

**CITY OF CORPUS CHRISTI
CONTRACT FOR PROFESSIONAL SERVICES**

**FOR PROJECT (No./Name)
E16428 Lifecycle Curb & Gutter Replacement**

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 Engineering & Construction Management Services, LLC., a limited liability corporation, 5001 Oakmont, Corpus Christi, Nueces County, Texas 78713, (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 in accordance with the standard of care defined in Article XIII of this Agreement. The approved Scope of Services defines the services to be performed by Consultant under this Agreement.

1.2 Consultant shall follow City Codes and Standards effective at the time of the execution of the contract. At review milestones, the Consultant and City will review the progress of the plans to ensure that City Codes and Standards are followed unless specifically and explicitly excluded from doing so in the approved Scope of Services attached as **Exhibit A**. A request made by either party to deviate from City standards after the contract is executed must be in writing.

1.3 Consultant shall provide labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Agreement. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subconsultants of Consultant. Upon request, Consultant must provide City with a list of all subconsultants that includes the services performed by subconsultant and the % of work performed by subconsultant (in dollars). Changes in Consultant's proposed team as specified in the SOQ or Scope of Services must be agreed to by the City in writing.

1.4 Consultant shall not begin work on any phase/task 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.

1.5 Consultant will provide monthly status updates (project progress or delays) in the format requested by the City with each monthly invoice.

1.6 For design services, Consultant agrees to render the professional services necessary for the advancement of the Project through Final Completion of the Construction Contract. Consultant acknowledges and accepts its responsibilities, as defined and described in City's General Conditions for Construction Contracts, excerpt attached as **Exhibit F**.

1.6.1 The Consultant agrees to serve as the City's Designer as defined in the General Conditions and will consult and advise the City on matters related to the Consultant's Scope of Services during the performance of the Consultant's services.

1.6.2 The Consultant agrees to prepare plans, specification, bid and contract documents and to analyze bids and evaluate the documents submitted by bidders.

1.6.3 The Consultant agrees to assist the City in evaluating the qualifications of the prospective contractors, subcontractors and suppliers.

1.7 For projects that require subsurface utility investigation:

1.7.1 The Consultant agrees to prepare and submit to the City prior to the 60% submittal a signed and sealed report identifying all utilities within the project area at the Quality Level specified in **Exhibits A and A-1**. It is assumed that all utilities will be identified using Quality Level A exploratory excavation unless stated otherwise.

1.7.2 Utilities that should be identified include but are not limited to utilities owned by the City, local franchises, electric companies, communication companies, private pipeline companies and 3rd party owners/operators.

1.8 For project with potential utility conflicts:

1.8.1 The Consultant agrees to coordinate the verification and resolution of all potential utility conflicts.

1.8.2 The Consultant agrees to prepare and submit a monthly Utility Coordination Matrix to the City.

1.9 The Consultant agrees to complete the Scope of Services in accordance with the approved project schedule and budget as defined in **Exhibit A**, including completing the work in phases defined therein.

ARTICLE II – QUALITY CONTROL

2.1 The Consultant agrees to perform quality assurance-quality control/constructability reviews (QCP Review). The City reserves the right to retain a separate consultant to perform additional QCP services for the City.

2.2 The Consultant will perform QCP Reviews at intervals during the Project to ensure deliverables satisfy applicable industry 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 the Opinion of Probable Cost (OPC), as needed.

2.3 Final construction documents that do not meet City standards in effect at the time of the execution of this Agreement may be rejected. If final construction documents are found not to be in compliance with this Agreement, Consultant will not be compensated for having to resubmit documents.

ARTICLE III – COMPENSATION

3.1 The Compensation for all services (Basic and Additional) included in this Agreement and in the Scope of Services for this Agreement shall not exceed **\$95,040**.

3.2 The Consultant's fee will be on a lump sum or time and materials (T&M) basis as detailed in **Exhibit A** and will be full and total compensation for all services and for all expenses incurred in performing these services. Consultant shall submit a Rate Schedule, ~~as shown in Exhibit B-4~~, with their proposal. City and Consultant agree that the Rate Schedule is considered confidential information that may be excluded from public disclosure under Texas Government Code Chapter 552 as determined by the Texas Attorney General.

3.3 The Consultant agrees to complete the Scope of Services in accordance with the approved project schedule and budget as defined in **Exhibit A**, including completing the work in phases defined therein.

3.4 The Director of Engineering Services may request 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 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**. Each invoice will include the Consultant's estimate of the proportion of the contracted services completed at the time of billing. For work performed on a T&M Basis, the invoice shall include documentation that shows who worked on the Project, the number of hours that each individual worked, the applicable rates from the Rate Schedule and any reimbursable expenses associated with the work. City will make prompt monthly payments in response to Consultant's monthly invoices.

3.6 Principals may only bill at the agreed hourly rate for Principals (as defined in the Rate Schedule) when acting in that capacity. Principals acting in the capacity of staff must bill at applicable staff rates.

3.7 Consultant certifies that title to all services covered by a Payment Request shall pass to City no later than the time of payment. Consultant further certifies 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.**

3.8 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."

3.9 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:

3.9.1 delays in the performance of Consultant's work;

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

3.9.3 damage to City; or

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

3.10 When the above reasons for withholding are removed or remedied by Consultant, compensation of the amount withheld shall be made within 30 days. City shall not be deemed in default by reason of withholding compensation as provided under this Agreement.

3.11 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 as required by the terms of this Agreement, any such claim shall be waived.

3.12 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.

3.13 All funding obligations of the City under this Agreement are subject to the appropriation of funds in its annual budget. The City may direct the Consultant to suspend work pending receipt and appropriation of funds. The right to suspend work under this provision does not relieve the City of its obligation to make payments in accordance with section 3.5 above for services provided up to the date of suspension.

ARTICLE IV – TIME AND PERIOD OF SERVICE

4.1 This Agreement shall be effective upon the signature of the City Manager or designee (Effective Date).

4.2 This service shall be for a period of 1 years beginning on the Effective Date. The Agreement may be renewed for up to 2 one-year renewal options upon mutual agreement of the parties to be evidenced in writing prior to the expiration date of the prior term. Any renewals shall be at the same terms and conditions, plus any approved changes.

4.3 The Consultant agrees to begin work on those authorized 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.

4.4 Time is of the essence for this Agreement. Consultant shall perform and complete its obligations under this Agreement in a prompt and continuous manner so as to not delay the Work for the Project, in accordance with the schedules approved by City. The Consultant and City are aware that many factors may affect the Consultant's ability to complete the services to be provided under this agreement. The Consultant must notify the City within ten business days of becoming aware of a factor that may affect the Consultant's ability to complete the services hereunder.

4.5 City shall perform its obligations of review and approval in a prompt and continuous manner so as to not delay the project.

4.6 This Agreement shall remain in force for a period which may reasonably be required for completion of the Project, including any extra work and any required extensions thereto, unless terminated as provided for in this Agreement. For construction design services, "completion of the Project" refers to acceptance by the City of the construction phase of the Project, i.e., Final Completion.

ARTICLE V – OPINIONS OF COST

5.1 The Opinion of Probable Cost (OPC) is computed by the Consultant and includes the total cost for construction of the Project.

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

5.3 Since Consultant has no control over a construction contractor's cost of labor, materials or equipment, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant's opinions of probable Project Cost or Construction Cost provided herein are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a design professional familiar with the construction industry, but Consultant cannot and does not guarantee proposals, bids or the construction cost shall not vary from the OPC prepared by Consultant.

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 Insurance Requirements are shown in **EXHIBIT C**.

ARTICLE VII – INDEMNIFICATION

Consultant shall fully indemnify and hold harmless the City of Corpus Christi and its officials, officers, agents, employees, excluding the engineer or architect or that person's agent, employee or subconsultant, over which the City exercises control ("Indemnatee") from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and court 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.

Consultant shall defend Indemnatee, with counsel satisfactory to the City Attorney, from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and court costs, if the claim is not based wholly or partly on the negligence of, fault of or breach of contract by Indemnatee. If a claim is based wholly or partly on the negligence of, fault of or breach of contract by Indemnatee, 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 By Consultant:

8.1.1 The City reserves the right to suspend this Agreement at the end of any phase for the convenience of the City by issuing a written and signed Notice of Suspension. The Consultant may terminate this Agreement for convenience in the event such suspension extends for a period beyond 120 calendar days by delivering a Notice of Termination to the City.

8.1.2 The Consultant must follow the Termination Procedure outlined in this Agreement.

8.2 By City:

8.2.1 The City may terminate this agreement for convenience upon seven days written notice to the Consultant at the address of record.

8.2.2 The City may terminate this agreement for cause upon ten days written notice to the Consultant. If Consultant begins, within three days of receipt of such notice, to correct its failure and proceeds to diligently cure such failure within the ten days, the agreement will not terminate. If the Consultant again fails to perform under this agreement, the City may terminate the agreement for cause upon seven days written notice to the Consultant with no additional cure period. If the City terminates for cause, the City may reject any and all proposals submitted by Consultant for up to two years.

8.3 Termination Procedure

8.3.1 Upon receipt of a Notice of Termination and prior to the effective date of termination, unless the notice otherwise directs or Consultant takes action to cure a failure to perform under the cure period, Consultant shall immediately begin the phase-out and discontinuance of all services in connection with the performance of this Agreement. Within 30 calendar days after receipt of the Notice of Termination, unless Consultant has successfully cured a failure to perform, Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. City retains the option to grant an extension to the time period for submittal of such statement.

8.3.2 Consultant shall submit all completed and/or partially completed work under this Agreement, including but not limited to specifications, designs, plans and exhibits.

8.3.3 Upon receipt of documents described in the Termination Procedure and absent any reason why City may be compelled to withhold fees, Consultant will be compensated for its services based upon a Time & Materials calculation or Consultant and City's estimate of the proportion of the total services actually completed at the time of termination. There will be no compensation for anticipated profits on services not completed.

8.3.4 Consultant acknowledges that City is a public entity and has a duty to document the expenditure of public funds. The failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed under this Agreement.

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 and relevant to the Work under this Agreement (Consultant's Records). 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, and any and all other agreements, sources of information and matters that may, in City's and Consultant's reasonable 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 Consultant'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 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 the City suffers actual damages, the City may elect to pursue its actual damages and any other remedy allowed by law. This includes but is not limited to:

10.1.1 Failure of the Consultant to make adequate progress and endanger timely and successful completion of the Project, which 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 errors and/or 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 errors and/or omissions in the documents.

10.2 When the City incurs non-value added work costs for change orders due to design errors and/or omissions, the City will send the Consultant a 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.

10.3 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.

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

ARTICLE XI – CONSULTANT REMEDIES

11.1 If Consultant is delayed due to uncontrollable circumstances, such as strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations or any other causes beyond Consultant's and City's reasonable control, an extension of the Project schedule in an amount equal to the time lost due to such delay shall be Consultant's sole and exclusive remedy. The revised schedule should be approved in writing with a documented reason for granting the extension.

11.2 The City agrees that the Consultant is not responsible for damages arising from any cause beyond Consultant's reasonable control.

11.3 If Consultant requests a remedy for a condition not specified above, Consultant must file a Claim as provided in this Agreement.

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 Mediation.

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 Mediation

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, 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 mediation. 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 process contained herein.

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 shall be deemed to have occurred.

12.2.3.4 The parties shall share the mediator's fee. Venue for mediation 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 In calculating the amount of any Claim or any measure of damages for breach of contract, the following standards shall apply both to claims by Consultant and to claims by City:

12.3.1 In no event shall either Party be liable, whether in contract or tort or otherwise, to the other Party for loss of profits, delay damages or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever;

12.3.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other Party is claimed to be responsible.

12.4 In case of litigation between the parties, Consultant and City agree that neither party shall be responsible for payment of attorney's fees pursuant to any law or other provision for payment of attorneys' fees. Both Parties expressly waive any claim to attorney's fees should litigation result from any dispute between the parties to this Agreement.

12.5 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 Assignability. Neither party will assign, transfer or delegate any of its obligations or duties under this Agreement contract to any other person and/or party without the prior written consent of the other party, except for routine duties delegated to personnel of the Consultant staff. This includes subcontracts entered into for services under this Agreement. If the Consultant is a partnership or joint venture, then in the event of the termination of the partnership or joint venture, 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.

13.2 Ownership of Documents. Consultant agrees that upon payment, City shall exclusively own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement, including contract documents (plans and specifications), drawings and submittal data. Consultant may make a copy for its files. Any reuse by the City, without specific written verification or adaptation by Consultant, shall be a City's sole risk and without liability or legal exposure to Consultant. The City agrees that any modification of the plans will be evidenced on the plans and be signed and sealed by a licensed professional prior to re-use of modified plans.

13.3 Standard of Care. Services provided by Consultant under this Agreement shall be performed with the professional skill and care ordinarily provided by competent licensed professionals 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.

13.4 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.

13.5 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.

13.6 Disclosure of Interest. Consultant agrees to comply with City of Corpus Christi Ordinance No. 17112 and complete the *Disclosure of Interests* form, attached as **Exhibit D**.

13.7 Certificate of Interested Parties. For contracts greater than \$50,000, Consultant agrees to comply with Texas Government Code section 2252.908 and complete Form 1295 Certificate of Interested Parties as part of this agreement, attached as **Exhibit E**. Form 1295 requires disclosure of "interested parties" with respect to entities that enter contracts with cities that exceed \$50,000. These interested parties include:

- (1) persons with a "controlling interest" in the entity, which includes:
 - a. an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock or otherwise that exceeds 10 percent;
 - b. membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
 - c. service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers; or
- (2) a person who actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or state agency, including a broker, intermediary, adviser or attorney for the business entity.

Form 1295 must be electronically filed with the Texas Ethics Commission at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. The form must then be printed, signed,

EXHIBIT A
SCOPE OF SERVICES

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

EXHIBIT "A"
CITY OF CORPUS CHRISTI, TEXAS

LIFECYCLE CURB & GUTTER REPLACEMENT
Project Number E16428

I. SCOPE OF SERVICES

A. Basic Services.

1. ~~Preliminary Phase. The Architect/Engineer A/E will:~~
 - ~~a. Prepare the necessary bid documents for advertising the proposed construction contract.~~
 - ~~b. Assist City staff during the bidding process as may be necessary.~~
 - ~~c. Conduct and/or attend and participate in meetings with the Contractor and City staff required towards the award of the construction contract.~~
2. Construction Phase. The A/E will perform contract administration to include the following:
 - a. Participate in pre-construction meeting conference and provide a recommended agenda for critical construction activities and elements impacted the project.
 - b. Review for conformance to contract documents, shop and working drawings, materials and other submittals.
 - c. Review field and laboratory tests.
 - d. 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.
 - e. Make regular visits to the site of the Project to confer with the City project inspector and contractor to observe the general progress and quality of work, and to determine, in general, if the work is being done in accordance with the contract documents. This will not be confused with the project representative observation or continuous monitoring of the progress of construction.
 - f. Prepare change orders as authorized by the City (coordinate with the City's construction division); provide interpretations and clarifications of the plans and specifications for the contractor and authorize minor changes which do not affect the contractor's price and are not contrary to the general interest of the City under the contract.
 - g. Make final inspection with City staff and provide the City with a Certificate of Completion for the project.
 - h. As applicable, review and assure compliance with plans and specifications, the preparation of operating and maintenance manuals (by the Contractor) for all equipment installed on this Project. These manuals will be in a "multimedia format" suitable for viewing with Microsoft's Internet Explorer, version 3.0. As a minimum the Introduction, Table of Contents, and Index will be in HTML (HyperText Markup Language) format, with HyperText links to the other parts of the manual. The remainder of the manual can be scanned images or a mixture of scanned images and text. Use the common formats for scanned images - GIF, TIFF, JPEG, etc.. Confirm before delivery of the manuals that all scanned image formats are compatible with the image-viewing software available on the City's computer - Imaging for Win95 (Wang) and Microsoft Imaging Composer. Deliver the manuals on a CD-ROM, not on floppy disks.

- i. Review construction "red-line" drawings, prepare record drawings of the Project as constructed (from the "red-line" drawings, inspection, and the contractor provided plans) and deliver to the Engineering Services a reproducible set and electronic file (AutoCAD r.14 or later) of the record drawings within two (2) months of final acceptance of the project. All drawings will be CADD drawn using dwg format in AutoCAD, and graphics data will be in dxf format with each layer being provided in a separate file. Attribute data will be provided in ASCII format in tabular form. All electronic data will be compatible with the City GIS system.

The City staff will:

- a. Prepare applications/estimates for payments to contractor.
- b. Conduct the final acceptance inspection with the Engineer.

B. Additional Services (ALLOWANCE)

This section defines the scope (and ALLOWANCE) for compensation for additional services that may be included as part of this contract, but the A/E will not begin work on this section without specific written approval by the Director of Engineering Services. Fees for Additional Services are an allowance for potential services to be provided and will be **negotiated** by the Director of Engineering Services as required. The A/E will, with written authorization by the Director of Engineering Services, do the following:

1. **Construction Observation Services.** Provide a project representative (PR) to provide periodic construction inspection.
 - A. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the PR and assistants, the A/E shall endeavor to provide further protection for the CITY against defects and deficiencies in the work.
 - B. The duties and responsibilities of the PR are described as follows:
 1. General: PR will act as directed by and under the supervision of A/E, and will confer with A/E regarding PR's actions. PR's dealings in matters pertaining to the Contractor's work in progress shall in general be with A/E and Contractor, keeping the CITY advised as necessary.
 2. Conference and Meetings: Attend meetings with Contractor, such as pre-construction conferences, progress meetings, job conferences and other project-related meetings as required by the City, and prepare and circulate copies of minutes thereof.
 3. Liaison:
 - A. Serve as liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Contract Documents.
 - B. PR shall communicate with CITY with the knowledge of and under the direction of A/E
 4. Interpretation of Contract Documents: Report when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued.
 5. Shop Drawings and Samples:
 - A. Receive Samples, which are furnished at the Site by Contractor, and notify of availability of Samples for examination.
 - B. Record date of receipt of Samples and approved Shop Drawings.

- C. Advise Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which PR believes that the submittal has not been approved.
- 6. Review of Work and Rejection of Defective Work:
 - A. Conduct on-Site observations of Contractor's work in progress to assist A/E in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - B. Report whenever PR believes that any part of Contractor's work in progress will not produce a completed Project that conforms to the Contract Documents or will prejudice the integrity of the design concept of the completed Project, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise City and A/E of that part of work in progress that PR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - C. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- 7. Records:
 - A. Maintain orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the Contract, A/E's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.
 - B. Prepare a daily report utilizing approved City format, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to A/E and the City.
- 8. Reports:
 - A. Furnish periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - B. Report immediately to the CITY and A/E the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the work, and property damaged by fire or other causes.
 - C. Provide project photo report on CD-ROM at the rate of a minimum of two photographs per day, including an adequate amount of photograph documentation of utility conflicts.
- 9. Completion:
 - A. Before the issue of Certificate of Completion, submit to Contractor a list of observed items requiring completion or correction.
 - B. Participate in a final inspection in the company of A/E, the CITY, and Contractor and prepare a final list of items to be completed or corrected.
 - C. Observe whether all items on final list have been completed or corrected and make recommendations concerning acceptance and issuance of the Notice of Acceptability of the Work.
- 2. **Start-up Services.** Provide on-site services and verification for all start-up procedures during actual start up of major Project components, systems, and related appurtenances if needed and required.

3 Warranty Phase. Provide a maintenance guaranty inspection toward the end of the one-year period after acceptance of the Project. Note defects requiring contractor action to maintain, repair, fix, restore, patch, or replace improvement under the maintenance guaranty terms of the contract. Document the condition and prepare a report for the City staff of the locations and conditions requiring action, with its recommendation for the method or action to best correct defective conditions and submit to City Staff. Complete the inspection and prepare the report no later than sixty (60) days prior to the end of the maintenance guaranty period.

4 Provide the services above authorized in addition to those items shown on Exhibit "A-1" Task List, which provides supplemental description to Exhibit "A". Note: The Exhibit "A-1" Task List does not supersede Exhibit "A".

2. SCHEDULE

Day	Date	Activity
Thursday	June 15, 2017	Contract Award/NTP
Monday	June 26, 2017	Begin Construction
Thursday	June 26, 2017	Complete Construction

3. FEES

A. Fee for Basic Services. The City will pay the A/E a fixed fee for providing for all "Basic Services" authorized as per the table below. The fees for Basic Services will not exceed those identified and will be full and total compensation for all services outlined in Section I.A.1-4 above, and for all expenses incurred in performing these services. **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.** For services provided in Section I.A.1-4, A/E will submit monthly statements for basic services rendered. In Section I.A.1-3, the statement will be based upon A/E's estimate (and City concurrence) of the proportion of the total services actually completed at the time of billing. For services provided in Section I.A.4, the statement will be based upon the percent of completion of the construction contract. City will make prompt monthly payments in response to A/E's monthly statements.

B. Fee for Additional Services. For services authorized by the Director of Engineering Services under Section I.B. "Additional Services," the City will pay the A/E a not-to-exceed fee as per the table below:

Summary of Fees

Basic Services Fees	
1. Preliminary Phase	N/A
2. Design Phase	N/A
3. Bid Phase	N/A
4. Construction Phase (See Construction Observation)	
Subtotal Basic Services Fees	NA
Additional Services Fees (Allowance)	

1. Permit Preparation	N/A
2. ROW Acquisition Survey	N/A
3. Topographic Survey and Parcel Descriptions	N/A
4. Environmental Issues	N/A
5. Construction Observation Services(12x22x4x\$90)	\$95,040
6. Start-up Services	N/A
7. Warranty Phase	Included in 5 Above
Sub-Total Additional Services Fees Authorized	\$95,040
Total Authorized Fee	\$95,040

EXHIBIT A-1

TASK LIST

(Provides supplemental description to Exhibit "A". Exhibit "A-1" Task List does not supersede Exhibit "A.")

EXHIBIT "A-1" TASK LIST

(Provides supplemental description to Exhibit "A". Exhibit "A-1" Task List does not supersede Exhibit "A.")

CITY OF CORPUS CHRISTI, TEXAS LIFECYCLE CURB & GUTTER REPLACEMENT (Project No. E16428)

Basic Services (See Exhibit "A")

Additional Services:

CONSTRUCTION OBSERVATION SERVICES

- 1) Provide construction observation services as authorized by the City in accordance with Exhibit 'A' of the Contract for Professional Services.
- 2) Conduct daily site visits to the project site during construction.
- 3) Prepare monthly reports and submit to City staff as required..
- 4) Provide detailed coordination with City staff during construction.
- 5) Coordinate construction activities with materials testing laboratory.

PUBLIC INVOLVEMENT PHASE

- 1) Assist the City in preparing notices, handouts and exhibits for public information meetings.
- 2) Assist the City in conducting the public information meetings.
- 3) Assist the City with follow-up and response to citizen comments.
- 4) Revise contract drawings to address citizen comments, as directed by the City.

WARRANTY PHASE

Upon receiving authorization from the City to proceed, conduct a maintenance guaranty inspection toward the end of the one-year period after acceptance of the project. Note defects requiring contractor action to maintain, repair, fix, restore, patch, correct or replace improvements under the maintenance guaranty terms of the construction contract. Document the condition and prepare a report for the City staff of the locations and conditions requiring action.

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 C

Insurance Requirements

EXHIBIT C

Insurance Requirements

Pre-Design, Design and General Consulting Contracts

1.1 Consultant must not commence work under this agreement until all required insurance 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.

1.2 Consultant must furnish to the Director of Engineering Services with the signed agreement a copy 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. **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
PROFESSIONAL LIABILITY (Errors and Omissions)	\$1,000,000 Per Claim 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.

1.3 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.

1.4 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.**

1.5 In the event of a change in insurance coverage, Consultant shall be required to submit a copy of the replacement certificate of insurance to City at the address provided

below within 10 business days of said change. Consultant shall pay any costs 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

1.6 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:

1.6.1 If the policy is cancelled, other than for nonpayment of premium, notice of such cancellation will be provided at least 30 days in advance of the cancellation effective date to the certificate holder;

1.6.2 If the policy is cancelled for nonpayment of premium, notice of such cancellation will be provided within 10 days of the cancellation effective date to the certificate holder.

1.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall notify City of such lapse in coverage and 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.

1.8 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 withhold any payment(s) if any, which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

1.9 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.

1.10 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.

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

EXHIBIT D
DISCLOSURE OF INTEREST

22



City of
Corpus
Christi

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: Engineering & Construction Management Services, LLC.

P. O. BOX: _____

STREET ADDRESS: 5001 Oakmont **CITY:** Corpus Christi **ZIP:** 78413

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	Department (if known)	Job	Title	and	City
------	-----------------------	-----	-------	-----	------

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
------	-------

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	Committee	Board,	Commission	or
------	-----------	--------	------------	----

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
------	------------

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: Felix H. Ocanas, Jr., P.E. **Title:** President
(Type or Print)

Signature of Certifying Person: _____ **Date:** _____

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.

EXHIBIT E
CERTIFICATE OF INTERESTED PARTIES (FORM 1295)

EXHIBIT F

Excerpt from Corpus Christi General Conditions for Construction Projects Related to Design Services

Excerpt from FORM 00 72 00 GENERAL CONDITIONS for Construction Projects related to design services

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

- A. A term with initial capital letters, including the term's singular and plural forms, has the meaning indicated in this paragraph wherever used in the Bidding Requirements or Contract Documents. In addition to the terms specifically defined, terms with initial capital letters in the Contract Documents may include references to identified articles and paragraphs, and the titles of other documents or forms.
1. **Addenda** - Documents issued prior to the receipt of Bids which clarify or modify the Bidding Requirements or the proposed Contract Documents.
 2. **Agreement** - The document executed between Owner and Contractor covering the Work.
 3. **Alternative Dispute Resolution** - The process by which a disputed Claim may be settled as an alternative to litigation, if Owner and Contractor cannot reach an agreement between themselves.
 4. **Application for Payment** - The forms used by Contractor to request payments from Owner and the supporting documentation required by the Contract Documents.
 5. **Award Date** – The date the City Council of the City of Corpus Christi (City) authorizes the City Manager or designee to execute the Contract on behalf of the City.
 6. **Bid** - The documents submitted by a Bidder to establish the proposed Contract Price and Contract Times and provide other information and certifications as required by the Bidding Requirements.
 7. **Bidding Documents** - The Bidding Requirements, the proposed Contract Documents, and Addenda.
 8. **Bidder** - An individual or entity that submits a Bid to Owner.
 9. **Bidding Requirements** - The Invitation for Bids, Instructions to Bidders, Bid Security, Bid Form and attachments, and required certifications.
 10. **Bid Security** - The financial security in the form of a bid bond provided by Bidder at the time the Bid is submitted and held by Owner until the Agreement is executed and the evidence of insurance and Bonds required by the Contract Documents are provided. A cashier's check, certified check, money order or bank draft from any State or National Bank will also be acceptable.
 11. **Bonds** - Performance Bond, Payment Bond, Maintenance Bond, and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.
 12. **Change Order** - A document issued on or after the Effective Date of the Contract and signed by Owner and Contractor which modifies the Work, Contract Price, Contract Times, or terms and conditions of the Contract.

13. Change Proposal - A document submitted by Contractor in accordance with the requirements of the Contract Documents:
 - a. Requesting an adjustment in Contract Price or Contract Times;
 - b. Contesting an initial decision concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents;
 - c. Challenging a set-off against payment due; or
 - d. Seeking a Modification with respect to the terms of the Contract.
14. City Engineer - The Corpus Christi City Engineer and/or his designated representative as identified at the preconstruction conference or in the Notice to Proceed.
15. Claim - A demand or assertion by Owner or Contractor submitted in accordance with the requirements of the Contract Documents. A demand for money or services by an entity other than the Owner or Contractor is not a Claim.
16. Constituent of Concern - Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous wastes, and substances, products, wastes, or other materials that are or become listed, regulated, or addressed pursuant to:
 - a. The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA");
 - b. The Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.;
 - c. The Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA");
 - d. The Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.;
 - e. The Clean Water Act, 33 U.S.C. §§1251 et seq.;
 - f. The Clean Air Act, 42 U.S.C. §§7401 et seq.; or
 - g. Any other Laws or Regulations regulating, relating to, or imposing liability or standards of conduct concerning hazardous, toxic, or dangerous waste, substance, or material.
17. Contract - The entire integrated set of documents concerning the Work and describing the relationship between the Owner and Contractor.
18. Contract Amendment - A document issued on or after the Effective Date of the Contract and signed by Owner and Contractor which:
 - a. Authorizes new phases of the Work and establishes the Contract Price, Contract Times, or terms and conditions of the Contract for the new phase of Work; or
 - b. Modifies the terms and conditions of the Contract, but does not make changes in the Work.
19. Contract Documents - Those items designated as Contract Documents in the Agreement.
20. Contract Price - The monetary amount stated in the Agreement and as adjusted by Modifications, and increases or decreases in unit price quantities, if any, that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

21. **Contract Times** - The number of days or the dates by which Contractor must:
 - a. Achieve specified Milestones;
 - b. Achieve Substantial Completion; and
 - c. Complete the Work.
22. **Contractor** - The individual or entity with which Owner has contracted for performance of the Work.
23. **Contractor's Team** - Contractor and Subcontractors, Suppliers, individuals, or entities directly or indirectly employed or retained by them to perform part of the Work or anyone for whose acts they may be liable.
24. **Cost of the Work** - The sum of costs incurred for the proper performance of the Work as allowed by Article 13.
25. **Defective** - When applied to Work, refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. Does not conform to the Contract Documents;
 - b. Does not meet the requirements of applicable inspections, reference standards, tests, or approvals referred to in the Contract Documents; or
 - c. Has been damaged or stolen prior to OAR's recommendation of final payment unless responsibility for the protection of the Work has been assumed by Owner at Substantial Completion in accordance with Paragraphs 15.03 or 15.04.
26. **Designer** - The individuals or entity named as Designer in the Agreement and the subconsultants, individuals, or entities directly or indirectly employed or retained by Designer to provide design or other technical services to the Owner. Designer has responsibility for engineering or architectural design and technical issues related to the Contract Documents. Designers are Licensed Professional Engineers or Registered Architects qualified to practice their profession in the State of Texas.
27. **Drawings** - The part of the Contract that graphically shows the scope, extent, and character of the Work. Shop Drawings and other Contractor documents are not Drawings.
28. **Effective Date of the Contract** - The date indicated in the Agreement on which the City Manager or designee has signed the Contract.
29. **Field Order** - A document issued by OAR or Designer requiring changes in the Work that do not change the Contract Price or the Contract Times.
30. **Hazardous Environmental Condition** - The presence of Constituents of Concern at the Site in quantities or circumstances that may present a danger to persons or property exposed to Constituents of Concern. The presence of Constituents of Concern at the Site necessary for the execution of the Work or to be incorporated in the Work is not a Hazardous Environmental Condition provided these Constituents of Concern are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract.

31. **Indemnified Costs** - All costs, losses, damages, and legal or other dispute resolution costs resulting from claims or demands against Owner's Indemnitees. These costs include fees for engineers, architects, attorneys, and other professionals.
32. **Laws and Regulations; Laws or Regulations** - Applicable laws, statutes, rules, regulations, ordinances, codes, and orders of governmental bodies, agencies, authorities, and courts having jurisdiction over the Project.
33. **Liens** - Charges, security interests, or encumbrances upon Contract related funds, real property, or personal property.
34. **Milestone** - A principal event in the performance of the Work that Contractor is required by Contract to complete by a specified date or within a specified period of time.
35. **Modification** - Change made to the Contract Documents by one of the following methods:
 - a. Contract Amendment;
 - b. Change Order;
 - c. Field Order; or
 - d. Work Change Directive.
36. **Notice of Award** - The notice of Owner's intent to enter into a contract with the Selected Bidder.
37. **Notice to Proceed** - A notice to Contractor of the Contract Times and the date Work is to begin.
38. **Owner** - The City of Corpus Christi (City), a Texas home-rule municipal corporation and political subdivision organized under the laws of the State of Texas, acting by and through its duly authorized City Manager and his designee, the City Engineer (the Director of Engineering Services), and the City's officers, employees, agents, or representatives, authorized to administer design and construction of the Project.
39. **Owner's Authorized Representative or OAR** - The individual or entity named as OAR in the Agreement and the consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide construction management services to the Owner. The OAR may be an employee of the Owner.
40. **Owner's Indemnitees** - Each member of the OPT and their officers, directors, members, partners, employees, agents, consultants, and subcontractors.
41. **Owner's Project Team or OPT** - The Owner, Owner's Authorized Representative, Resident Project Representative, Designer, and the consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide services to the Owner.
42. **Partial Occupancy or Use** - Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

43. **Progress Schedule** - A schedule prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
44. **Project** - The total undertaking to be accomplished for Owner under the Contract Documents.
45. **Resident Project Representative or RPR** - The authorized representative of OPT assigned to assist OAR at the Site. As used herein, the term Resident Project Representative includes assistants and field staff of the OAR.
46. **Samples** - Physical examples of materials, equipment, or workmanship representing some portion of the Work that are used to establish the standards for that portion of the Work.
47. **Schedule of Documents** - A schedule of required documents, prepared, and maintained by Contractor.
48. **Schedule of Values** - A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for Contractor's Applications for Payment.
49. **Selected Bidder** - The Bidder to which Owner intends to award the Contract.
50. **Shop Drawings** - All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
51. **Site** - Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed. The Site includes rights-of-way, easements, and other lands furnished by Owner which are designated for use by the Contractor.
52. **Specifications** - The part of the Contract that describes the requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
53. **Subcontractor** - An individual or entity having a direct contract with Contractor or with other Subcontractors or Suppliers for the performance of a part of the Work.
54. **Substantial Completion** - The point where the Work or a specified part of the Work is sufficiently complete to be used for its intended purpose in accordance with the Contract Documents.
55. **Supplementary Conditions** - The part of the Contract that amends or supplements the General Conditions.
56. **Supplier** - A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with Subcontractors or other Suppliers to furnish materials or equipment to be incorporated in the Work.
57. **Technical Data** - Those items expressly identified as Technical Data in the Supplementary Conditions with respect to either:
 - a. Subsurface conditions at the Site;

- b. Physical conditions relating to existing surface or subsurface structures at the Site, except Underground Facilities; or
 - c. Hazardous Environmental Conditions at the Site.
58. Underground Facilities - All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, other similar facilities or appurtenances, and encasements containing these facilities which are used to convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
59. Unit Price Work - Work to be paid for on the basis of unit prices.
60. Work - The construction of the Project or its component parts as required by the Contract Documents.
61. Work Change Directive - A directive issued to Contractor on or after the Effective Date of the Contract ordering an addition, deletion, or revision in the Work. The Work Change Directive serves as a memorandum of understanding regarding the directive until a Change Order can be issued.

1.02 Terminology

- A. The words and terms discussed in this Paragraph 1.02 are not defined, but when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. It is understood that the cost for performing Work is included in the Contract Price and no additional compensation is to be paid by Owner unless specifically stated otherwise in the Contract Documents. Expressions including or similar to "at no additional cost to Owner," "at Contractor's expense," or similar words mean that the Contractor is to perform or provide specified operation of Work without an increase in the Contract Price.
- C. The terms "day" or "calendar day" mean a calendar day of 24 hours measured from midnight to the next midnight.
- D. The meaning and intent of certain terms or adjectives are described as follows:
 - 1. The terms "as allowed," "as approved," "as ordered," "as directed," or similar terms in the Contract Documents indicate an exercise of professional judgment by the OPT.
 - 2. Adjectives including or similar to "reasonable," "suitable," "acceptable," "proper," "satisfactory," or similar adjectives are used to describe a determination of OPT regarding the Work.
 - 3. Any exercise of professional judgment by the OPT will be made solely to evaluate the Work for general compliance with the Contract Documents unless there is a specific statement in the Contract Documents indicating otherwise.
 - 4. The use of these or similar terms or adjectives does not assign a duty or give OPT authority to supervise or direct the performance of the Work, or assign a duty or give authority to the OPT to undertake responsibilities contrary to the provisions of Articles 9 or 10 or other provisions of the Contract Documents.

- E. The use of the words “furnish,” “install,” “perform,” and “provide” have the following meanings when used in connection with services, materials, or equipment:
 - 1. Furnish means to supply and deliver the specified services, materials, or equipment to the Site or other specified location ready for use or installation.
 - 2. Install means to complete construction or assembly of the specified services, materials, or equipment so they are ready for their intended use.
 - 3. Perform or provide means to furnish and install specified services, materials, or equipment, complete and ready for their intended use.
 - 4. Perform or provide the specified services, materials, or equipment complete and ready for intended use if the Contract Documents require specific services, materials, or equipment, but do not expressly use the words “furnish,” “install,” “perform,” or “provide.”
- F. Contract Documents are written in modified brief style:
 - 1. Requirements apply to all Work of the same kind, class, and type even though the word “all” is not stated.
 - 2. Simple imperative sentence structure is used which places a verb as the first word in the sentence. It is understood that the words “furnish,” “install,” “perform,” “provide,” or similar words include the meaning of the phrase “The Contractor shall...” before these words.
 - 3. Unless specifically stated that action is to be taken by the OPT or others, it is understood that the action described is a requirement of the Contractor.
- G. Words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with this recognized meaning unless stated otherwise in the Contract Documents.
- H. Written documents are required where reference is made to notices, reports, approvals, consents, documents, statements, instructions, opinions or other types of communications required by the Contract Documents. Approval and consent documents must be received by Contractor prior to the action or decision for which approval or consent is given. These may be made in printed or electronic format through the OPT’s project management information system or other electronic media as required by the Contract Documents or approved by the OAR.
- I. Giving notice as required by the Contract Documents may be by printed or electronic media using a method that requires acknowledgment of the receipt of that notice.

ARTICLE 2 – PRELIMINARY MATTERS

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

- B. Provide equipment that is functionally complete as described in the Contract Documents. The Drawings and Specifications do not indicate or describe all of the Work required to complete the installation of products purchased by the Owner or Contractor. Additional

details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Designer through the OAR.

3.02 Reference Standards

- B. Comply with applicable construction industry standards, whether referenced or not.
 - 1. Standards referenced in the Contract Documents govern over standards not referenced but recognized as applicable in the construction industry.
 - 2. Comply with the requirements of the Contract Documents if they produce a higher quality of Work than the applicable construction industry standards.
 - 3. Designer determines whether a code or standard is applicable, which of several are applicable, or if the Contract Documents produce a higher quality of Work.

3.03 Reporting and Resolving Discrepancies

3.04 Interpretation of the Contract Documents

- A. Submit questions concerning the non-technical or contractual / administrative requirements of the Contract Documents to the OAR immediately after those questions arise. OAR is to provide an interpretation of the Contract Documents regarding these questions and will coordinate the response of the OPT to Contractor.
- B. Submit questions regarding the design of the Project described in the Contract Documents to the OAR immediately after those questions arise. OAR is to request an interpretation of the Contract Documents from the Designer. Designer is to respond to these questions by providing an interpretation of the Contract Documents. OAR will coordinate the response of the OPT to Contractor.
- C. OPT may initiate a Modification to the Contract Documents through the OAR if a response to the question indicates that a change in the Contract Documents is required. Contractor may appeal Designer's or OAR's interpretation by submitting a Change Proposal.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

5.02 Use of Site and Other Areas

5.03 Subsurface and Physical Conditions

5.04 Differing Subsurface or Physical Conditions

- A. Notify OAR immediately, but in no event later than 3 days, after becoming aware of a subsurface or physical condition that is uncovered or revealed at the Site, and before

further disturbing the subsurface or physical conditions or performing any related Work that:

1. Establishes that the Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
2. Requires a change in the Drawings or Specifications;
3. Differs materially from that shown or indicated in the Contract Documents; or
4. Is of an unusual nature and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

Do not further disturb or perform Work related to this subsurface or physical condition, except in an emergency as required by Paragraph 7.12, until permission to do so is issued by OAR.

- B. OAR is to notify the OPT after receiving notice of a differing subsurface or physical condition from the Contractor. Designer is to:
 1. Promptly review the subsurface or physical condition;
 2. Determine the necessity of OPT's obtaining additional exploration or tests with respect to the subsurface or physical condition;
 3. Determine if the subsurface or physical condition falls within one or more of the differing Site condition categories in Paragraph 5.04.A;
 4. Prepare recommendations to OPT regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question;
 5. Determine the need for changes in the Drawings or Specifications; and
 6. Advise OPT of Designer's findings, conclusions, and recommendations.
- C. OAR is to issue a statement to Contractor regarding the subsurface or physical condition in question and recommend action as appropriate after review of Designer's findings, conclusions, and recommendations.

5.05 Underground Facilities

- A. The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to OPT by the owners of these Underground Facilities or by others. OPT is not responsible for the accuracy or completeness of information or data provided by others that OPT makes available to Contractor. The Contractor is responsible for:
 1. Reviewing and checking available information and data regarding existing Underground Facilities at the Site;
 2. Complying with Laws and Regulations related to locating Underground Facilities before beginning Work;
 3. Locating Underground Facilities shown or indicated in the Contract Documents;
 4. Coordinating the Work with the owners, including Owner, of Underground Facilities during construction; and

5. The safety and protection of existing Underground Facilities at or adjacent to the Site and repairing damage resulting from the Work.
- B. Notify the OAR and the owner of the Underground Facility immediately if an Underground Facility is uncovered or revealed at the Site that was not shown in the Contract Documents, or was not shown with reasonable accuracy in the Contract Documents. Do not further disturb conditions or perform Work affected by this discovery, except in the event of an emergency as required by Paragraph 7.12.
- C. The Designer is to take the following action after receiving notice from the OAR:
 1. Promptly review the Underground Facility and conclude whether the Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy;
 2. Prepare recommendations to OPT regarding the Contractor's resumption of Work in connection with this Underground Facility;
 3. Determine the extent to which a change is required in the Drawings or Specifications to document the consequences of the existence or location of the Underground Facility; and
 4. Advise OAR of Designer's findings, conclusions, and recommendations and provide revised Drawings and Specifications if required.
- D. OAR is to issue a statement to Contractor regarding the Underground Facility in question and recommend action as appropriate after review of Designer's findings, conclusions, and recommendations.

ARTICLE 6 – BONDS AND INSURANCE

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

ARTICLE 8 – OTHER WORK AT THE SITE

ARTICLE 9 – OWNER'S AND OPT'S RESPONSIBILITIES

9.01 Communications to Contractor

- A. OPT issues communications to Contractor through OAR except as otherwise provided in the Contract Documents.

9.02 Replacement of Owner's Project Team Members

- A. Owner may replace members of the OPT at its discretion.

9.03 Furnish Data

- A. OPT is to furnish the data required of OPT under the Contract Documents.

9.04 Pay When Due

- A. Owner is to make payments to Contractor when due as described in Paragraphs 15.01.D and 15.06.D.

9.05 Lands and Easements; Reports and Tests

- A. Owner's duties with respect to providing lands and easements are described in Paragraph 5.01. OPT will make copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site available to Contractor in accordance with Paragraph 5.03.

9.06 Insurance

- A. Owner's responsibilities with respect to purchasing and maintaining insurance are described in Article 6.

9.07 Modifications

- A. Owner's responsibilities with respect to Modifications are described in Article 11.

9.08 Inspections, Tests, and Approvals

- A. OPT's responsibility with respect to certain inspections, tests, and approvals are described in Paragraph 14.02.

9.09 Limitations on OPT's Responsibilities

- A. The OPT does not supervise, direct, or have control or authority over, and is not responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or related safety precautions and programs, or for failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. OPT is not responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 Undisclosed Hazardous Environmental Condition

- A. OPT's responsibility for undisclosed Hazardous Environmental Conditions is described in Paragraph 5.06.

9.11 Compliance with Safety Program

- A. Contractor is to inform the OPT of its safety programs and OPT is to comply with the specific applicable requirements of this program.

ARTICLE 10 – OAR'S AND DESIGNER'S STATUS DURING CONSTRUCTION

10.01 Owner's Representative

- A. OAR is Owner's representative. The duties and responsibilities and the limitations of authority of OAR as Owner's representative are described in the Contract Documents.

10.02 Visits to Site

- A. Designer is to make periodic visits to the Site to observe the progress and quality of the Work. Designer is to determine, in general, if the Work is proceeding in accordance with the Contract Documents based on observations made during these visits. Designer is not required to make exhaustive or continuous inspections to check the quality or quantity of

the Work. Designer is to inform the OPT of issues or concerns and OAR is to work with Contractor to address these issues or concerns. Designer's visits and observations are subject to the limitations on Designer's authority and responsibility described in Paragraphs 9.09 and 10.07.

- B. OAR is to observe the Work to check the quality and quantity of Work, implement Owner's quality assurance program, and administer the Contract as Owner's representative as described in the Contract Documents. OAR's visits and observations are subject to the limitations on OAR's authority and responsibility described in Paragraphs 9.09 and 10.07.

10.03 Resident Project Representatives

- A. Resident Project Representatives assist OAR in observing the progress and quality of the Work at the Site. The limitations on Resident Project Representatives' authority and responsibility are described in Paragraphs 9.09 and 10.07.

10.04 Rejecting Defective Work

- A. OPT has the authority to reject Work in accordance with Article 14. OAR is to issue a Defective Work Notice to Contractor and document when Defective Work has been corrected or accepted in accordance with Article 14.

10.05 Shop Drawings, Modifications and Payments

- A. Designer's authority related to Shop Drawings and Samples are described in the Contract Documents.
- B. Designer's authority related to design calculations and design drawings submitted in response to a delegation of professional design services are described in Paragraph 7.15.
- C. OAR and Designer's authority related to Modifications is described in Articles 11.
- D. OAR's authority related to Applications for Payment is described in Articles 13 and 15.

10.06 Decisions on Requirements of Contract Documents and Acceptability of Work

- A. OAR is to render decisions regarding non-technical or contractual / administrative requirements of the Contract Documents and will coordinate the response of the OPT to Contractor.
- B. Designer is to render decisions regarding the conformance of the Work to the requirements of the Contract Documents. Designer will render a decision to either correct the Defective Work, or accept the Work under the provisions of Paragraph 14.04, if Work does not conform to the Contract Documents. OAR will coordinate the response of the OPT to Contractor.
- C. OAR will issue a Request for a Change Proposal if a Modification is required. OAR will provide documentation for changes related to the non-technical or contractual / administrative requirements of the Contract Documents. Designer will provide documentation if design related changes are required.
- D. Contractor may appeal Designer's decision by submitting a Change Proposal if Contractor does not agree with the Designer's decision.

10.07 Limitations on OAR's and Designer's Authority and Responsibilities

- A. OPT is not responsible for the acts or omissions of Contractor's Team. No actions or failure to act, or decisions made in good faith to exercise or not exercise the authority or responsibility available under the Contract Documents creates a duty in contract, tort, or otherwise of the OPT to the Contractor or members of the Contractor's Team.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

ARTICLE 12 – CLAIMS

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

ARTICLE 18 – MISCELLANEOUS

END OF SECTION