

**CITY OF CORPUS CHRISTI
AMENDMENT NO. 1
CONTRACT FOR PROFESSIONAL SERVICES**

FOR PROJECT (No./Name) E15140 Citywide Street Preventative Maintenance Program Year 3

The City of Corpus Christi, a Texas home rule municipal corporation, P.O. Box 9277, Corpus Christi, Nueces County, Texas 78469-9277 (City) acting through its duly authorized City Manager or Designee (Director) and Coym, Rehmet & Gutierrez, L.P., a Texas corporation, 5656 S. Staples, Suite 230, Corpus Christi, Nueces County, Texas 78411, (Consultant), hereby agree as follows:

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ARTICLE I – SCOPE OF SERVICES

1.1 The Consultant shall provide to Engineering Services its Scope of Services, to be incorporated herein and attached to this Agreement as **Exhibit A**. The Scope of Services shall include all associated services required for Consultant to provide such Services, pursuant to this Agreement, and any and all Services that would normally be required by law or common due diligence.

1.2 Consultant shall comply with City standards, as specified in the UDC or Code of Ordinances, throughout the duration of the Project, unless specifically and explicitly excluded from doing so in the approved Scope of Services attached as **Exhibit A**.

1.3 Consultant acknowledges and accepts its responsibilities, as defined and described in City's General Conditions for Construction Contracts. The Consultant will serve as the City's Designer and will consult and advise the City during the performance of the Consultant's services. The Consultant shall report to the City's designated Project Manager.

1.4 Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Agreement. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday service, as requested by City. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subconsultants of Consultant.

1.5 Consultant shall not begin work on any Task Order authorized under this Agreement until they are briefed on the scope of the Project and are notified in writing to proceed. If the scope of the Project changes, either Consultant or City may request a review of the changes with an appropriate adjustment in compensation.

1.6 Consultant, in consideration for the compensation described in Article III, shall render the professional services necessary for the advancement of the Project through Substantial Completion to Final Completion, including review and prepare plans, specifications and bid and contract documents.

1.7 Consultant shall analyze bids and evaluate the documents submitted by bidders, including the Statement of Experience, in order to make an informed recommendation to City concerning the responsibility of the lowest bidder.

1.8 Consultant will provide monthly status updates (project progress or delays and gantt charts) presented with each monthly invoice.

1.9 Consultant services will be "Services for Construction Projects"- (Basic Services for Construction Projects)" which are shown and are in accordance with "Professional Engineering Services- A Guide to the Selection and Negotiation Process, 1993" a joint publication of the Consulting Engineer's Council of Texas and Texas Society of Professional Engineers. For purposes of this contract, certain services listed in this publication as Additional Services will be considered as Basic Services.

ARTICLE II – QUALITY CONTROL PLAN

2.1 The Consultant agrees to perform quality assurance-quality control/constructability reviews (QCP Review). In the event that the City retains a separate consultant to perform additional QCP services for the City, the Consultant will provide all necessary information to the City, address any comments from the City's consultant and provide resolution to the City's satisfaction.

2.2 The Consultant will perform QCP Reviews at intervals during the design phase to ensure plans, specifications and drawings satisfy accepted quality standards and meet the requirements of the Project scope. Based on the findings of the QCP Review, the Consultant must reconcile the project scope and Construction Estimate as needed. Documentation will be included that verifies interdisciplinary coordination has occurred.

2.3 The Consultant will perform constructability reviews, using persons with construction experience, at appropriate intervals during the design phase to ensure that the Project is buildable, as well as cost-effective, biddable and maintainable. Based on the findings of the constructability reviews, the Consultant will redesign the Project, as required, and provide interim construction estimates.

2.4 Consultant is responsible for the accuracy and competency of its QCP reviews and final construction documents. Documents that do not meet City standards may be rejected. Consultant will not be compensated for having to resubmit documents.

ARTICLE III – COMPENSATION

3.1 The Compensation for all services included in this Agreement and in the Scope of Services for this Agreement shall not exceed \$867,370.00. Work will be performed on a Time and Materials basis. Consultant will be required to submit timesheets with their monthly invoice. The fees for Basic Services will not exceed those identified and will be full and total compensation for all services outlined in **Exhibit A**, and for all expenses incurred in performing these services.

3.2 The Consultant agrees to complete the phases of services in accordance with the approved project schedule and budget. Work will not begin on any phase or any Additional Service until requested in writing by the Consultant and written authorization is provided by the Director of Engineering Services.

3.3 All services shall be performed and the applicable standard of professional care set forth in section 13.4 herein and to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion. City shall not be liable for any payment under this Agreement for services that are unsatisfactory and/or have not been previously approved by the Director.

3.4 The Director may direct the Consultant to undertake additional services or tasks provided that no increase in fee is required. Services or tasks requiring an increase of fee will be mutually agreed and evidenced in writing as an amendment to this contract. Consultant shall notify the City of Corpus Christi within three (3) days of notice if tasks requested requires an additional fee.

3.5 Monthly invoices will be submitted in accordance with the Payment Request as shown in **Exhibit B**. For services provided, Consultant will submit monthly statements for services rendered. The statement will be based upon Consultant's estimate (and with City's concurrence) of the proportion of the total services actually completed at the time of billing. City will make prompt monthly payments in response to Consultant's monthly statements.

3.6 Consultant warrants that title to all services covered by a Payment Request shall pass to City no later than the time of payment. Consultant further warrants that, upon submittal of a Payment Request, all services for which Payment Requests have been previously issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Consultant or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **Consultant SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY CITY TO Consultant.**

3.7 The final payment due hereunder shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City. Final billing shall indicate "Final Bill – no additional compensation is due to Consultant."

3.8 City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Consultant is responsible, because of:

3.8.1 delays in the performance of Consultant's work;

3.8.2 failure of Consultant to make payments to subconsultants or vendors for labor, materials or equipment;

3.8.3 reasonable evidence that Consultant's work cannot be completed for the amount unpaid under this Agreement;

3.8.4 damage to City; or

3.8.5 persistent failure by Consultant to carry out the performance of its services in accordance with this Agreement.

3.9 When the above reasons for withholding are removed or remedied by Consultant, compensation of the amount withheld shall be made within a reasonable time. City shall not be deemed in default by reason of withholding compensation as provided for in this Article III.

3.10 In the event of any dispute(s) between the Parties regarding the amount properly compensable for any Phase or as final compensation or regarding any amount that may be withheld by City, Consultant shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the event Consultant does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.

3.11 Request of final compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final Payment Request.

3.12 The fee for this project is subject to the availability of funds. The Engineer may be directed to suspend work pending receipt and appropriation of funds.

3.13 **Time & Materials Contracts**

3.13.1 Consultant shall complete **EXHIBIT B-1** and include in proposal. Rate sheets are confidential pursuant to section 552.104 of the Texas Government Code since release of this information would give advantage to a competitor or bidder. In addition, section 552.110 of the TX Govt. Code protects third party commercial and financial information if release of the information would cause the third party substantial competitive harm.

3.13.2 Consultant shall submit documentation with the monthly invoice that shows who worked on the Project, the number of hours that each individual worked on the Project and reimbursables for that individual.

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

ARTICLE IV – TIME AND PERIOD OF SERVICE

4.1 The term of this Agreement shall commence upon its approval execution by both the City and Consultant.

4.2 The Consultant agrees to begin work on those authorized Basic Services for this contract upon receipt of the Notice to Proceed from the Director of Engineering Services. Work will not begin on any phase or any Additional Services until requested in writing by the Consultant and written authorization is provided by the Director of Engineering Services.

4.3 Time is of the essence for this Agreement. Consultant shall perform and complete its obligations for the services under Article I herein in a prompt and continuous manner, so as to not delay the development of services or the construction of the work for the Project, in accordance with the schedules approved by City. City shall perform its obligations of review and approval in a prompt and continuous manner so as to not delay the project.

4.4 This Agreement shall remain in force for a period which may reasonably be required for the design, award of the contract and completion of the Project, including any extra work and any required extensions thereto, unless terminated as provided for in Article VIII of this Agreement.

ARTICLE V – CONSTRUCTION ESTIMATE

5.1 The Construction Estimate (Estimate) is computed by the Consultant and includes the total cost for construction of the Project.

5.2 The Estimate does not include the cost of the land, rights-of-way or other costs which are the responsibility of the City.

ARTICLE VI – INSURANCE REQUIREMENTS

6.1 Consultant must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Consultant must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.

6.2 Consultant must furnish to the Director of Engineering Services with the signed agreement 2 copies of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. **The City must be listed as an additional insured on the General liability and Auto Liability policies, and a waiver of subrogation is required on all applicable policies. Endorsements must be provided with COI. Project name and or number must be listed in Description Box of COI.**

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-written day notice of cancellation, required on all certificates or by applicable policy endorsements	Bodily Injury and Property Damage Per occurrence - aggregate
Commercial General Liability including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$2,000,000 Aggregate

AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit
PROFESSIONAL LIABILITY (Errors and Omissions)	\$1,000,000 Per Claim \$2,000,000 Aggregate (Defense costs not included in face value of the policy) If claims made policy, retro date must be prior to inception of agreement, have extended reporting period provisions and identify any limitations regarding who is insured.
WORKERS' COMPENSATION (All States Endorsement if Company is not domiciled in Texas) Employer's Liability	Statutory \$500,000 /\$500,000 /\$500,000

6.3 In the event of accidents of any kind related to this agreement, Consultant must furnish the City with copies of all reports of any accidents within 10 days of the accident.

6.4 Applicable for paid employees, Consultant must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Consultant will be promptly met. An All States Endorsement shall be required if Consultant is not domiciled in the State of Texas.

6.5 Consultant shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII. **Consultant is required to provide City with renewal Certificates.**

6.6 Consultant shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Engineering Services
P.O. Box 9277
Corpus Christi, TX 78469-9277

6.7 **Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**

6.7.1 List the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;

6.7.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;

6.7.3 Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and

6.7.4 Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

6.8 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

6.9 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

6.10 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractor's performance of the work covered under this agreement.

6.11 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.

6.12 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

6.13 **Contracts Less than \$50,000** - Insurance not required; however, if contract is amended to exceed \$50,000, the above insurance requirements must be met.

ARTICLE VII – INDEMNIFICATION

Consultant shall fully indemnify and hold harmless the City of Corpus Christi and its officials, officers, agents, employees, volunteers, directors and representatives ("Indemnatee") from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and defense costs, to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement or failure to pay a subcontractor or supplier committed by Consultant or its agent, consultant under contract or another entity over which Consultant exercises control while in the exercise of rights or performance of the duties under this agreement. This indemnification does not apply to any liability resulting from the negligent acts or omissions of the City or its employees, to the extent of such negligence.

If the liability results solely from the negligent acts or omissions of the Consultant, the Consultant shall also defend the Indemnatee with counsel satisfactory to the City Attorney. If a claim is based

wholly or partly on the negligence of, fault of or breach of contract by the City, the Consultant shall reimburse the City's reasonable attorney's fees in proportion to the Consultant's liability.

Consultant must advise City in writing within 24 hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.

ARTICLE VIII – TERMINATION OF AGREEMENT

8.1 The City may, at any time, with or without cause, terminate this contract upon seven days written notice to the Consultant at the address of record.

8.2 In this event, the Consultant will be compensated for its services on all stages authorized based upon Consultant and City's estimate of the proportion of the total services actually completed at the time of termination.

ARTICLE IX – RIGHT OF REVIEW AND AUDIT

9.1 Consultant grants City, or its designees, the right to audit, examine or inspect, at City's election, all of Consultant's records relating to the performance of the Work under this Agreement, during the term of this Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under this Agreement, then such retention period shall extend until final resolution of the dispute.

9.2 "Consultant's records" include any and all information, materials and data of every kind and character generated as a result of the Work under this Agreement. Examples include billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in questions and any and all other agreements, sources of information and matters that may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

9.3 City agrees that it shall exercise the right to audit, examine or inspect Consultant's records only during City's regular business hours. Consultant agrees to allow City's designee access to all of Consultant's records, Consultant's facilities and Consultant's current or former employees, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

9.4 Consultant shall include this audit clause in any subcontractor, supplier or vendor contract.

ARTICLE X – OWNER REMEDIES

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

10.1.1 Failure of the Consultant to make adequate progress and endangers timely and successful completion of the Agreement, which failure includes failure of subconsultants to meet contractual obligations;

10.1.2 Failure of the Consultant to design in compliance with the laws of the City, State and/or federal governments, such that subsequent compliance costs exceed expenditures that would have been involved had services been properly executed by the Consultant.

10.1.3 Losses are incurred because of defects, errors and omissions in the design, working drawings, specifications or other documents prepared by the Consultant to the extent that the financial losses are greater than the City would have originally paid had there not been defects, errors and omissions in the documents.

10.2 Pursuant to Article VI, the City may assert a claim against the Consultant's professional liability insurance as appropriate when other remedies are not available or offered for design deficiencies discovered during and after Project construction.

10.3 When the City incurs non-value added work costs for change orders due to design errors or omissions, the City will send the Consultant a certified Cost Recovery Claim letter that includes

- (1) Summary of facts with supporting documentation;
- (2) Instructions for Consultant to revise design documents, if appropriate, at Consultant's expense;
- (3) Calculation of non-value added work costs incurred by the City; and
- (4) Deadline for Consultant's response.

10.4 The Consultant may be required to revise bid documents and re-advertise the Project at the Consultant's sole cost if, in the City's judgment, the Consultant generates excessive addenda, either in terms of the nature of the revision or the actual number of changes due to the Consultant's errors or omissions.

10.5 The City may withhold or nullify the whole or part of any payment as detailed in Article III.

ARTICLE XI – CONSULTANT REMEDIES

11.1 Consultant shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations or any other causes beyond Consultant's reasonable control.

ARTICLE XII – CLAIMS AND DISPUTE RESOLUTION

12.1 Filing of Claims

12.1.1 Claims arising from the circumstances identified in this Agreement or other occurrences or events, shall be made by Written Notice delivered by the party making the Claim to the other party within twenty-one (21) calendar days after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim.

12.1.2 Every Claim of Consultant, whether for additional compensation, additional time or other relief, shall be signed and sworn to by a person authorized to bind the Consultant by his/her signature, verifying the truth and accuracy of the Claim.

12.1.3 The responsibility to substantiate a claim rests with the party making the Claim.

12.1.4 Within thirty (30) calendar days of receipt of notice and supporting documentation, City will meet to discuss the request, after which an offer of settlement or a notification of no settlement offer will be sent to Consultant. If Consultant is not satisfied with the proposal presented, Consultant will have thirty (30)

calendar days in which to (i) submit additional supporting data requested by the City, (ii) modify the initial request for remedy or (iii) request Alternative Dispute Resolution.

12.1.5 Pending final resolution of a claim, except as otherwise agreed in writing, Consultant shall proceed diligently with performance of the Agreement and City shall continue to make payments in accordance with this Agreement.

12.2 Alternative Dispute Resolution

12.2.1 All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

12.2.2 Before invoking mediation or any other alternative dispute resolution (ADR) process set forth herein, the Parties agree that they shall first try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to the use of any other ADR process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a Party delivers a written notice of such dispute, then the Parties shall proceed with the mediation ADR process contained herein.

12.2.3 Mediation

12.2.3.1 In the event that City or Consultant shall contend that the other has committed a material breach of this Agreement, the Party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

12.2.3.2 Request for mediation shall be in writing, and shall request that the mediation commence no less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both parties.

12.2.3.3 In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) calendar days of the request for mediation, all conditions precedent in this Article XII shall be deemed to have occurred.

12.2.3.4 The parties shall share the mediator's fee. Venue for any mediation or lawsuit arising under this Agreement shall be Nueces County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

12.3 No Waiver of Governmental Immunity. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO WAIVE CITY'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.

ARTICLE XIII – MISCELLANEOUS PROVISIONS

13.1 Use of Local Expertise/ Local Professional Participation. The City Council's stated policy is that City expenditures on contracts for professional services be of maximum benefit to the local economy.

13.2 Assignability. The Consultant will not assign, transfer or delegate any of its obligations or duties in this contract to any other person without the prior written consent of the City, except for routine duties delegated to personnel of the Consultant staff. If the Consultant is a partnership, then in the event of the termination of the partnership, this contract will inure to the individual benefit of such partner or partners as the City may designate. No part of the Consultant fee may be assigned in advance of receipt by the Consultant without written consent of the City.

The City will not pay the fees of expert or technical assistance and consultants unless such employment, including the rate of compensation, has been approved in writing by the City.

13.3 Ownership of Documents. All documents including contract documents (plans and specifications), record drawings, contractor's field data, and submittal data will be the sole property of the City, may not be used again by the Consultant without the express written consent of the Director of Engineering Services. However, the Consultant may use standard details that are not specific to this project. The City agrees that any modification of the plans will be evidenced on the plans, and be signed and sealed by a professional engineer prior to re-use of modified plans.

13.4 Standard of Care. Services provided by Consultant under this Agreement shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license; and performed as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

13.5 Licensing. Consultant shall be represented by personnel with appropriate licensure, registration and/or certification(s) at meetings of any official nature concerning the Project, including scope meetings, review meetings, pre-bid meetings and preconstruction meetings.

13.6 Entire Agreement. This Agreement represents the entire and integrated Agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both the City and Consultant.

13.7 Disclosure of Interest. Consultant agrees, in compliance with City of Corpus Christi Ordinance No. 17112, to complete, as part of this contract, the *Disclosure of Interests* form.

13.8 Conflict of Interest. Consultant agrees, in compliance with Chapter 176 of the Texas Local Government Code, to complete and file Form CIQ with the City Secretary's Office. For more information and to determine if you need to file a Form CIQ, please review the information on the City Secretary's website at <http://www.cctexas.com/government/city-secretary/conflict-disclosure/index>.

13.9 Controlling Law. This Agreement is governed by the laws of the State of Texas without regard to its conflicts of laws. Venue for legal proceedings lies exclusively in Nueces County, Texas.

13.10 Severability. If, for any reason, any one or more Articles and/or paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining Articles and/or paragraphs of this Agreement but shall be confined in its effect to the specific Article, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any Article, sentence, clause or parts of this Agreement, in any one or more instance, shall not affect or prejudice in any way the validity of this Agreement in any other instance.

13.11 Conflict Resolution Between Documents. Consultant hereby agrees and acknowledges if anything contained in the Consultant-prepared **Exhibit A**, Consultant's Scope of Services, or contained in any other document prepared by Consultant and included herein, is in conflict with this Agreement, this Agreement shall take precedence and control to resolve said conflict.

J.H. Edmonds, P.E. Date
 Director of Engineering Services

Victor M. Gutierrez Jr., P.E. Date
Principal
5656 S. Staples, Suite 230
Corpus Christi, TX 78411
(361) 991-8550 Office

Operating Department	Date
----------------------	------

Assistant City Attorney Date

Office of Management and Budget	Date
------------------------------------	------

City Secretary

Project Number _____
Accounting Unit _____
Account _____
Activity _____
Account Category _____
Fund Name _____

EXHIBIT A
SCOPE OF SERVICES

{{Insert Proposal & Scope of Services from A/E}}

Coym, Rehmet & Gutierrez Engineering, L.P.

ENGINEERS • PLANNERS • SURVEYORS

TBPE Firm Reg. No. F-388

TBPLS Firm Reg. No. 10104001

5656 S. STAPLES, SUITE 230
CORPUS CHRISTI, TX 78411
361-891-8550 FAX: 361-893-7589

1220 N. TEXAS BLVD., SUITE 4
ALICE, TX 78332
361-684-8821 FAX: 361-684-0559

September 8, 2015

Jeff H. Edmonds, P.E.
Director of Capital Projects
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

VIA EMAIL

**RE: Contract Amendment No. 2
City-Wide Street Preventative Maintenance Program (SPMP) - Year 3
Project No. E15140 (Original submitted July 7, 2015);
(Revised August 10, 2015); (Revised September 8, 2015)**

Dear Mr. Edmonds:

Coym, Rehmet & Gutierrez Engineering, L.P. is pleased to submit this correspondence as our proposal for Contract Amendment No. 2 for performing professional services related to **Year 3 of the City-Wide Street Preventative Maintenance Program (SPMP)**. As requested, this proposal has been modified to a "time & materials" fee proposal and includes two optional one-year renewals for Years 4 & 5. It is our understanding that the **Year 3 SPMP Construction Budget** is as follows:

Year 3 SPMP Construction Budget for Overlays:	\$9,975,000.00
Year 3 SPMP Construction Budget for Seal Coats:	<u>\$3,825,000.00</u>
TOTAL YEAR 3 SPMP CONSTRUCTION BUDGET:	\$13,800,000.00

DESCRIPTION AND TASK LIST

Under this Amendment No. 2, we propose to perform the following tasks on a time and materials hourly basis:

PHASE I – YEAR 3 WORK PLAN

Coym, Rehmet and Gutierrez Engineering, L.P. (CRG) will prepare and provide a **Year 3 Work Plan**, which will include all necessary data and exhibits required for a presentation to the City Council.

CRG proposes to perform the following tasks:

1. Attend a kick off meeting with City Staff to review the proposed scope of work, schedule, deliverables, project managers and contacts for CRG and the City, and City expectations.
2. Secure and review all pertinent and project-related GIS files from the City's GIS Department.
3. Coordinate with the City regarding the Year 1 Pilot Program & Year 2 data.
4. Review documentation regarding the Year 1 Pilot Program and Year 2 Program, including:
 - a. Project plans and specifications and addenda.
 - b. Contract award documentation for Haas-Anderson Construction, Inc. and Bay, Ltd.

- c. Bid tabulations and unit prices of awarded contracts.
 - d. Delivery orders issued, or planned for issuance, under Year 1 and Year 2.
 - e. Program flow charts and activity list as presented by City Staff.
 - f. Pertinent correspondence regarding the Years 1 & 2 Programs, as furnished by the City.
 - g. Presentations made to the City Council regarding street selection criteria and other issues.
- 5. Review all projects completed or pending under Bond 2000, 2004 and 2008 Overlays and Reconstruction, Bond 2012 and 2014 Reconstruction, Years 1 & 2 City Seal Coats Program, and street deferrals from Year 1.
 - 6. Review existing and updated City-furnished Pavement Condition Index (PCI) scores for City streets.
 - 7. Prepare a list of streets which are candidates for rehabilitation under the SPMP.
 - 8. Segregate possible seal coat (PCI 70-100) and overlay (PCI 55-69) projects by City district.
 - 9. Utilizing engineering judgment, prepare an initial list of Year 3 projects. The list should consider Year 1 street deferrals.
 - 10. Perform "Windshield" inspections of streets to evaluate distress, ride quality, overall condition, curb & gutter and ADA ramp conditions. Conduct a field trip hazard survey along the designated ADA route.
 - 11. Prepare a preliminary list of Year 3 streets taking into consideration the following:
 - a. City-furnished PCI scores and windshield inspection results.
 - b. Neighborhood streets and groupings, taking into account initial subdivision construction dates.
 - c. Distribution by District based on capital assets (% of total network). The distribution by District is based on:

District 1	22%
District 2	13%
District 3	16%
District 4	28%
District 5	21%
 - d. Street classification (residential, collectors and arterial) based on capital assets.
 - e. Percentage of overlays and seal coats.
 - f. Traffic loads impacting potential premature failure of a roadway.
 - g. Costs utilizing bid unit prices.
 - h. Adding an approximate 20% overage of the construction funding for Year 3 to allow for "strike-throughs" by the Utility Departments.
 - 12. Submit the preliminary list of streets and meet with City Staff to review and receive comments.
 - 13. Address staff comments, resubmit the list of streets and meet as necessary with City Staff to finalize the proposed Year 3 Work Plan.
 - 14. Prepare the draft for proposed Year 3 Work Plan with documentation and exhibits and submit for distribution to City Utility Departments and the RTA.
 - 15. Meet as necessary with City Engineering, Storm Water, Paving and Utility Departments to discuss and finalize the Year 3 Work Plan.
 - 16. Prepare all documentation and exhibits necessary for the final Council presentation.
 - 17. Prepare construction contract documents for bidding the Year 3 SPMP work.

PHASE II – YEAR 3 PRELIMINARY TASKS

1. Attend a kick off meeting with City Staff to review the proposed scope of work, schedule, deliverables, contractors and contacts for the City, CRG and the two contractors.
2. Review original and revised documents and delivery orders related to the SPMP Programs for Years 1 & 2.
3. Meet with Contractors, Haas-Anderson Construction and Bay Ltd., along with City Staff to review the Years 1 & 2 “lessons learned” and prepare any documentation required to effect necessary change orders or directives and other contractual items as required.
4. Prepare a geotechnical investigation scope for the Year 3 Program, meet with City Staff and Rock Engineering to obtain a Proposal, coordinate the investigation, compile and keep all records for incorporation into the delivery orders design and scopes.
5. Prepare a listing and schedule for the five (5) overlays delivery orders and the five (5) seal coat delivery orders to be included in the Year 3 Program and receive City approval.
6. Work with City Staff to develop a listing for five (5) overlay delivery orders and five (5) seal coat delivery orders to be included in the Year 3 Program.

PHASE III – YEAR 3 DELIVERY ORDERS (10 DO’S)

1. Prepare instructions and exhibits for field survey crew to mark stationing on curb lines of streets included in DO’s.
2. Perform site visits and field investigations to ascertain areas requiring pre-paving repairs or modifications, concrete construction or other items contained in the unit bid price contracts.
3. Identify and analyze requirements of governmental authorities having jurisdiction to approve design of the DO’s including permitting, environmental, historical, construction and geotechnical issues; upon request or concurrence of the Project Manager, meet and coordinate with agencies such as RTA, CDBG, USPS, affected school districts (CCISD, FBISD, etc.) community groups, TDLR, etc.
4. Review the geotechnical investigation for the streets included in the DO’s.
5. Coordinate work with the ADA and Miscellaneous Concrete IDIQ Contracts that may exist, if required.
6. Prepare draft delivery orders for issuance to the Contractors. The delivery orders shall incorporate City GIS and Maximo data to allow City staff to load appropriately into data bases. The delivery orders will include:
 - a. A short narrative of the expected work for each street.
 - b. A complete listing of included streets with pertinent data in tabular form.
 - c. Cost data utilizing unit bid price matrix.
 - d. Aerial photo plans (11” x 17”), depicting limits of construction, areas of pavement repair/replacement, areas of concrete repair/replacement, boring locations and descriptions and any items required that are included in the unit price bids. Typical cross sections (in some areas) as necessary may be required.
 - e. Any additional information that may assist the Contractor during construction.
7. Submit the draft delivery orders to City Staff and make field visits with staff and contractor to fully review the proposed scope, costs and other ancillary items.

8. Make changes as derived from City Staff reviews and submit the final delivery orders for approval.
9. Meet with Contractors and City Inspection personnel to review delivery orders and insure coordination before commencing construction.
10. Issue delivery order(s).
11. Coordinate scheduling of delivery order work with all involved City Departments.
12. Closely monitor public notification requirements and insure contractor compliance.
13. Review field and laboratory tests.
14. Provide interpretations and clarifications of the contract documents for the contractor and authorize required changes, which do not affect the contractor's price and are not contrary to the general interest of the City under the contract.
15. Coordinate and provide field engineering for DO's during construction to include witnessing exposed subgrade and base to confirm recommended improvements:
 - a. Exposed base and subgrade for sidewalks, driveways, and curb and gutter;
 - b. Base and subgrade proof rolling;
 - c. Minor utility improvements for storm water inlets, adjustments to valve boxes and manhole rings and covers;
 - d. ADA field work;
 - e. Bus stops;
 - f. Landscaping and irrigation system assessments; and
 - g. Other pedestrian improvements
16. Prepare change orders as authorized by the City (coordinate with the City's construction division).
17. Make pre-final and final inspection with City Staff and provide the City with a Certificate of Completion for the project.
18. Prepare as-built drawings of construction as completed.

PHASE IV – WARRANTY PHASE

1. Prepare a list of all sites completed at the end of a 12-month period for the City and recommend acceptance of the sites and commencement of warranty period.
2. Provide a warranty inspection of all sites toward the end of the 12-month period and generate a warranty items punch list. The Warranty Phase allowance is based on one (1) 12-month warranty period.

ADDITIONAL SERVICES (ALLOWANCE)

1. Control Surveys: Marking stationing on curb lines for construction control and reference. The survey allowance is based on thirty (30) 9-hr days of (2-man) field crew work and associated office work.
2. Topographic Surveys: For curb lines, sidewalks, drainage structures and streets with unique geometric shapes, topographic surveys will be obtained to insure proposed improvements are tangent with existing facilities, meet TDLR grade requirements and provide positive drainage.

SCHEDULE

We propose to complete the Phase I & II Tasks as follows:

Phase I & II Tasks	Due Date
1. Prepare Construction Contract Documents For Bidding	October 16, 2015
2. Preliminary Year 3 Street List For Utility Department Review	October 23, 2015
3. Preliminary Year 3 Work Plan	November 2, 2015
4. Final Year 3 Work Plan Submittal Date	November 16, 2015

We anticipate the issuance of ten (10) Year 3 delivery orders within one year of the Notice to Proceed.

FEE

For services authorized by the Director of Engineering Services, the City will pay the A/E for all Basic & Additional Services on an hourly, time and materials basis in accordance with CRG's 2015 Schedule of Rates, included in this proposal as Attachment "A" for the not-to-exceed fees shown in the Table 1 below. Additional Services for Control Surveys and Topographic Surveys will also be paid on an hourly, time and materials basis according to CRG's hourly rates previously referenced. The City will furnish Inspection Services, field verify all quantities for Contractor estimates and submit estimates or payment.

A/E will invoice, on a monthly basis, for all basic & additional services and for sub-consultant fees & expenses in accordance with CRG's 2015 Schedule of Rates.

Fees for A/E services include the necessary conferences and site visits for the preparation and execution of the Work Plan preparation outlined herein. The City shall supply or reimburse all available GIS, base and/or site maps from City Engineering files, all pertinent information regarding the Year 1 & Year 2 Delivery Orders and streets deferrals from the Year 1 Program.

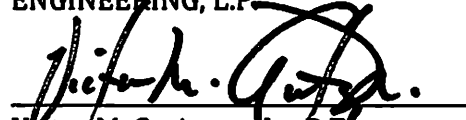
Table 1

Not-To-Exceed FEE SUMMARY In Accordance with CRG 2015 Schedule of Rates (Attachment "A")	
Basic Services – Phases I, II, III & IV (Hourly on a Time and Materials Basis in Accordance with CRG's 2015 Schedule of Rates, Not to Exceed 6% of the Total Construction Budget)	\$828,000.00
Subtotal Basic Services	\$828,000.00
Additional Services (Allowance)	
Control Surveys	\$32,330.00
Topographic Surveys	\$7,040.00
Subtotal Additional Services	\$39,370.00
TOTAL BASIC AND ADDITIONAL SERVICES (Not to Exceed):	\$867,370.00

Jeff Edmonds, P.E.
July 7, 2015
Revised August 10, 2015
Revised September 8, 2015

If the above is acceptable, please prepare an agenda item for City Council action and an A/E Contract for signatures. Please call should you have any questions or require additional information.

Very truly yours,
COYM, REHMET & GUTIERREZ
ENGINEERING, L.P.

A handwritten signature in black ink, appearing to read "Victor M. Gutierrez Jr.", is written over a horizontal line.

Victor M. Gutierrez Jr., P.E.
Principal

Attachments: Attachment "A" CRG's 2015 Schedule of Rates

EXHIBIT B

SAMPLE PAYMENT REQUEST FORM

COMPLETE PROJECT NAME
Project No. XXXX
Invoice No. 12345
Invoice Date:

Sample form for:
Payment Request
Revised 07/27/00

	Contract	Amd No. 1	Amd No. 2	Total Contract	Amount Invoiced	Previous Invoice	Total Invoice	Percent Complete
Basic Services:								
Preliminary Phase	\$1,000	\$0	\$0	\$1,000	\$0	\$1,000	\$1,000	100%
Design Phase	2,000	1,000	0	3,000	1,000	500	1,500	50%
Bid Phase	500	0	250	750	0	0	0	0%
Construction Phase	2,500	0	1,000	3,500	0	0	0	0%
Subtotal Basic Services	\$6,000	\$1,000	\$1,250	\$8,250	\$750	\$1,500	\$2,500	30%
Additional Services:								
Permitting	\$2,000	\$0	\$0	\$2,000	\$500	\$0	\$500	25%
Warranty Phase	0	1,120	0	1,120	0	0	0	0%
Inspection	0	0	1,627	1,627	0	0	0	0%
Platting Survey	TBD	TBD	TBD	TBD	TBD	TBD	TBD	0%
O & M Manuals	TBD	TBD	TBD	TBD	TBD	TBD	TBD	0%
SCADA	TBD	TBD	TBD	TBD	TBD	TBD	TBD	0%
Subtotal Additional Services	\$2,000	\$1,120	\$1,627	\$4,747	\$500	\$0	\$500	11%
Summary of Fees								
Basic Services Fees	\$6,000	\$1,000	\$1,250	\$8,250	\$750	\$1,500	\$2,500	30%
Additional Services Fees	2,000	1,120	1,627	4,747	500	0	500	11%
Total of Fees	\$8,000	\$2,120	\$2,877	\$12,997	\$1,250	\$1,500	\$3,000	23%

EXHIBIT B-1

CONFIDENTIAL RATE SHEET

Rate sheets are confidential pursuant to **section 552.104 of the Texas Government Code** since release of this information would give advantage to a competitor or bidder. In addition, **section 552.110 of the TX Govt. Code** protects third party commercial and financial information if release of the information would cause the third party substantial competitive harm.

EXHIBIT B-1: HOURLY RATES

DOCUMENTATION OF PROVISIONAL / OVERHEAD RATES

Overhead rate documentation has been provided to the City of Corpus Christi and was utilized in reviewing and approving the loaded hourly rates below.

	Hourly Rate	TX Registration Number
PRINCIPAL(S):		
(Name)	\$ / hr	
(Name)	\$ / hr	
Project Consultant	\$ / hr	
CAD Technician	\$ / hr	
Clerical	\$ / hr	
Other - Specify	\$ / hr	
HOURLY RATE OF PRINCIPAL(S)- SUBCONSULTANTS:		
SUBCONSULTANT		
(Name of Firm)		
PRINCIPAL(S)		
(Name)	\$ / hr	
(Name)	\$ / hr	
Project Consultant	\$ / hr	
CAD Technician	\$ / hr	
Clerical	\$ / hr	
Other - Specify	\$ / hr	
SUBCONSULTANT		
(Name of Firm)		
PRINCIPAL(S)		
(Name)	\$ / hr	
(Name)	\$ / hr	
Project Consultant	\$ / hr	
CAD Technician	\$ / hr	
Clerical	\$ / hr	
Other - Specify	\$ / hr	

ADD ADDITIONAL SUBCONSULTANTS AS NEEDED

EXHIBIT C
DISCLOSURE OF INTEREST



City of
Corpus
Christi

SUPPLIER NUMBER
TO BE ASSIGNED BY CITY
PURCHASING DIVISION

CITY OF CORPUS CHRISTI DISCLOSURE OF INTEREST

City of Corpus Christi Ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA". See reverse side for Filing Requirements, Certifications and definitions.

COMPANY NAME: Coym, Rehmet & Gutierrez Engineering, L.P.

P. O. BOX: _____

STREET ADDRESS: 5656 S. Staples, Suite 230 CITY: Corpus Christi ZIP: 78411

FIRM IS: 1. Corporation ☐ 2. Partnership ☒ 3. Sole Owner ☐
4. Association ☐ 5. Other ☐

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Job Title and City Department (if known)
<u>N/A</u>	_____
_____	_____
_____	_____

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Title
<u>N/A</u>	_____
_____	_____
_____	_____

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Board, Commission or Committee
<u>N/A</u>	_____
_____	_____
_____	_____

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Consultant
<u>N/A</u>	_____
_____	_____
_____	_____

FILING REQUIREMENTS

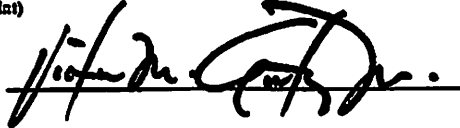
If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any City official or employee that is distinguishable from the effect that the action will have on members of the public in general or a substantial segment thereof, you shall disclose that fact in a signed writing to the City official, employee or body that has been requested to act in the matter, unless the interest of the City official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Secretary. [Ethics Ordinance Section 2-349 (d)]

CERTIFICATION

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: Victor M. Gutierrez Jr., P.E. Title: Principal
(Type or Print)

Signature of Certifying
Person:



Date: 9.9.2015

DEFINITIONS

- a. "Board member." A member of any board, commission, or committee appointed by the City Council of the City of Corpus Christi, Texas.
- b. "Economic benefit". An action that is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof.
- c. "Employee." Any person employed by the City of Corpus Christi, Texas either on a full or part-time basis, but not as an independent contractor.
- d. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- e. "Official." The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.
- f. "Ownership Interest." Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity. "Constructively held" refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements."
- g. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.