Qualifications. **Proposers must acknowledge receipt of all addenda by including a signed and dated copy in their Qualifications Response packet.**

FUNDING: Funds for payment have been provided through City of Kingsville budget approved by the City of Kingsville City Commissioners for the fiscal year only. State of Texas prohibits the obligation and expenditure of public funds beyond the fiscal year for which the budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the current fiscal year shall be subject to budget approval. The Fiscal Year for City of Kingsville extends from October 1st of each calendar year to September 30th of the next calendar year.

DELIVERY OF PROPOSALS: No proposal or modification to a proposal or inclusion of addendum to response proposal shall be made orally or by telephone.

When submitting by mail, place the envelope in another sealed envelope and address as indicated in the official advertisement. Proposals that do not arrive in the hands of the Purchasing Manager at the location described in the official advertisement, on or before the time and date set for the opening, will not be accepted, and will be considered a late proposal.

LATE PROPOSALS: City of Kingsville is not responsible for lateness or non-delivery of mail by carrier, etc. Proposers planning to hand deliver proposals are advised that a security screening station operates in the City of Kingsville City Hall and delays may be anticipated in reaching the Purchasing Office. City of Kingsville cannot accept a proposal after the closing hour advertised. Proposals received in the Purchasing Office after submission deadline will be considered non-responsive. Late proposals will not be opened until a contract is approved, and one copy of the proposal will be filed with the permanent file. City of Kingsville will not be responsible for unmarked/improperly marked proposals or for proposals delivered to the wrong location.

REVISING PROPOSALS: Revisions to Proposals will be handled as follows:

- A. **Before Submission and prior to Proposal Opening.** In ink, make desired changes, including interlineations, alterations, or erasures, and initial the changes to guarantee authenticity.
- B. **After Submission and prior to Proposal Opening.** Withdraw the proposal in accordance with "Withdrawing Proposals" below. In ink, make desired changes and initial the changes. Resubmit to the Purchasing Manager in accordance with Article IX, "Delivery of Qualification Proposal", the City will not make revisions to a Proposal on behalf of a Proposer.
- C. **After Proposal Opening.** Proposal revisions are not allowed after the time of proposal opening.

WITHDRAWAL OF PROPOSALS: A Proposal may be withdrawn by written fax or telegraphic request received by Purchasing Manager prior to the time fixed for proposal opening. Two (2) signed copies of any such telegraphic or fax withdrawal should be forwarded immediately to City in a sealed envelope properly marked to identify the contents.

PROPRIETARY MATERIAL: All **PROPRIETARY** information must be clearly marked and identified as such. Failure to mark it as proprietary information may result in the information being released to the public. The City does not take any responsibility for determining whether information is proprietary. All other information submitted is subject to be released under the Texas Public Information Act or other applicable law.

CONFIDENTIAL MATERIAL: All material that is to be considered confidential in nature must be clearly identified as such and will be treated as confidential by City of Kingsville to the extent allowable in the Texas Public Information Act.

PROPOSAL PROCESS: Proposals will be opened so as to avoid disclosure of contents to competing Proposer's and will be kept secret during the process of negotiations. All proposals submitted will be opened for public inspection after the contract has been awarded, **except for trade secrets and confidential information contained in the proposal and clearly identified as such.** Discussions may be had with responsible Proposer's who submit proposals determined reasonably susceptible of being selected for award. Proposers will be accorded fair treatment with respect to an opportunity for discussion and revision of proposals. Revisions may be permitted after submission and before award for the purpose of obtaining the best and final offer.

NON-RESPONSIVE PROPOSALS: A proposal that has one or more of the deficiencies listed below is non-responsive and will not be considered.

- A. The proposal is not signed by the person or persons authorized to bind the contract.
- B. The proposal was not in the hands of the Purchasing Manager as per the time and location specified in the advertisement.
- C. The Proposer submits more than one proposal, under the same or different name, for a specific proposed contract. (A Proposer may submit a proposal and participate as a material supplier, **subcontractor**, or both to any or all Proposer's contemplating submitting a proposal for this work).
- D. The Proposer did not attend a specified mandatory pre-proposal conference as required by law.

AWARD OF CONTRACT: The City reserves the right to reject any or all proposals, to accept the proposal or proposals it considers most advantageous, to waive irregularities or formalities in proposing, and to hold all proposals for thirty (30) days after the date scheduled for opening such proposals.

The award of this contract shall be made to the responsible Proposer, whose proposal is determined to be the best evaluated offer resulting from negotiation, taking into consideration the relative importance of evaluation factors set forth in the RFQ.

The Proposer whose proposal is accepted by City under the RFQ shall within ten (10) days after receipt of notice that his proposal has been accepted, execute a Contract with City.

PROTESTS: Protests before award must be submitted in writing to the Purchasing Manager not later than six (6) calendar days after bid opening, and protests after award must be submitted within ten (10) calendar days after award by City of Kingsville City Commissioners.

The protests must include, at a minimum, the name of protester, bid number of description of goods or services, and a statement of grounds for protests.

Protest received in writing will be forwarded to the City of Kingsville City Secretary's Office for processing. A response will be provided in writing to the protest.

Protests received in writing will be forwarded to the City of Kingsville City Secretary's Office for processing.

CONTRACT: The proposal, accompanying documents, and any negotiated terms, when properly executed and signed by City of Kingsville, shall constitute a contract equally binding between the successful Proposer and City of Kingsville.

CONTRACT CHANGES: No oral statements of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders to the contract will be made in writing and approved by the City of Kingsville City Commissioners.

ASSIGNMENT OF CONTRACT: The services to be performed by the Proposer shall not be sold, assigned, sublet, or transferred nor shall the Proposer assign any monies due or to become due to him/her under any contract entered, in whole or in part, without the written consent of the City pursuant to these specifications.

TERMINATION FOR DEFAULT: City of Kingsville reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the City of Kingsville in the event of breach or default of this contract. City of Kingsville reserves the right to terminate the contract immediately in the event the successful Proposer fails to perform in accordance with the accepted proposal. Breach of contract or default authorizes the City to award to another Proposer, retain services elsewhere and charge the full increase in cost to the defaulting Proposer.

EXCEPTIONS AND SUBSTITUTIONS: All proposals meeting the intent of this request for proposal will be considered for negotiations. Proposer taking exception to the specifications or offering substitutions shall state these exceptions by attachment as part of the proposal. The absence of such a list shall indicate that the Proposer shall be responsible for performing in strict accordance with the specifications of the Request for Qualifications. City of Kingsville City Commission reserves the right to accept any and all or none of the exceptions and/or substitutions deemed to be in the best interest of the City.

SILENCE OF SPECIFICATIONS: The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

ETHICS: The Proposer shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, elected or appointed official or agent of the City of Kingsville

GRATUITIES: Do not offer City employees benefits, gifts, or favors. Failure to honor this policy may result in the termination of the Contract. Termination of the Contract will be in accordance with the General Conditions.

No Public Official shall have interest in this contract except in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, Chapter 171.

APPLICABLE LAWS AND VENUE: The successful firm agrees, during the performance of the work, to comply with all applicable codes and ordinances of the appropriate city, county or state of Texas as they may apply, as these laws may now read or as they may hereafter be changed or amended. The parties herein agree that this contract shall be enforceable in Kleberg County Texas.

HOLD HARMLESS AGREEMENT: Successful Proposer shall defend, indemnify and save harmless City of Kingsville and all its officers, elected officials, agents and employees from all suits, actions or other claims of any character, and description brought for or on account of any injuries or damages received or sustained by any person or property on account of any negligent act or fault of the successful Proposer, or of any agent, employee, subcontractor or supplier in the execution of, or performance under any contract which may result from proposal award. Successful Proposer shall pay any judgement with cost that may be obtained against City of Kingsville growing out of such injuries.

LAWS, REGULATIONS AND PERMITS: The Proposer's attention is directed to the fact that all applicable State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though herein written out in full.

NON-COLLUSION AFFIDAVIT OF PROPOSER

State of Texas §
County of Kleberg §

_____, being duly sworn, deposes and says that:

1. He/She is _____ of _____, the offeror submitting the attached Proposal;
2. He/She is full informed respecting the preparation and contents of the attached proposal and any and all appurtenances thereof;
3. Such proposal is genuine and is not a collusive proposal;
4. Neither the said offeror nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with another Proposer, firm or person to submit a collusive proposal in connection with the Contract for which the attached Proposal has been submitted or to refrain from proposing in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Proposer, firm or person to fix the price or prices in the attached proposal or of any other Proposer, or to fix an overhead, profit or cost element of the proposal price or the proposal price of any other Proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City or any other person interested in the proposed contract; and
5. The price or prices quoted in the attached proposal are fair and proper and are not tainted by any, conspiracy, connivance or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Name)

(Title)

(Date)

Subscribed and sworn to me this By: _____ day of _____, 20__.

Notary Public in and for _____ N _____ County, Texas

My commission expires _____

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor or other person doing business with local governmental entity

FORM CIQ

OFFICE USE ONLY

Date Received

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

1 Name of person who has a business relationship with local governmental entity.

2 **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date

Adopted 06/29/2007

STATEMENT OF CREDENTIALS

1. GENERAL: In order to assist the City in determining the ability of each Proposer to properly fulfill the requirements of this proposed contract, the Proposer will complete the following items. All questions must be answered and the data given must be clear and comprehensive. **This statement must be notarized.** If necessary, questions may be answered on separate attached sheets. The Proposer may submit any additional information he desires.

Name of Proposer: _____

Address: _____

Date Organized: _____ Date Incorporated: _____

Office Number: _____ Fax Number: _____

Number of years in business under present name: _____

Type of work performed by your company: _____

Have you ever failed to complete any work awarded to you? _____

Have you ever defaulted on a contract? _____

Attach resumes for the principal members of your organization, including the officers as well as the proposed superintendent for the project. Credit available: \$

Bank reference (Name): _____

EXPERIENCE: The Proposer will give below a list of similar projects which he has completed within the last seven (7) years.

1. Owner: _____

Address: _____

Ph/Fx Number: _____ Email: _____

Scope of Work Description: _____

Date Completed: _____ Total Cost: _____

2. Owner: _____

Address: _____

Ph/Fx Number: _____ Email: _____

Scope of Work Description: _____

Date Completed: _____ Total Cost: _____

3. Owner: _____

Address: _____

Ph/Fx Number: _____ Email: _____

Scope of Work Description: _____

Date Completed: _____ Total Cost: _____

4. Owner: _____

Address: _____

Ph/Fx Number: _____ Email: _____

Scope of Work Description: _____

Date Completed: _____ Total Cost: _____

5. Owner: _____

Address: _____

Ph/Fx Number: _____ Email: _____

Scope of Work Description: _____

Date Completed: _____ Total Cost: _____

6. Owner: _____

Address: _____

Ph/Fx Number: _____ Email: _____

Scope of Work Description: _____

Date Completed: _____ Total Cost: _____

7. Owner: _____

Address: _____

Ph/Fx Number: _____ Email: _____

Scope of Work Description: _____

Date Completed: _____ Total Cost: _____

8. Owner: _____

Address: _____

Ph/Fx Number: _____ Email: _____

Scope of Work Description: _____

Date Completed: _____ Total Cost: _____

9. Owner: _____

Address: _____

Ph/Fx Number: _____ Email: _____

Scope of Work Description: _____

Date Completed: _____ Total Cost: _____

10.Owner: _____

Address: _____

Ph/Fx Number: _____ Email: _____

Scope of Work Description: _____

Date Completed: _____ Total Cost: _____

3. CONTRACTS ON HAND: The Proposer shall provide below a list of any contracts/projects he currently has on hand:

4. EQUIPMENT AVAILABLE FOR THIS CONTRACT/PROJECT ON HAND (if applicable): The Proposer shall provide below a list of equipment available for use on this contract/project:

_____ will provide all equipment needed upon request. _____

5. SUBCONTRACTORS: The Proposer shall provide below a tentative list of subcontractors proposed to work on this contract/project, and the portion of work to be performed by each.

The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the owner in verification of the recitals comprising this Statement of Credentials.

Executed this _____ day of _____, 20__.

By _____

Title _____

Subscribed and sworn to me this ____ day of _____, 20__.

By: _____

Notary Public in and for _____ County, Texas

My commission expires _____

ENGINEERING SERVICES CONTRACT

STATE OF TEXAS

COUNTY OF KLEBERG

THIS CONTRACT FOR ENGINEERING SERVICES is made by and between the City of Kingsville, hereinafter called "City" and _____ hereinafter called "Engineer" for the purpose of contracting for engineering services.

WITNESSETH

WHEREAS, Government Code, Chapter 2254, Subchapter A, "Professional Services Procurement Act" provides for the procurement of professional services of engineers; and

WHEREAS, the City desires to contract for engineering services described as follows:

Professional Engineering Services necessary for the implementation of 2021 City of Kingsville Drainage Improvements .

NOW, THEREFORE, the City and the Engineer, in consideration of the mutual covenants and agreements herein contained, do hereby mutually agree as follows:

AGREEMENT ARTICLE 1 SCOPE OF SERVICES TO BE PROVIDED BY CITY

The City will furnish items and perform those services for fulfillment of the contract as identified in Attachment A – Services To Be Provided By The City, attached hereto and made a part thereof this contract.

ARTICLE 2 SCOPE OF SERVICES TO BE PROVIDED BY ENGINEER

The Engineer shall perform those engineering services for the fulfillment of the contract as identified in Attachment B – Services To Be Provided By The Engineer, attached hereto and made a part thereof this contract.

The Engineer shall prepare a schedule of work, identified as Attachment C– Work Schedule, attached hereto and made a part thereof this contract. The work schedule shall contain a complete schedule by task such that the Engineer's Scope of Services under this contract can be accomplished within the specified time and contract cost. Attachment C – Work Schedule shall identify the task, the total maximum dollar amount payable for each task, and time allotted to complete the job by date or working days. Attachment D – Payment Schedule shall identify

the hourly rates for each job title, total number of hours for each job title, and the maximum dollar amount payable for each job title.

Unless specifically excluded in Attachment B – Services To Be Provided By The Engineer, it shall be the Engineer’s responsibility to prepare, submit, or arrange for any and all permits, approvals, or inspections required for the work. The permits, approvals or inspections shall include, but not be limited to, the following:

1. Building permits
2. Floodplain development permits
3. Access driveway permits
4. Utility permits
5. Americans with disabilities submissions and approvals
6. Asbestos inspections

ARTICLE 3 CONTRACT PERIOD

After execution of this contract, the Engineer shall not proceed with the work until authorized in writing by the City to proceed, as provided in Article 5 – Work Authorizations. This contract shall terminate at the close of business on _____, unless extended by supplement agreement duly executed by the Engineer and the City prior to the date of termination, as provided in Article 10 – Supplemental Agreements, or otherwise terminated, as provided in Article 19 – Termination. Any work performed or cost incurred after the date of termination shall be ineligible for reimbursement.

ARTICLE 4 COMPENSATION AND METHOD OF PAYMENT

The maximum amount payable under this contract is \$ _____, unless modified as provided in Article 10 – Supplemental Agreements. Payment to (person/firm) shall be based on satisfactory completion of identified milestones established in Attachment D – Payment Schedule.

The Engineer shall prepare and submit to the City, no more frequently than once per month, an invoice and a progress report stating the percent completion of the work accomplished during the billing period. The invoice and progress report shall contain sufficient detail such that the billing can be reviewed for compliance with both the work schedule and fee schedule.

The City reserves the right to withhold payment pending verification of satisfactory work.

The City assumes no liability for work performed or costs incurred prior to the date authorized by the City to begin work, during periods when work is suspended, or subsequent to the contract completion date.

ARTICLE 5

WORK AUTHORIZATIONS

The City will issue work authorizations, in the form identified and attached hereto as Attachment E – Work Authorization, to authorize the Engineer to perform one or more tasks. The amount payable for a work authorization shall be supported by the estimated cost of each work task as described in the work authorization. The work authorization will not waive the City’s or Engineer’s responsibilities and obligations established in this contract. The work authorization will be issued by the City of Kingsville Director of Public Works. The executed work authorization(s) shall become a part of this contract.

Upon satisfactory completion of the work authorization, the Engineer shall submit to the City for review and acceptance the deliverables as specified in the executed work authorization.

Work included in a work authorization shall not begin until the City and the Engineer have signed the work authorization. All work must be completed on or before the completion date specified in the work authorization. The Engineer shall promptly notify the City of any event which will affect completion of the work authorization.

ARTICLE 6 PROGRESS

The Engineer shall, from time to time during the progress of the work, confer with the City. The Engineer shall prepare and present such information as may be pertinent and necessary, or as may be requested by the City, in order to evaluate features of the work. Upon request by the City, the Engineer shall make presentations to the City of Kingsville City Commissioners.

At the request of the City or the Engineer, conferences shall be held at the Engineer’s office, the City’s office, or at other locations designated by the City. These conferences shall also include an evaluation of the Engineer’s services and work when requested by the City.

Should the City determine that the progress in production of the work does not satisfy the work schedule, the City will review the work schedule with the Engineer to determine corrective action needed.

The Engineer shall promptly advise the City in writing of events which have a significant impact upon the progress of work, including:

- (1) problems, delays, or adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods; this disclosure will be accompanied by a statement of the action taken, or contemplated, and any City assistance needed to resolve the situation; and
- (2) favorable developments or events which would enable meeting the work schedule goals sooner than anticipated.

ARTICLE 7

SUSPENSION

The City may suspend the work, but not terminate the contract, by giving written notice a minimum of thirty (30) calendar days prior to the date of suspension. The thirty (30) day notice may be waived if approved in writing by both parties.

The work will be reinstated and resumed in full force and effect within sixty (60) calendar days of receipt of written notice from the City to resume the work. The sixty (60) day notice may be waived if approved in writing by both parties.

If the City suspends the work, the contract period, as determined in Article 3 – Contract Period, is not affected and the contract will terminate on the date specified unless the contract is amended as provided in Article 10 – Supplemental Agreements.

ARTICLE 8 ADDITIONAL WORK

If the Engineer determines that any work it has been directed to perform is beyond the scope of this agreement and constitutes extra work, it shall promptly notify the City in writing. In the event the City determines that such work constitutes extra work and exceeds the maximum amount payable, the City shall so advise the Engineer and a supplemental agreement may be executed, as provided in Article 10 – Supplemental Agreements.

The Engineer shall not perform any additional work or incur any additional costs prior to the execution, by both parties, of a supplemental agreement. The City shall not be responsible for actions by the Engineer or any costs incurred by the Engineer relating to additional work not directly associated with the performance of the work authorized in this contract or as amended.

ARTICLE 9 CHANGES IN WORK

If the City finds it necessary to request changes to previously satisfactorily completed work or parts thereof which involve changes to the original scope of services or character of work under the contract, the Engineer shall make such revisions if requested and as directed by the City. This will be considered additional work and paid for as specified under Article 8 – Additional Work.

The Engineer shall make such revisions to the work to correct errors appearing therein, when required to do so by the City. No additional compensation will be paid for the correction of errors.

ARTICLE 10 SUPPLEMENTAL AGREEMENTS

The terms of this contract may be modified by supplemental agreement if the City determines that there has been a significant change in the scope, complexity, or character of the service to be performed, or the duration of the work. Additional compensation, if appropriate, shall be identified as provided in Article 4 – Compensation and Method of Payment.

Any supplement agreement must be executed by both parties within the contract period specified in Article 3 – Contract Period.

No claim for extra work done or materials furnished shall be made by the Engineer until full execution of the supplemental agreement and authorization to proceed is issued by the City. The City reserves the right to withhold payment pending verification of satisfactory work performed.

ARTICLE 11 PUBLIC INFORMATION ACT

All data, basic sketches, charts, calculations, plans, specifications, and other documents created or collected under the terms of this contract are the exclusive property of the City and shall be furnished to the City upon request. All documents prepared by the Engineer and all documents furnished to the Engineer by the City shall be delivered to the City upon completion or termination of this contract. The Engineer, at its own expense, may retain copies of such documents or any other data which it has furnished the City under this contract. Release of information will be in accordance with the Texas Public Information Act.

ARTICLE 12 PERSONNEL, EQUIPMENT AND MATERIAL

The Engineer shall furnish and maintain, at its own expense, office space for the performance of all services, and adequate and sufficient personnel and equipment to perform the services as required. All employees of the Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them.

The City may instruct the Engineer to remove any employee from association with the work authorized in this contract if, in the sole opinion of the City, the work of the employee does not comply with the terms of this contract or if the conduct of the employee is detrimental to the work.

The Engineer certifies that it presently has adequate qualified personnel in its employment for performance of the services required under this contract. The Engineer may not change the project manager without prior consent of the City.

ARTICLE 13 SUBCONTRACTING

The Engineer shall not assign, subcontract or transfer any portion of the work under this contract without prior written approval of the City. All subcontracts shall include the provisions required in this contract and shall be approved as to form, in writing, by the City prior to work being performed under the subcontract.

ARTICLE 14

EVALUATION OF WORK

The City and its authorized representatives shall have the right at all reasonable times to review or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If a review or evaluation is being made on the premises of the Engineer or a subcontractor, the Engineer shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the City representatives in the performance of their duties. If funds by other agencies or entities are to be used for payment of the services under this contract or for any construction project as a consequence of this contract, the Engineer's services and work may be subject to periodic review and approval by other agencies or entities, including city, county, state, and/or federal agencies.

ARTICLE 15 SUBMISSION OF REPORTS

All applicable study reports shall be submitted in preliminary form for review by the City before a final report is issued. The City's comments on the Engineer's preliminary report shall be addressed in the final report.

ARTICLE 16 SUBMISSION OF PLANS AND SPECIFICATIONS

Unless otherwise directed, preliminary plans and any supporting documentation submitted for review shall be in triplicate.

The submission of plans and specifications for letting shall consist of two, original paper copies of all documents, along with a compact disc (CD).

Plan Sheet size shall be 24" X 36", unless otherwise directed.

ARTICLE 17 COMPUTER DOCUMENTS AND INFORMATION EXCHANGE

All computer files must be compatible with the City's computer systems without conversion or modifications and must plot consistent with any reproducible plots submitted.

All plots and graphics media provided by the Engineer shall be delivered to the City. Final payment for the work associated with this contract will not be made until the files furnished by the Engineer have been demonstrated to be usable in the required formats.

ARTICLE 18 VIOLATION OF CONTRACT TERMS / BREACH OF CONTRACT

Violation of the contract terms or breach of contract by the Engineer shall be grounds for termination of the contract and any increased cost arising from the Engineer's default, breach of contract, or violation of contract terms shall be paid by the Engineer. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE 19 TERMINATION

This contract shall terminate at the close of business on _____, unless extended as provided in Article 10 – Supplemental Agreements.

This contract may be terminated before the stated termination date by any of the following conditions:

1. By mutual agreement and consent, in writing, of both parties;
2. By the City, by notice in writing to the Engineer as a consequence of failure by the Engineer to perform the services set forth herein in a satisfactory manner;
3. By either party, upon the failure of the other party to fulfill its obligations as set forth herein;
4. By the City, for reasons of its own and not subject to the mutual consent of the Engineer upon not less than thirty (30) calendar days written notice to the Engineer; and
5. By written notice from the City upon satisfactory completion of all services and obligations described herein.

Should the City terminate this contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the Engineer. In determining the value of the work performed by the Engineer prior to termination the City shall be the sole judge. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the City terminate this contract under Item 4 of the above paragraph, the amount charged during the thirty (30) calendar day notice period shall not exceed the amount charged during the preceding thirty (30) calendar days.

If the Engineer defaults in the performance of this contract or if the City terminates this contract for fault on the part of the Engineer, the City will give consideration to the actual costs incurred by the Engineer in performing the work to the date of default, the amount of work which was satisfactorily completed to the date of default, the value of the work which is usable to the City, the cost to the City of employing another firm to complete the work required and the time required to do so, and other factors which affect the value to the City of the work performed at the time of default.

The termination of this contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the City and the Engineer under this contract except the obligations set forth in Articles 11, 14, 19, 20, 21 and 23 of this contract. If the termination of this contract is due to the failure of the Engineer to fulfill its contract obligations, the City may take over the project and prosecute the work to completion. In such case, the Engineer shall be liable to the City for any additional cost occasioned to the City.

ARTICLE 20
COMPLIANCE WITH LAWS

The Engineer shall comply with all applicable Federal, State, and local laws, statutes codes, ordinances, rules, and regulations, and the orders and decrees of any court, or administrative bodies or tribunals, in any manner affecting the performance of this contract, including, without limitation, worker's compensation laws, minimum salary and wage statues and regulations, and licensing laws and regulations. When required, the Engineer shall furnish the City with satisfactory proof of its compliance.

ARTICLE 21
INDEMNIFICATION

THE ENGINEER SHALL SAVE HARMLESS THE CITY AND ITS OFFICERS AND EMPLOYEES FROM ALL CLAIMS AND LIABILITY DUE TO ACTIVITIES OF THE ENGINEER, ITS AGENTS, OR EMPLOYEES PERFORMED UNDER THIS CONTRACT AND WHICH ARE CAUSED BY OR RESULT FROM ERROR, OMISSION, OR NEGLIGENT ACT OF THE ENGINEER OR OF ANY PERSON EMPLOYED BY THE ENGINEER. THE ENGINEER SHALL ALSO SAVE HARMLESS THE CITY FROM ANY AND ALL EXPENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEY FEES WHICH MAY BE INCURRED BY THE CITY IN LITIGATION OR OTHERWISE RESISTING SAID CLAIM OR LIABILITIES WHICH MAY BE IMPOSED ON THE CITY AS A RESULT OF SUCH ERROR, OMISSION, OR NEGLIGENT ACTIVITY BY THE ENGINEER, ITS AGENTS, OR EMPLOYEES.

ARTICLE 22
ENGINEER'S RESPONSIBILITY

The Engineer shall be responsible for the accuracy of its work and shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts without compensation. The Engineer will not be relieved of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities until after the construction phase of the project has been completed.

ARTICLE 23
ENGINEER'S SEAL

The responsible Engineer shall sign, seal, and date all appropriate engineering submissions to the City in accordance with the Texas Engineering Practice Act and the rules of the State Board of Registration for Professional Engineers.

ARTICLE 24
RETENTION, AVAILABILITY OF RECORDS AND AUDIT REQUIREMENTS

The Engineer shall maintain all books, documents, papers, accounting records, and other evidence pertaining to cost incurred and shall make such materials available at its office during

the contract period and for four (4) years from the date of final payment under this contract or until pending litigation has been completely and fully resolved, whichever occurs last. The City or any of its duly authorized representatives shall have access during normal business hours to any and all books, documents, papers, and records of the Engineer which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts, transcriptions, and for checking the amount of work performed by the Engineer.

ARTICLE 25 INSURANCE

The Engineer shall obtain and maintain insurance in the limits of liability for each of the types of insurance coverage identified as follows:

1. Workers' Compensation, endorsed with a waiver of subrogation in favor of City of Kingsville in the amount of the statutory obligations imposed under the Texas Workers' Compensation Law ("Statutory Texas").
2. Commercial General Liability, endorsed with the City as an additional insured and endorsed with a waiver of subrogation in favor of City of Kingsville, in limits of liability not less than one million dollars (\$1,000,000) combined single limit each occurrence and in the aggregate for bodily injury and property damage.
3. Texas Business Automobile Policy, endorsed with the City as an additional insured and endorsed with a waiver of subrogation in favor of City of Kingsville, in limits of liability not less than two hundred fifty thousand dollars (\$250,000) each person for bodily injury, five hundred thousand dollars (\$500,000) each occurrence for bodily injury, and one hundred thousand dollars (\$100,000) each occurrence for property damage.
4. Professional Liability in limits of one million dollars (\$1,000,000) each occurrence and in the aggregate.

The work shall not be commenced by Engineer until after policy, or policies evidencing the insurance coverage herein required, or certificates of such insurance, providing that the insurer shall give City thirty (30) days written notice prior to cancellation, material revision or intention not to renew, have been submitted to the City. In the event the Insurer refuses to provide the City with notice as detailed, the Engineer agrees to provide notice in writing immediately, and shall suspend all work until insurance is restored and proof, in a form acceptable to the City, is provided.

The Engineer, at his/her expense, shall purchase and maintain in force at all times during the term of this Contract the insurance with limits not less than indicated above. The Engineer will be considered in breach of contract should the Engineer fail to maintain the required insurance coverage during the contract period of this contract. The termination of this contract resulting from failure to maintain the required insurance will be carried out in accordance with Article 19-Termination.

ARTICLE 26
SUCCESSORS AND ASSIGNS

The Engineer and the City do hereby bind themselves, their successors, executors, administrators, and assigns to each other party of this agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this contract.

The Engineer shall not assign, subcontract, or transfer its interest in this contract without the prior written consent of the City.

ARTICLE 27
SEVERABILITY

In the event any one or more of the provisions contained in this contract, for any reason, shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and; this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE 28
CONTRIBUTIONS

It is expressly understood by the City and the Engineer, that from the award date of the contract to one year after termination or expiration of contract term, it is prohibited for any city official or employee thereof, to receive gifts described by Section 5.02 of the City Personnel or Civil Service Rules, and/or campaign or political contributions regardless of amount from the Engineer or principal owners of said Engineering firm. City Official is defined as those individuals described as city and precinct officers in Subchapter B of Chapter 152 of the Local Government Code. The Engineer is furthermore prohibited from making political campaign or personal contributions to candidates for city from the date of award of contract to one year after termination or expiration of contract term. It is also prohibited for the Engineer to contribute to employee associations or for the benefit of groups of employees.

ARTICLE 29
NOTICES

All notices to either party by the other, required under this contract, shall be personally delivered or mailed to such party at the following respective address:

CITY

ENGINEER

City of Kingsville Mayor

**ARTICLE 30
SIGNATORY WARRANTY**

The undersigned signatory for the Engineer hereby represents and warrants that the signatory is an officer of the organization for which he or she has executed this contract on behalf of the firm.

IN WITNESS WHEREOF, the City and the Engineer have executed these presents in duplicate.

CITY OF KINGSVILLE

ENGINEER: _____

By: _____

By: _____

Title: _____

Date: _____

Date: _____

ATTEST:

City Secretary

List of Attachments

- Attachment A – Services To Be Provided By The City
- Attachment B – Services To Be Provided By The Engineer
- Attachment C – Work Schedule
- Attachment D – Payment Schedule
- Attachment E – Work Authorization
- Attachment F – Status Report

ATTACHMENT A
SERVICES TO BE PROVIDED BY THE CITY

1. Provide any relevant drawings of the project.
2. Provide copies of all current permits, plans, surveys, and drawings applicable to the projects upon request.
3. Provide any additional documentation related to the project upon request.
4. Provide access to the project area for the duration of the project.
5. Provide contact information for key personnel involved with this project.
6. Provide any relevant historical environmental or engineering data upon request.
7. Provide assistance as necessary with schedules.
8. Make ten (10) day call to confirm prevailing wage decision.
9. Incorporate any and all wage rate modifications or supersedes via bid addendum (if applicable).
10. Conduct bid opening and prepare minutes.
11. Tabulate, analyze, and review bids for completeness and accuracy.
12. Accomplish Construction Contractor eligibility verification.
13. Participate in pre-construction conference and prepare copy of report/minutes.

ATTACHMENT B

SERVICES TO BE PROVIDED BY THE ENGINEER

The Engineering Firm shall render the following professional services necessary for the development of the Project:

SCOPE OF SERVICES

1. Attend preliminary conferences with the City regarding the requirements of the project.
2. Determine necessity for acquisition of any additional real property/easements/ROW's for the TWBD project and, if applicable, furnish to the City:
 - Name and address of property owners;
 - Legal description of parcels to be acquired; and
 - Map showing entire tract with designation of part to be acquired.
3. Make any necessary surveys of existing rights-of-way, topography, utilities, or other field data required for proper design of the project. Provide consultation and advice as to the necessity of the City providing or obtaining other services such as auger borings, core borings, soil tests, or other subsurface explorations; laboratory testing and inspecting of samples or materials; other special consultations. The Engineer will review any tests required and act as the City's representative in connection with any such services.
4. Prepare railroad/highway permits.
5. Prepare preliminary engineering/architectural study and report on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the City, to include preliminary layouts, sketches and cost estimates for the project, and to set forth clearly the Engineer's recommendations; to be completed within _____ days of contract execution.
6. Furnish the City copies of the preliminary report, if applicable (additional copies will be furnished to the City at direct cost of reproduction).
7. Furnish the City a written status report upon request (Attachment F).
8. Submit detailed drawings and plans/specifications to appropriate regulatory agency(ies) and obtain clearance.
9. Assist in the preparation of the bid packet/contract documents/advertisement for bids. At the time the bid packet is completed, the Engineering Firm shall also furnish to the City an updated written Estimate of Probable Costs for the project.
10. Provide in all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive base bid for construction exceed the funds available, deductive alternatives can be taken to reduce the bid price.

11. Design for access by persons with disabilities to facilities to be used by the public in accordance with Public Law 504.
12. Make periodic visits, no less than every thirty (10) days during the construction period, to the site to observe the progress and quality of the work, and to determine in general if the work is proceeding in accordance with the Contract.
13. Consult with and advise the City during construction; issue to Contractors all instructions requested by the City; and prepare routine change orders if required, at no charge for engineering services to the City when the change order is required to correct errors or omissions by the Engineer; provide price analysis for change orders; process change orders approved by City and the Project Engineer and submit to TDA for approval prior to execution with the Construction Contractor.
14. Review shop and working drawings furnished by Contractors for compliance with design concept and with information given in contract documents (Contractors will be responsible for dimensions to be confirmed and correlated at job site).
15. Resolve all payment requests within thirty (30) days of receipt of signed pay request from the Construction Contractor.
16. Based on the Engineer's on-site observations and review of the Contractor's applications for payment, determine the amount owed to the Contractor in such amounts; such approvals of payment to constitute a representation to the City, based on such observations and review, that the work has progressed to the point indicated and that the quality of work is in accordance with the plans, specifications and contract documents.
17. Recommend that a 10% retainage is withheld from all payments on construction contracts until final acceptance by the City and approval by TWDB, unless State or Local law provides otherwise.
18. Prepare Certificate of Construction Completion and Clean Lien Certificate. A Clean Lien Certificate may be prepared for each of the Prime Contractor(s) and each of the subcontractor(s).
19. Conduct interim/final inspections.
20. Revise contract drawings to show the work as actually constructed, and furnish the City with a set of "record drawings" plans.
21. The Engineer will provide a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in

files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the City. The digital copy provided shall not include a digital representation of the Engineer's seal but the accompanying documentation from the Engineer shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the City. In addition, complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be provided to the City in written form.

SUBCONTRACTORS

1. No work under this contract shall be subcontracted by Engineer without prior approval, in writing, from the City.
2. The Engineer shall, prior to proceeding with the work, notify City in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.
3. If any time during progress of the work, the City determines that any subcontractor is incompetent or undesirable, the City will notify the Engineer who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this contract shall create any contractual relation between any subcontractors and City.
4. The Engineer will include in all contracts and subcontracts of amounts in excess of \$100,000 a provision which requires compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act [42 U.S.C 7606], Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR 31.35 and 31.36), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provisions shall require reporting of violations to TDA and to the U.S. Environmental Protection Agency Assistant Administrator for Enforcement.
5. The Engineer will include in all contracts and subcontracts other than for small purchases (less than \$10,000), provisions or conditions which will allow for administrative, contractual or legal remedies in instances which violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
6. The Engineer will include in all contracts and subcontracts in excess of \$10,000 suitable provisions for termination by the City including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the Engineer.
7. The Engineer will include in all contracts and subcontracts in excess of \$10,000 provisions requiring compliance with the following:

- The Engineer will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, physical or mental disability, marital status, parenthood, or age.
 - Executive Order 11246-Equal Employment Opportunity.
 - Copeland Anti-Kickback Act.
 - Davis-Bacon Act – prime contractor contracts in excess of \$2,000.
 - Section 103 and 107 of the Contract Work Hours and Safety Standards Act – contracts in excess of \$2,000.
 - A provision recognizing mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
 - Section 3 of the Housing and Urban Development Act of 1969.
 - Title VI of the Civil Rights Act of 1964.
8. The Engineer will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.
9. The Engineer will include in all negotiated contracts and subcontracts a provision to the effect that the City, TWDB, the Comptroller General of the State of Texas, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.
10. The Engineer will include in all contracts and subcontracts a requirement that the Contractor maintain all relevant records for three (3) years after the City has made final payment to the Contractor and all other pending matters are closed.

STANDARD OF PERFORMANCE AND DEFICIENCIES

1. All services of the Engineer and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The Engineer represents that it has the required skills and capacity to perform work and services to be provided under this Contract.
2. The Engineer represents that services provided under this Contract shall be performed within the limits prescribed by the City in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.
3. Any deficiency in Engineer's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from City and at the Engineer's expense if the deficiency is due to Engineer's negligence. The City shall notify the Engineer in writing of any such deficiency and

provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the City under applicable state or federal law.

4. The Engineer agrees to and shall hold harmless the City, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the Engineer, its officers, agents, employees, subcontractors, and others acting for or under the direction of the Engineer doing the work herein contracted for or by or in consequence of any negligence in the performance of this contract, or by or on account of any omission in the performance of this contract.

**ATTACHMENT C WORK
SCHEDULE**

Project Schedule (Estimated):

Preparation of Environmental Information Document (EID)	Date	TBD
Agency Coordination, Public Hearing(s), Field Survey(s)	Date	TBD
Preliminary Review of EID	Date	TBD
Submission of Complete EID	Date	TBD
Issuance of Finding of No Significant Impact	Date	TBD
FONSI Comment Period	Date	TBD
Completion of Planning	Date	TBD

ATTACHMENT D

PAYMENT SCHEDULE

The City shall reimburse Engineer for basic engineering services provided upon completion of the following project milestones per the following percentages of the maximum contract amount:

<u>Milestone</u>	<u>% of Contract Fee</u>
• Approval of Preliminary Engineering Plans and Specifications by City	20%
• Approval of Plans and Specifications by Regulatory Agency(ies)	30%
• Completion of bid advertisement and contract award	20%
• Completion of construction staking	10%
• Completion of Final Closeout Assessment and submittal of "As Builts" to City	10%
• Completion of final inspection and acceptance by the City	10%
TOTAL	100%

NOTE: Percentages of payment listed here are general guidelines based on engineering services typically provided. These are negotiable and should serve only as a guide. Payment schedule should be tied directly to the actual Scope of Work identified in Attachment B Services To Be Provided By The Engineer.

SPECIAL SERVICES

Special Services shall be reimbursed under the following hourly rate schedule. (List all applicable services to include overhead charge).

- Registered Surveyor \$ _____
- Survey Crew (3 members) \$ _____
- Project Engineer \$ _____
- Engineering Technician \$ _____
- Project Representative \$ _____
- Draftsman \$ _____

The fee for all other Special Services shall not exceed a total of _____ and No/100 Dollars (\$_____). The payment for these Special Services shall be paid as a lump sum, per the following schedule:

1. The Engineer shall be paid upon completion of surveying, necessary field data, and acquisition data, if applicable, the sum of _____ and No/100 Dollars (\$_____).

2. The Engineer shall be reimbursed the actual cost of necessary testing based on itemized billing statements from the independent testing laboratory, plus a _____percent (_____%) overhead charge. All fees for testing shall not exceed a total of _____ and No/100 Dollars (\$_____).
3. The payment requests shall be prepared by the Engineer and be accompanied by such supporting data to substantiate the amounts requested.
4. Any work performed by the Engineer prior to the execution of this contract is at the Engineer's sole risk and expense

