



Brownsville Independent School District

Agenda Category: Contracts/MOU Board of Education Meeting: 04/01/2025
General Function

Item Title: Amendment to the Owner Engineering Agreement X Action
with Ethos-Hostistique Holdings/dba Ethos Engineering Information
CSP #22-141 LED Lighting Upgrades Discussion
at Burns, Egly, and Perez Elementary

BACKGROUND:

Administration recommends approval to the Owner Engineering Agreement with Ethos-Hostistique Holdings/dba Ethos Engineering for the CSP #22-141-LED Lighting Upgrades at Burns, Egly, and Perez Elementary Project. This is due to the increase in both original scope of work and the established construction budget for the of amount of \$46,025.39.

Attached is the following document:

- Exhibit A: Proposal and Agreement (Amendment)

FISCAL IMPLICATIONS:

Contract amount increase by \$46,025.39

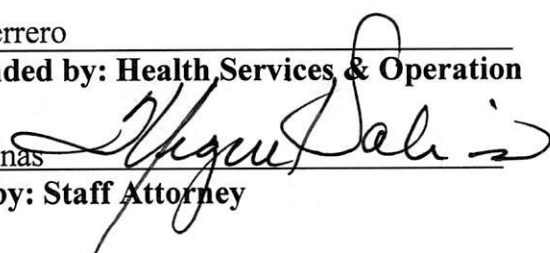
RECOMMENDATION:

Recommend approval to the Owner Engineering Agreement with Ethos-Hostistique Holdings/dba Ethos Engineering for the CSP #22-141-LED Lighting Upgrades at Burns, Egly, and Perez Elementary Project. This is due to the increase in both original scope of work and the established construction budget for the of amount of \$46,025.39.

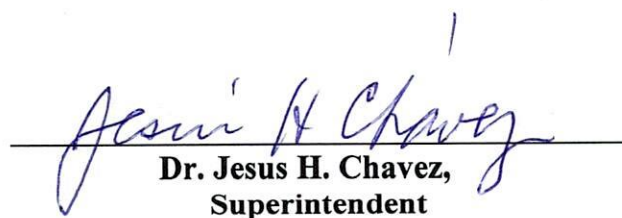

Manuel Hinojosa, FAIA

Submitted by: Principal/ Program Adm.

Alonso Guerrero
Recommended by: Health Services & Operation

Miguel Salinas 
Reviewed by: Staff Attorney

Approved for Submission to Board of Education:


Dr. Jesus H. Chavez,
Superintendent

Alejandro Cespedes
Approved by: Chief Financial Officer

Minerva Almanza

From: Priscilla Lozano <plozano@808West.com>
Sent: Friday, March 28, 2025 8:22 AM
To: Roxanne Eckstein; Lea Ohrstrom
Cc: Miguel Salinas; Minerva Almanza
Subject: Re: Amendment to Owner Engineering Agreement with Ethos

CAUTION: This email originated from outside of Brownsville ISD. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

No legal objection.

Priscilla

From: Roxanne Eckstein <reckstein@bisd.us>
Sent: Thursday, March 27, 2025 1:53 PM
To: Kevin O'Hanlon <kohanlon@808West.com>; Lea Ohrstrom <lohrstrom@808West.com>; Priscilla Lozano <plozano@808West.com>
Cc: Miguel Salinas <miguelsalinas@bisd.us>; Minerva Almanza <malmanza1@bisd.us>
Subject: Amendment to Owner Engineering Agreement with Ethos

Ms. Lozano,

Please see the attached for your review and approval. This Board Agenda item will be going to the board on April 1st and wondering if you can have an approval by the end of the day if possible.

Thank you! Should you have any questions or comments, please contact me at (956) 698-6379.

Sincerely,

Roxy Eckstein



AN EARLY COLLEGE DISTRICT
BROWN SVILLE
INDEPENDENT SCHOOL DISTRICT

Roxanne Eckstein
Paralegal
Staff Attorney Office

1900 E. Price Road, Suite 302 • Brownsville, Texas 78521
Office: (956) 698-6379 • Fax: (956) 714-6400
E-mail: reckstein@bisd.us

**Roxanne Eckstein | Paralegal to Miguel Salinas & Administrative Support | Staff Attorney |
Chief Academic Officer | Chief Operations Officer | Phone: 956.698.6379 | Fax: 956.714.6400
Brownsville Independent School District | 1900 East Price Road, Suite 302 | Brownsville, TX 78521**

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EXHIBIT A: PROPOSAL AND AGREEMENT (AMENDMENT)

AGREEMENT made as of December 9, 2024.

BETWEEN the Owner:

Brownsville ISD
1900 East Price Road
Brownsville, Texas 78521

And the MEP Consultant:

Ethos Engineering, LLC
119 West Van Buren, Suite 101
Harlingen, TX 78550

For the Project: BISD Burns ES, Egly ES and Perez ES - Lighting Upgrades

Description: This amendment to "Exhibit A: Proposal and Agreement," originally signed and executed on May 5, 2021, is due to the increase in both the original scope of work and the established construction budget.

Scope of Work

- A. Project includes the following campuses: Burns ES, Egly ES and Perez ES
- B. Established Construction Budget by BISD Facilities Staff: \$1,200,000.00
- C. Collect existing design drawings from BISD maintenance staff.
- D. Visit site for condition assessment of existing conditions (light fixtures quantities, ceiling height, room reflectance's).
- E. Electrical /Utility Services: The electrical and telephone utility services for the project are existing and will remain.
- F. Electrical Panel/Wiring – they may be need upgrade to incorporate a solid grounding system.
- G. Document existing light levels.
- H. Perform Lighting calculations.
- I. Prepare construction documents for Competitive Sealed Proposal (CSP).
- J. Electrical Construction Documents: Ethos Engineering shall provide electrical design, construction documents, and specifications depicting the following.
 1. Electrical Demolition Lighting Site Plan
 - This Drawing specifies location and quantity counts of existing exterior luminaires that are to be replaced with new.
 2. Electrical Demolition Lighting Floor Plans
 - This drawing specifies location and quantity counts of existing interior luminaires that are to be replaced with new.

- These drawings specify existing lighting control; systems that are to be removed and replaced with new.
 - 3. Electrical Demolition Power Plans
 - This drawing specifies existing electrical circuitry and equipment needing modification to upgrade lighting systems.
 - 4. Electrical New Site Lighting Plan
 - This drawing specifies new luminaire requirements for the exterior and perimeter lighting.
 - 5. Electrical New Lighting Floor Plan
 - This drawing specifies new luminaire requirements for the interior spaces.
 - These drawing specifies new lighting controls requirements for the interior spaces.
 - 6. Electrical Lighting and Lighting control details
 - 7. Division 26 Specifications
- K. Construction Administration Phase, including review submittals, site visits, review closeout documents, document post renovations light levels.
- L. Bidding Phase: Ethos Engineering will be in assistance to Owner during the bidding phase. Bid phase services includes.
1. Respond to prospect bidders request for information (RFI) During the bid phase.
 2. Attend the pre-bid meeting (virtually)
 3. Attend the bid opening (virtually)
 4. Assist Owner with bidder evaluation (virtually), if required.
- M. Construction Administration Phase: Ethos Engineering will review shop drawing, RFI and submittals and perform construction meeting[s]/Observation[s] during the construction phase. Construction observation shall be as follows:
1. Monthly to evaluate the appropriateness of pay applications.
 2. Detailed field reports
 3. Monthly Virtual OAC Meeting
 4. If more than two (2) review of any shop drawings, products data item, sample or similar
 5. Submittal required by the Engineers, such additional review shall be provided by the
 6. engineer as a Change in Services (additional service).
 7. Construction administration services beyond contractor proposed construction schedule (Owner and Contractor agreement), it will be handled as Additional Services.
- N. Commissioning services for MEP systems are not included in the design fee, if desired or necessary they can be presented as an additional service (lump sum).

EXPECTATIONS AND CONDITIONS

- A. The project will be designed to the current codes and ordinances adopted by the City of Brownsville IECC code.
- B. Utility company impact fees, permitting fees or other are specifically excluded unless otherwise indicated.
- C. Services associated with Geotechnical, environmental, asbestos and mold abatement are specifically excluded.
- D. All Drawings, Documents, Specifications produced in any form, to include Digital Media, Provided by Engineer under the terms of this agreement are the property of Ethos

Engineering, and are not to be used for any reason or purpose other than to construct the above-named project without the written consent of the Engineer.

Compensation for the professional engineering services

Compensation for the professional engineering services are as follows.

1. Design and Electrical Engineering Services:

= Revised Construction Cost X 6.5%	=	
= \$1,908,083.05 X 6.5%	=	\$124,025.39
= Original Construction Cost X 6.5%	=	
= \$1,200,00.00 X 6.5%	=	\$78,000.00
Request to Adjust PO	=	\$ 46,025.39

PAYMENT PROVISIONS

Consultant will submit Statements for Services monthly according to the following schedule for portions of the work completed at the end of the billing month.

Project Phase	NTE
<i>Preliminary Design</i>	30%
<i>Construction Documents</i>	45%
<i>Bidding</i>	5%
<i>Construction Administration</i>	20%

COMPENSATION FOR OTHER SERVICES (Additional)

Standard Hourly Employee Rates

Employee Category	Hourly Rate
<i>Principal</i>	\$165.00/hour
<i>Senior Engineer, Project Manager</i>	\$140.00/hour
<i>Registered Engineer</i>	\$120.00/hour
<i>Graduate Engineer</i>	\$90.00/hour
<i>Field Technician-2</i>	\$90.00/hour
<i>Field Technician-1</i>	\$75.00/hour
<i>Drafting Technician-2</i>	\$75.00/hour
<i>Drafting Technician-1</i>	\$65.00/hour
<i>Clerical/Support</i>	\$45.00/hour

For other services of sub consultants for other than normal consulting services for the Project, as provided under our Standard Agreement, or identified as Other Services (printing, copies, advertising, etc.), a multiple of 1.1. times the amounts billed from the Consultant for such services.

These services are being provided through the engineering services contract between Ethos Engineering and the Brownsville ISD. The general conditions of the engineering services agreement with the Owner shall extend to these services.

If a signed copy of the agreement is not returned to Ethos Engineering, then it will be mutually agreed once a PO has been issued or the first paid invoice for said project will be considered as an acceptance of our proposal, and a binding contract for the project.

We look forward to being of service to you on this project. Should you have any questions please do not hesitate to contact my office. If you are in agreement, please return a signed copy of this letter for our records, with initials in the boxes for desired services.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

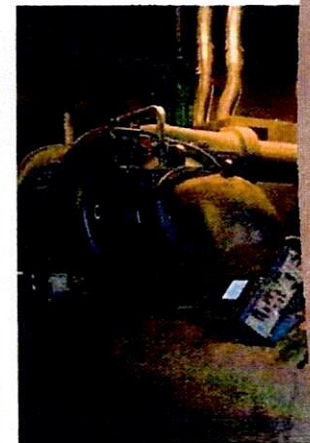
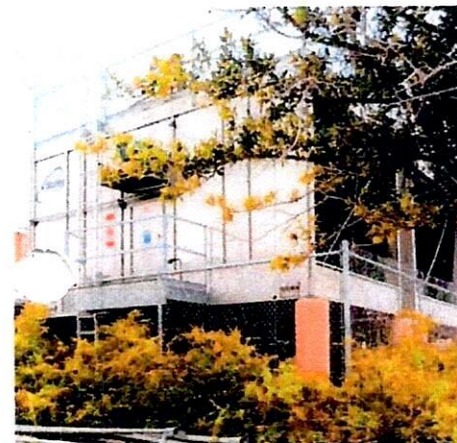
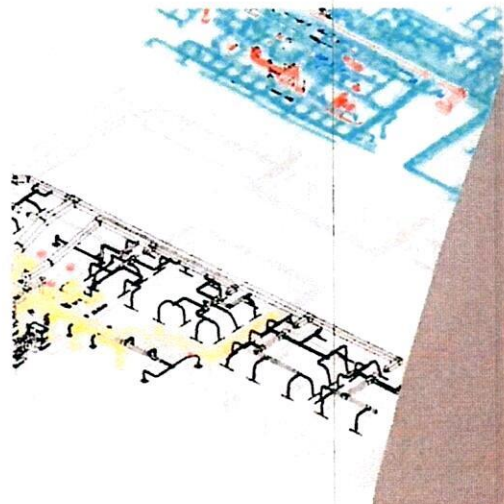
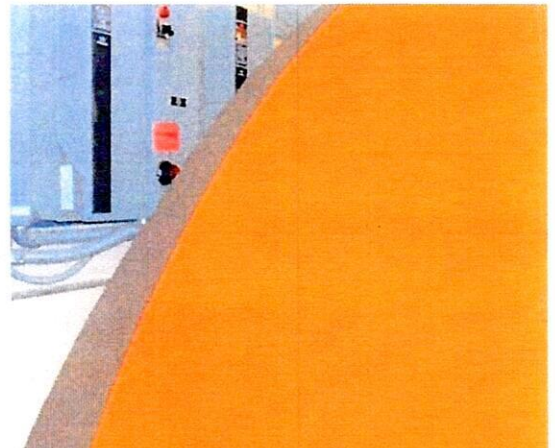
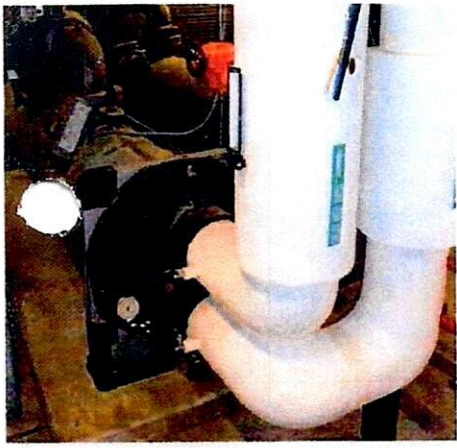
Printed Name and Title



CONSULTANT (Signature)

Guillermo Quintanilla - Principal

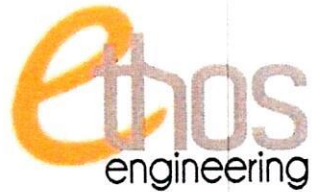
Printed Name and Title



AGREEMENT

BETWEEN OWNER
AND CONSULTANT

ethos
engineering



Brownsville ISD

2021 Lighting Upgrades

Agreement between Owner and Consulting Engineer

April 21, 2021

Submitted to Brownsville ISD

Agreement between Owner and Consultant

Brownsville ISD

AGREEMENT made as of April 21, 2021.

BETWEEN the Owner:

Brownsville ISD
Brownsville Independent School District
1900 East Price Road
Brownsville, Texas 78521

And the CONSULTING ENGINEER:

Ethos Engineering, LLC
119 West Van Buren, Suite 101
Harlingen, TX 78550

ARTICLE 1 – DESCRIPTION OF SCOPE

The Consulting Engineer shall provide the owner with the following professional engineering services in connection with Lighting Upgrades to the following campuses: Burns ES, Egly ES and Perez ES:

Scope of work includes performing onsite assessments and providing recommendations replacement/upgrades. Once the recommendations are approved by the Owner, Consulting Engineer shall proceed with Preliminary Design, and Construction Documents, Bid Assistance, Construction Administration Phases – see Exhibit “A”

It is expressly understood that work identified above is to be designed and constructed as one (1) project.

ARTICLE 2 – GENERAL PROVISIONS

§ 2.1 CONSULTING ENGINEER shall perform professional services as hereinafter stated which include normal mechanical and electrical engineering services. CONSULTING ENGINEER shall provide for OWNER professional engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER’s professional engineering representative for the Project, providing professional engineering consultation and advice on electrical engineering services.

§ 2. 4. The CONSULTING ENGINEER shall be the general administrator of the professional services for the Project. All communications between the CONSULTING ENGINEER and the Owner, Contractor or other consultants for the Project shall be forwarded through the CONSULTING ENGINEER.

ARTICLE 3 – CONSULTING ENGINEER’S RESPONSIBILITIES

§ 3.1 GENERAL RESPONSIBILITIES

§ 3.1.1 The services performed by the CONSULTING ENGINEER, CONSULTING ENGINEER’s employees and CONSULTING ENGINEER’s sub consultants shall be as enumerated in Articles 4, 5 and 14.

§ 3.1.2 The CONSULTING ENGINEER shall designate a representative authorized to act on behalf of the CONSULTING ENGINEER with respect to This Part of the Project

§ 3.1.3 The CONSULTING ENGINEER shall recommend to the Owner that appropriate investigations surveys tests, analyses and reports be obtained as necessary for the proper execution of the CONSULTING ENGINEER’s services. Costs associated with these tests, analyses and reports are not part of the basic services.

§ 3.1.4 The CONSULTING ENGINEER’s services shall be coordinated with the Owner and other consultants for the Project in order to avoid unreasonable delay in the orderly and sequential progress of the CONSULTING ENGINEER’ services.

§ 3.1.5 The CONSULTING ENGINEER shall provide copies of drawings, reports, specifications and other necessary information to the Owner and other consultants for coordination and review during the course of the Project. All aspects of the Work designed by the CONSULTING ENGINEER shall be coordinated by the CONSULTING ENGINEER, and other consultants as necessary for the proper coordination of This Part of the Project. Costs associated with production, copying and delivery of drawings, reports, specifications and other documentation shall be invoiced as reimbursable expenses.

§ 3.1.6 The CONSULTING ENGINEER shall prepare budget for the Cost of the Work of the Project.

§ 3.1.7 The CONSULTING ENGINEER shall maintain the confidentiality of information specifically designed as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the CONSULTING ENGINEER from establishing a claim or defense in an adjudicatory proceeding. The CONSULTING ENGINEER shall require of the CONSULTING ENGINEER’s sub consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

§ 3.1.9 Except with the Owner knowledge and consent, the CONSULTING ENGINEER shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the CONSULTING ENGINEER’s professional judgment with respect to this Project.

§ 3.1.10 The CONSULTING ENGINEER's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The CONSULTING ENGINEER shall not be responsible for delays beyond the CONSULTING ENGINEER's control. CONSULTING ENGINEER's schedule shall be based on number of days required to complete work after receiving from OWNER all the information required by CONSULTING ENGINEER to complete each phase of the work. Modifications issued by CONSULTING ENGINEER while CONSULTING ENGINEER's work is in progress will require adjustments to the schedule.

§ 3.2 EVALUATION OF BUDGET AND COST OF WORK

§ 3.2.1 CONSULTING ENGINEER shall be responsible for developing estimates of the Cost of the Work.

§ 3.2.2 CONSULTING ENGINEER shall review estimates of the Cost of the Work prepared by others and make recommendations to adjust scope of work if necessary, to meet the Owner's budget for the project.

§ 3.2.3 CONSULTING ENGINEER shall be entitled to compensation for all work related to modifications to the Project scope, including those necessary to adjust the Cost of the Work.

ARTICLE 4 – SCOPE OF CONSULTING ENGINEER'S SERVICES

§ 4.1 PRELIMINARY DESIGN

§ 4.1.1 The CONSULTING ENGINEER shall ascertain the requirements for This Part of the Project and shall confirm such requirements to the OWNER.

§ 4.1.2 The CONSULTING ENGINEER shall review alternative systems with the OWNER, attend necessary conferences, prepare necessary analyses, drawings and other documents, be available for general consultation, and make recommendations regarding basic systems for This Part of the Project. When necessary, the CONSULTING ENGINEER shall consult with public agencies and other organizations concerning utility services and requirements.

§ 4.1.3 In consultation with OWNER and on the basis of the accepted Summary Report, determine the scope of the Project, Project Constraints, Construction Budgets, and Schedule requirements.

§ 4.1.4 Based upon the mutually agreed-upon scope of work, Engineer shall prepare Preliminary Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

§ 4.2 CONSTRUCTION DOCUMENTS

§ 4.3.1 When authorized by the OWNER, the CONSULTING ENGINEER shall prepare, from the PRELIMINARY DESIGN Documents approved by the Owner and confirmed by the OWNER, Drawings and Specifications setting forth in detail the requirements for the construction of This Part of the Project, all of which are to be approved by the Owner. The CONSULTING ENGINEER shall prepare the Drawings and Specifications in such format as the OWNER may reasonably require.

§ 4.3.2 The CONSULTING ENGINEER shall assist the Owner's responsibility for filing the documents concerning This Part of the Project required for the approval of governmental authorities having jurisdiction over the Project.

§ 4.4 BIDDING OR NEGOTIATION

§ 4.4 .1 The CONSULTING ENGINEER shall assist the Owner in obtaining and evaluating bids or negotiated proposal, and assist in awarding and preparing contracts for construction or installation.

§ 4.5 CONTRACT ADMINISTRATION SERVICES

§ 4.5.1 The CONSULTING ENGINEER's responsibility to provide the Contract Administration services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the CONSULTING ENGINEER shall be entitled to a Change in Services in accordance with Section 5.1 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.

§ 4.5.3 The CONSULTING ENGINEER shall visit the site at biweekly intervals during active construction appropriate to the stage of the Contractor's operations for This Part of the Project, to become generally familiar with and to keep the OWNER informed about the progress and quality of the portion of the Work complete for This Part of the Project, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with time Contract Documents. However, the CONSULTING ENGINEER shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work for This Part of the project. The CONSULTING ENGINEER shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work for This Part of the Project, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.5.4 The CONSULTING ENGINEER shall report to the OWNER known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTING ENGINEER shall not be

responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTING ENGINEER shall be responsible for the CONSULTING ENGINEER's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work. CONSULTING ENGINEER shall not participate in meetings with Contractor to discuss deviations from Contract Documents. Requests for attendance to such meetings shall entitle CONSULTING ENGINEER to additional compensation.

§ 4.5.5 The CONSULTING ENGINEER shall at all times have access to the Work for This Part of the Project, wherever it is in preparation or progress.

§ 4.5.6 Based on the CONSULTING ENGINEER's evaluations of the Work and of the Contractor's Applications for Payment, the CONSULTING ENGINEER shall assist the OWNER in determining the amounts due the Contractor for This Part of the Project and shall certify such amounts to the OWNER in writing. CONSULTING ENGINEER requires a minimum of three days to schedule site visit, review Application for Payment and issue opinion to OWNER.

§ 4.5.7 Certification for payment by the CONSULTING ENGINEER to the OWNER of the amounts due the Contractor shall constitute a representation to the OWNER based on the CONSULTING ENGINEER's evaluation of the Work as provided in section 4.5.3 and on the data comprising the Contractor's Application for Payment that the Work for This Part of the Project has progressed to the point indicated and that to the best of the CONSULTING ENGINEER's knowledge information and belief the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract documents prior to completion, and (4) to specific qualifications expressed by the CONSULTING ENGINEER.

§ 4.5.8 Upon written request of the OWNER, the CONSULTING ENGINEER shall furnish to the OWNER with reasonable promptness, in writing or in the form of drawings, interpretations of the Contract Documents prepared by the CONSULTING ENGINEER, if, in the opinion of the OWNER, such interpretations are necessary for the proper execution or progress of the Work.

§ 4.5.9 The CONSULTING ENGINEER shall within a reasonable time render written recommendations on claim disputes and other matters in question between the Owner and Contractor relating to the execution or progress of This Part of the Project as provided by the Contract Documents. CONSULTING ENGINEER shall be entitled to additional compensation for services under this article.

§ 4.5.10 The CONSULTING ENGINEER shall assist the OWNER in determining whether the OWNER shall reject Work for This Part of the Project which does not conform to the Contract Documents or whether additional inspection or testing is required. CONSULTING ENGINEER shall be entitled to additional compensation for services under this article.

§ 4.5.11 The CONSULTING ENGINEER shall review and approve or take other appropriate action upon the Contactor's submittals pertaining to This Part of the Project, such as Shop Drawings Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Following such appropriate action, the CONSULTING ENGINEER shall forward the Contractor's submittals to the GENERAL CONTRACTOR. The CONSULTING ENGINEER's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the CONSULTING ENGINEER's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor, as required for this Part of the Project the, Contract Documents. The CONSULTING ENGINEER's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the CONSULTING ENGINEER, of any construction means, methods techniques, sequences or procedures. The CONSULTING ENGINEER's approval of a specific item shall not indicate approval of an assembly of which the item is a component. CONSULTING ENGINEER will set aside fifteen (15) days for initial review of submittals for each discipline. CONSULTING ENGINEER will not conduct review of partial or incomplete Mechanical, Electrical or Plumbing submittals. CONSULTING ENGINEER shall set aside seven (7) days for review of revised submittals. CONSULTING ENGINEER shall be entitled to additional compensation for any submittals that need to be reviewed more than twice.

§ 4.5.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTING ENGINEER shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTING ENGINEER. The CONSULTING ENGINEER shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 4.5.13 The CONSULTING ENGINEER shall be responsible to assist in preparing Change Orders and Construction Change Directives for This Part of the Project for the

Owner's approval and execution in accordance with the Contract Documents, and may recommend to the Owner minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. CONSULTING ENGINEER shall be entitled to additional compensation for preparing Change Order and Construction Change Directives.

§ 4.5.14 The CONSULTING ENGINEER shall conduct inspections, to determine the date or dates of Substantial Completion and the date of final completion, shall review and approve, or take other appropriate action on, the Contractor's list of items to be completed or corrected, and shall forward the list to the GENERAL CONTRACTOR for final disposition. The CONSULTING ENGINEER shall receive and review from the Contractor and forwarding to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor with respect to This Part of the Project. The CONSULTING ENGINEER shall issue to the OWNER a final certification in writing with respect to final payment for this Part of the Project.

ARTICLE 5 – OTHER SERVICES

§ 5.1 CHANGE IN SERVICES

§ 5.1.1 Change in Services of the CONSULTING ENGINEER, including services required of sub consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the CONSULTING ENGINEER's control, or if the CONSULTING ENGINEER's services are affected as described in section 5.1.2. In the absence of mutual agreement in writing, the CONSULTING ENGINEER shall notify the OWNER prior to providing such services. If the CONSULTING ENGINEER deems that all or a part of such Change in Services is not required, the CONSULTING ENGINEER shall give prompt written notice to the OWNER and the CONSULTING ENGINEER shall have no obligation to provide those services Except for a change due to the fault of the CONSULTING ENGINEER, Change in Services of the CONSULTING ENGINEER shall entitle the CONSULTING ENGINEER to an adjustment in compensation pursuant to Section 13.2.2, and to any Reimbursable Expense described in Section 12.6.

§ 5.1.2 If any of the following circumstances affect the CONSULTING ENGINEER's services for the Project the CONSULTING ENGINEER shall be entitled to an appropriate adjustment in the CONSULTING ENGINEER's schedule and compensation.

1. change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service,
2. enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;

3. decisions of the Owner not rendered in a timely manner,
4. significant changes in the Project including, but not limited to size, quality, complexity, the Owner's schedule or budget, or procurement method,
5. evaluation of the Owner's or CONSULTING ENGINEER's proposals, including the preparation or revision of Instruments of Service, and provision of other services in connection with Change Orders and Construction Change Directives,
6. providing consultation concerning replacement of Work resulting from fire or other causes during construction.
7. failure of performance on the part of the Owner, the Owner's consultants or contractors;
8. evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work;
9. preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the CONSULTING ENGINEER is party thereto;
10. evaluation of substitutions proposed by the Owner or the Contractor after the award of the Contract for Construction;
11. preparation of design and documentation for alternate bids or proposal requests proposed by the Owner;
12. change in the Preliminary Project information contained in the Agreement between Owner and CONSULTING ENGINEER; or
13. Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.
14. Aspects of work entitling CONSULTING ENGINEER to additional compensation under Article 3.
15. Aspects of work entitling CONSULTING ENGINEER to additional compensation under Article 4.
16. Aspects of work not listed as CONSULTING ENGINEER's responsibility.
17. ADA/TDLR Review (plans and site)
18. Fire Protection
19. Attendance at construction meetings beyond those listed.
20. Design services due to a change in Scope of Basic Services.

21. Design of significant bid alternates requested by the Owner.
22. Should the Engineer be required to make more than two (2) inspection for Substantial Completion and/or more than two (2) inspection for Final Completion, such service shall be provided by the Engineer as a Change in Services, in accordance with the Architect-Engineer.
23. Statements of detailed probable construction costs.
24. Engineering studies of alternative systems and equipment locations.
25. Energy studies.
26. Economic analysis.
27. Commissioning including the preparation of systems acceptance specifications, pre-functional test checklist, and functional performance checklists shall be provided as an Optional service.
28. Modification to the MEP design systems due to change in building code during the design or construction phase.
29. Value engineering design services after approval of the Design Development submission

§ 5.2 PROJECT REPRESENTATION SERVICES

§ 5.2.1 If more extensive representation at the site than is described under Section 4.5.3 is required for This Part of the Project, the CONSULTING ENGINEER shall, if requested by the OWNER, provide one or more Project Representatives to assist the CONSULTING ENGINEER in carrying out such additional on-site responsibilities.

§ 5.2.2 Project Representatives shall be selected, employed and directed by the CONSULTING ENGINEER, and the CONSULTING ENGINEER shall be compensated therefore as agreed by the OWNER and CONSULTING ENGINEER. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in an exhibit to this Agreement.

§ 5.2.3 Through the presence at the site of such Project Representatives, the CONSULTING ENGINEER shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work for This Part Of the Project, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the CONSULTING ENGINEER as described elsewhere in this Agreement.

ARTICLE 6 – OWNER’S RESPONSIBILITIES

§ 6.1 The Owner shall provide available information in a timely manner regarding requirements for and limitations on This Part of the Project as not to delay the CONSULTING ENGINEER services.

§ 6.1 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONSULTING ENGINEER's services for the Project.

§ 6.2. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

§ 6.3. Assist CONSULTING ENGINEER by placing at CONSULTING ENGINEER all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

§ 6.4. Furnish to CONSULTING ENGINEER, as required for performance of CONSULTING ENGINEER Basic services, except as noted the following:

1. Data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;
2. Appropriate professional interpretations of all of the foregoing;
3. Environmental assessment and impact statements;
4. Property, boundary, easement, right-of-way, topographic and utility surveys;
5. Property descriptions;
6. Zoning, deed and other land use restriction; and
7. Other special data or consultations not covered in Section 2; all of which CONSULTING ENGINEER may use and rely upon in performing services under this Agreement.

§ 6.5. Provide engineering surveys to establish reference points for construction (except to the extent provided on Basic Engineering Services to enable Contractor(s) to proceed with the layout of the work.

§ 6.6. Arrange for access to and make all provisions for CONSULTING ENGINEER to enter upon public and private property as required for CONSULTING ENGINEER to perform services under this Agreement.

§ 6.7. Examine all studies, reports, sketches, Drawings, Specifications, Proposals and other documents presented by CONSULTING ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTING ENGINEER.

§ 6.8. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

§ 6.9. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or CONSULTING ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

§ 6.10. If OWNER designates a person to represent OWNER at the site who is not ENGINEER or ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities of ENGINEER and the Resident Project Representative (and any assistants) will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

§ 6.11. If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

§ 6.12. Furnish to CONSULTING ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER so that CONSULTING ENGINEER may make the necessary findings to support opinions of probable Total Project Costs.

§ 6.13. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.

§ 6.14. Give prompt written notice to CONSULTING ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.

§ 6.15. Furnish, or direct CONSULTING ENGINEER to provide, Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.

§ 6.16. Bear all costs incident to compliance with the requirements of this Section 6.

ARTICLE 7 – COST OF THE WORK

§ 7.1 DEFINITION

§ 7.1.1 The Cost of the Work shall be the total cost or to the extent the Project is not completed the estimated cost to the Owner of all elements of the Project designed or specified by the CONSULTING ENGINEER. The Cost of the Work for This Part of the Project shall be the total cost or estimated cost to the Owner as designed or specified by the CONSULTING ENGINEER.

§ 7.1.2 The Cost of the Work or the Cost of the Work for This Part of the Project shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or special provided for by the CONSULTING ENGINEER, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor plus a reasonable allowance for their overhead and profit. In addition a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 7.1.3 The Cost of the Work does not include the compensation of the CONSULTING ENGINEER and the CONSULTING ENGINEER's consultant the costs of the land rights-of-way and financing or other costs that are the responsibility of the CONSULTING ENGINEER as provided in Article 6 of this Agreement, or that are the responsibility of the Owner as defined in the Agreement.

ARTICLE 8 – INSTRUMENTS OF SERVICE

§ 8.1 Drawings, specifications and other documents, including those in electronic form prepared by the CONSULTING ENGINEER are Instruments of Service for use solely with respect to this Project unless otherwise provided, the CONSULTING ENGINEER shall be deemed the author and owner of the CONSULTING ENGINEER's Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

§ 8.2 Upon execution of this Agreement, the CONSULTING ENGINEER grants to the OWNER a nonexclusive 'license to reproduce the CONSULTING ENGINEER's Instruments of Service for purposes of designing, administering, using and maintaining the Project, provided that the OWNER shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Such license shall permit the OWNER to include the CONSULTING ENGINEER's Instruments of

Service in a similar nonexclusive license to the Owner in the Agreement, authorizing the Owner and the Owner's contractors to reproduce applicable portions of the CONSULTING ENGINEER's Instruments of Service solely for purposes of constructing, using and maintaining the Project. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the OWNER shall refrain from making further reproductions of the CONSULTING ENGINEER's Instruments of Service and shall return to the CONSULTING ENGINEER within seven days of termination all originals and reproductions in the OWNER's possession or control. If and upon date the CONSULTING ENGINEER is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license that permits the the Owner, to continue to use and to reproduce the CONSULTING ENGINEER's Instruments of Service and to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 8.3 Except for the licenses granted in Section 8.2, no other license or right shall be deemed granted or implied under this Agreement. The OWNER shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the CONSULTING ENGINEER. Submission or distribution of Instruments of Services to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the CONSULTING ENGINEER. Owner shall not use the CONSULTING ENGINEER's Instruments of Service for future additions or alterations to This Project or for other projects, unless the CONSULTING ENGINEER obtains the prior written agreement of the CONSULTING ENGINEER. Any unauthorized use of the Instruments of Service shall be at the OWNER's sole risk and without liability to the CONSULTING ENGINEER.

§ 8.4 Prior to the CONSULTING ENGINEER providing to the OWNER any Instruments of Service in electronic form any electronic data for incorporation into the Instruments of Service, the OWNER and CONSULTING ENGINEER shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data including any special limitations or licenses not otherwise provided in this Agreement.

§ 8.5 The CONSULTING ENGINEER shall maintain on file and make available to the OWNER design calculations for This Part of the Project, and shall furnish copies thereof to the OWNER on request.

ARTICLE 9 – DISPUTE RESOLUTION

§ 9.1 MEDIATION

§ 9.1.1 Any claim dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the CONSULTING ENGINEER's services the CONSULTING ENGINEER may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation.

§ 9.1.2 The OWNER and CONSULTING ENGINEER shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 9.1.3 The parties agree to split the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 9.2 Any claim or dispute arising of this agreement shall be adjudicated in a court of competent jurisdiction in Cameron County Texas

§ 9.2 ARBITRATION

~~§ 9.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 9.1.1.~~

~~§ 9.2.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.~~

~~§ 9.2.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.~~

~~§ 9.2.4 An arbitration arising out of or related to this Agreement may be consolidated with an arbitration between the OWNER and any other person or entity if such arbitration involves common issues of fact relating to the performance by the CONSULTING ENGINEER of the CONSULTING ENGINEER's obligations under this Agreement.~~

~~§ 9.2.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may e entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 9.3 CLAIMS FOR CONSEQUENTIAL DAMAGES

The OWNER and CONSULTING ENGINEER waive consequential damages for claims, disputes or other Matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 10.

ARTICLE 10 – TERMINATION OR SUSPENSION

§ 10.2 If the OWNER fails to make payments to the CONSULTING ENGINEER in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the CONSULTING ENGINEER's option, cause for suspension of performance of services under this Agreement. If the CONSULTING ENGINEER elects to suspend services, prior suspension of services, the CONSULTING ENGINEER shall give seven days' written notice to the OWNER. In the event of a suspension of services, the CONSULTING ENGINEER shall have no liability to the OWNER for delay or damage caused because of such suspension of services. Before resuming services, the CONSULTING ENGINEER shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the CONSULTING ENGINEER's services. The CONSULTING ENGINEER's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 10.3 If the Project is suspended by the Owner for more than 30 consecutive days, the CONSULTING ENGINEER shall be compensated for services performed prior to notice of such suspension. When the project is resumed, The CONSULTING ENGINEER shall be compensated for expenses incurred in the interruption and resumption of the CONSULTING ENGINEER's services. The CONSULTING ENGINEER's fees for the remaining services and the tune schedules shall be equitably adjusted.

§ 10. 4 If the Project is suspended for more than 90 consecutive days by either party, the CONSULTING ENGINEER may terminate this Agreement by giving not less than seven days' written notice.

§ 10.5 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance

with the terms of this Agreement through no fault of the party initiating the termination.

§ 10.6 This Agreement may be terminated by the OWNER upon not less than seven days for the OWNER's convenience and without cause.

§ 10.7 In the event of termination not the fault of the CONSULTING ENGINEER, the CONSULTING ENGINEER shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 10.8.

§ 10.8 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the CONSULTING ENGINEER is not otherwise compensated, plus amount for the CONSULTING ENGINEER's anticipated profit on the value of the services not performed by the CONSULTING ENGINEER.

ARTICLE 11 – MISCELLANEOUS PROVISIONS

§ 11.1 This Agreement shall be governed by the law of the principal place of business of the OWNER, unless otherwise provided in Article 14.

§ 11.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date identified in the Agreement.

§ 11.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitation commence to run any later than the date when the services are substantially completed.

§ 11.4 To the extent damages are covered by property insurance during construction, the CONSULTING ENGINEER waive all rights against the Owner, contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction. The CONSULTING ENGINEER, as appropriate, shall require of the Owner, Contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 11.5 The CONSULTING ENGINEER, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors assigns and legal representatives of such other party with respect to all covenants of this Agreement.

§ 11.6 This Agreement represents the entire and integrated agreement for This Part of the Project between the OWNER and the CONSULTING ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both OWNER and CONSULTING ENGINEER.

§ 11.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the OWNER or CONSULTING ENGINEER.

§ 11.8 Unless otherwise provided in this Agreement the OWNER and CONSULTING ENGINEER shall have no responsibility for the discovery, presence, handling removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

ARTICLE 12 – PAYMENTS TO THE CONSULTING ENGINEER

§ 12.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the CONSULTING ENGINEER's statement of services. No deductions shall be made from the CONSULTING ENGINEER's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the CONSULTING ENGINEER has been adjudged to be liable.

§ 12.3 The CONSULTING ENGINEER shall submit invoices for services and Reimbursable Expenses in accordance with the provisions of the Agreement. The OWNER shall review such invoices and, if they are considered incorrect or untimely, the OWNER shall review the matter with the CONSULTING ENGINEER and confirm in writing to the CONSULTING ENGINEER, within ten days from receipt of the CONSULTING ENGINEER's billing, the OWNER's understanding of the disposition of the issue.

§ 12.4 If and to the extent that the time initially established in Section 13.4.1 of this Agreement is exceeded or extended through no fault of the CONSULTING ENGINEER, compensation for services tendered during the additional period of time shall be computed in the manner set forth in Section 13.2

§ 12.6 REIMBURSABLE EXPENSES

§ 12.6.1 Reimbursable Expenses are in addition to compensation for the CONSULTING ENGINEER's services and include expenses incurred by the CONSULTING ENGINEER and CONSULTING ENGINEER's employees and sub consultants directly related to the Project, as identified in the following Clauses:

1. transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
2. fees paid for securing approval of authorities having jurisdiction over the Project;
3. reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
4. expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
5. renderings, models and mock-ups requested by the Owner; and
6. expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the CONSULTING ENGINEER.
7. providing services relative to Architectural, Structural, Civil, and ADA consultants and inspections.

§ 12.6.2 Records of Reimbursable Expenses and expenses pertaining to a Change in Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the OWNER authorized representative at mutually convenient times.

§ 12.7 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of the CONSULTING ENGINEER's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans, and similar contributions.

§12.8 INSURANCE

§ 12.8.1 If required by the OWNER, the CONSULTING ENGINEER shall obtain insurance covering claims arising out of the performance of professional services under this Agreement and caused by errors omissions or negligent acts for which the CONSULTING ENGINEER is liable. The CONSULTING ENGINEER shall maintain this insurance in force if available after the completion of professional services under this Agreement until the expiration of the applicable statutes of limitations. In the event there is no such statute specifically applicable to design and construction of improvement to real property, this insurance, if available, shall be maintained in

force by the CONSULTING ENGINEER for a reasonable period after the date of Substantial Completion of the Project as agreed to by the CONSULTING ENGINEER.

§ 12.8.2 Unless otherwise agreed, the CONSULTING ENGINEER shall each provide insurance to protect themselves from claims under workers' compensation acts, from claims for damages because of bodily injury including personal injury, sickness, disease, or death of any employees or of any other person, from claims for damages because of injury to or destruction of property including loss of use resulting therefrom, and front damage to, or destruction of property including valuable papers and records coverage and including loss of use resulting therefrom.

§ 12.8.3 The insurance required pursuant to Sections 12.8.1 and 12.8.2 shall be in not less than the minimum limits required by law or by Section 13.5.

§ 12.8.4 The CONSULTING ENGINEER shall furnish to the OWNER certificates of insurance evidencing the insurance required by Sections 12.8.1 and 12.8.2, including appropriate evidence that each type of insurance includes appropriate coverage for this specific Project. Certificates shall contain provisions that at least 30 days' prior written notice will be given to the OWNER in the event of cancellation, reduction in or no renewal of the insurance.

ARTICLE 13 – BASIS OF COMPENSATION

The OWNER shall compensate the CONSULTING ENGINEER as follows:

§ 13.1 COMPENSATION

§ 13.1.1 For services as described in Section 4.1 through Section 4.5.14, Engineer's initial fee amounts shall be determined as follows:

See attached Exhibit "A"

§ 13.2 COMPENSATION FOR OTHER SERVICES

§ 13.2.1 For other services of the CONSULTING ENGINEER, as described in Article 5, compensation shall be computed as follows:

See attached Exhibit "A"

§ 13.2.2 For other services of sub consultants for other than normal consulting services for This Part of the Project, as provided under Section 13.2.2 or identified in Article 5 as Other Services, a multiple of 1.1 times the amounts billed to the CONSULTING ENGINEER for such services.

§ 13.3 REIMBURSABLE EXPENSES

13.3.1 All special consultants, reproduction costs, delivery costs, delivery costs, and postage will be reimbursed at cost plus ten percent. Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the A/E in the interest of the Project, as identified in the following clauses.

13.3.2 Expense of reproductions postage and handling of Drawings, Specifications and other documents required in the Bidding or Negotiation and Construction Phases.

13.3.3 Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of the amount currently carried by the Engineer (\$1M).

§ 13.4 ADDITIONAL PROVISIONS

The CONSULTING ENGINEER agree in accordance with the Terms and Conditions of this Agreement that:

§ 13.4.1 If services covered by this Agreement have not been completed within 18 months of the date thereof through no fault of the CONSULTING ENGINEER for This Part of the Project, extension of the CONSULTING ENGINEER’s service beyond that time shall be compensated on the basis of hourly rates and multiples as provided in Section 13.2.1

§ 13.4.2 The rates and multiples set forth for services shall be annually adjusted in accordance with normal salary review practices of the CONSULTING ENGINEER.

§ 13.4.3 PAYMENT PROVISIONS

CONSULTING ENGINEER shall submit Statements for Services monthly according to the following schedule for portions of the work completed at the end of the current billing month.

<i>Project Phase</i>	<i>NTE</i>
<i>Preliminary Design</i>	<i>30%</i>
<i>Construction Documents</i>	<i>45%</i>
<i>Bidding</i>	<i>5%</i>
<i>Construction Administration</i>	<i><u>25%</u></i>
<i>Total</i>	<i>100%</i>

§ 13.5 INSURANCE COVERAGES

Type of insurance	Minimum limit (\$ 0.00)
Professional Liability	\$1,000,000

ARTICLE 14 – OTHER CONDITIONS OR SERVICES

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Dr. Rene Gutierrez,
BISD Superintendent

Printed Name and Title



CONSULTANT (Signature)

Guillermo Quintanilla - Principal

Printed Name and Title



EXHIBIT A: PROPOSAL AND AGREEMENT

AGREEMENT made as of [April 21, 2021](#).

BETWEEN the Owner:

[Brownsville ISD](#)
[1900 East Price Road](#)
[Brownsville, Texas 78521](#)

And the MEP Consultant:

[Ethos Engineering, LLC](#)
[119 West Van Buren, Suite 101](#)
[Harlingen, TX 78550](#)

For the Project: [BISD Burns ES, Egly ES and Perez ES - Lighting Upgrades](#)

Scope of Work

- A. Project includes the following campuses: Burns ES, Egly ES and Perez ES
- B. Established Construction Budget by BISD Facilities Staff: \$1,200,00.00
- C. Collect existing design drawings from BISD maintenance staff.
- D. Visit site for condition assessment of existing conditions (light fixtures quantities, ceiling height, room reflectance's).
- E. Electrical /Utility Services: The electrical and telephone utility services for the project are existing and will remain.
- F. Electrical Panel/Wiring – they may be need upgrade to incorporate a solid grounding system.
- G. Document existing light levels.
- H. Perform Lighting calculations.
- I. Prepare construction documents for Competitive Sealed Proposal (CSP).
- J. Electrical Construction Documents: Ethos Engineering shall provide electrical design, construction documents, and specifications depicting the following.
 1. Electrical Demolition Lighting Site Plan
 - This Drawing specifies location and quantity counts of existing exterior luminaires that are to be replaced with new.
 2. Electrical Demolition Lighting Floor Plans
 - This drawing specifies location and quantity counts of existing interior luminaires that are to be replaced with new.
 - These drawings specify existing lighting control; systems that are to be removed and replaced with new.
 3. Electrical Demolition Power Plans
 - This drawing specifies existing electrical circuitry and equipment needing modification to upgrade lighting systems.

4. Electrical New Site Lighting Plan
 - This drawing specifies new luminaire requirements for the exterior and perimeter lighting.
 5. Electrical New Lighting Floor Plan
 - This drawing specifies new luminaire requirements for the interior spaces.
 - These drawing specifies new lighting controls requirements for the interior spaces.
 6. Electrical Lighting and Lighting control details
 7. Division 26 Specifications
- K. Construction Administration Phase, including review submittals, site visits, review closeout documents, document post renovations light levels.
- L. Bidding Phase: Ethos Engineering will be in assistance to Owner during the bidding phase. Bid phase services includes.
1. Respond to prospect bidders request for information (RFI) During the bid phase.
 2. Attend the pre-bid meeting (virtually)
 3. Attend the bid opening (virtually)
 4. Assist Owner with bidder evaluation (virtually), if required.
- M. Construction Administration Phase: Ethos Engineering will review shop drawing, RFI and submittals and perform construction meeting[s]/Observation[s] during the construction phase. Construction observation shall be as follows:
1. Monthly to evaluate the appropriateness of pay applications.
 2. Detailed field reports
 3. Monthly Virtual OAC Meeting
 4. If more than two (2) review of any shop drawings, products data item, sample or similar
 5. Submittal required by the Engineers, such additional review shall be provided by the
 6. engineer as a Change in Services (additional service).
 7. Construction administration services beyond contractor proposed construction schedule (Owner and Contractor agreement), it will be handled as Additional Services.
- N. Commissioning services for MEP systems are not included in the design fee, if desired or necessary they can be presented as an additional service (lump sum).

EXPECTIONS AND CONDITIONS

- A. The project will be designed to the current codes and ordinances adopted by the City of Brownsville IECC code.
- B. Utility company impact fees, permitting fees or other are specifically excluded unless otherwise indicated.
- C. Services associated with Geotechnical, environmental, asbestos and mold abatement are specifically excluded.
- D. All Drawings, Documents, Specifications produced in any form, to include Digital Media, Provided by Engineer under the terms of this agreement are the property of Ethos Engineering, and are not to be used for any reason or purpose other than to construct the above-named project without the written consent of the Engineer.

Compensation for the professional engineering services

Compensation for the profession engineering services as a follow.

1. *Design Electrical Engineering services:* 78,000.00

PAYMENT PROVISIONS

Consultant will submit Statements for Services monthly according to the following schedule for portions of the work completed at the end of the billing month.

Project Phase	NTE
<i>Preliminary Design</i>	30%
<i>Construction Documents</i>	45%
<i>Bidding</i>	5%
<i>Construction Administration</i>	20%

COMPENSATION FOR OTHER SERVICES (Additional)

Standard Hourly Employee Rates

Employee Category	Hourly Rate
<i>Principal</i>	\$165.00/hour
<i>Senior Engineer, Project Manager</i>	\$140.00/hour
<i>Registered Engineer</i>	\$120.00/hour
<i>Graduate Engineer</i>	\$90.00/hour
<i>Field Technician-2</i>	\$90.00/hour
<i>Field Technician-1</i>	\$75.00/hour
<i>Drafting Technician-2</i>	\$75.00/hour
<i>Drafting Technician-1</i>	\$65.00/hour
<i>Clerical/Support</i>	\$45.00/hour

For other services of sub consultants for other than normal consulting services for the Project, as provided under our Standard Agreement, or identified as Other Services (printing, copies, advertising, etc.), a multiple of 1.1. times the amounts billed from the Consultant for such services.

These services are being provided through the engineering services contract between [Ethos Engineering](#) and the [Brownsville ISD](#). The general conditions of the engineering services agreement with the Owner shall extend to these services.

If a signed copy of the agreement is not returned to Ethos Engineering, then it will be mutually agreed once a PO has been issued or the first paid invoice for said project will be considered as an acceptance of our proposal, and a binding contract for the project.

We look forward to being of service to you on this project. Should you have any questions please do not hesitate to contact my office. If you are in agreement, please return a signed copy of this letter for our records, with initials in the boxes for desired services.

This Agreement entered into as of the day and year first written above.

Compensation for the professional engineering services

Compensation for the profession engineering services as a follow.

1. *Design Electrical Engineering services:* 78,000.00

PAYMENT PROVISIONS

Consultant will submit Statements for Services monthly according to the following schedule for portions of the work completed at the end of the billing month.

Project Phase	NTE
<i>Preliminary Design</i>	30%
<i>Construction Documents</i>	45%
<i>Bidding</i>	5%
<i>Construction Administration</i>	20%

COMPENSATION FOR OTHER SERVICES (Additional)

Standard Hourly Employee Rates

Employee Category	Hourly Rate
<i>Principal</i>	\$165.00/hour
<i>Senior Engineer, Project Manager</i>	\$140.00/hour
<i>Registered Engineer</i>	\$120.00/hour
<i>Graduate Engineer</i>	\$90.00/hour
<i>Field Technician-2</i>	\$90.00/hour
<i>Field Technician-1</i>	\$75.00/hour
<i>Drafting Technician-2</i>	\$75.00/hour
<i>Drafting Technician-1</i>	\$65.00/hour
<i>Clerical/Support</i>	\$45.00/hour

For other services of sub consultants for other than normal consulting services for the Project, as provided under our Standard Agreement, or identified as Other Services (printing, copies, advertising, etc.), a multiple of 1.1. times the amounts billed from the Consultant for such services.

These services are being provided through the engineering services contract between Ethos Engineering and the Brownsville ISD. The general conditions of the engineering services agreement with the Owner shall extend to these services.

If a signed copy of the agreement is not returned to Ethos Engineering, then it will be mutually agreed once a PO has been issued or the first paid invoice for said project will be considered as an acceptance of our proposal, and a binding contract for the project.

We look forward to being of service to you on this project. Should you have any questions please do not hesitate to contact my office. If you are in agreement, please return a signed copy of this letter for our records, with initials in the boxes for desired services.

This Agreement entered into as of the day and year first written above.



OWNER (Signature)
Dr. Rene Gutierrez,
BISD Superintendent

CONSULTANT (Signature)

Guillermo Quintanilla - Principal

Printed Name and Title

Printed Name and Title



Brownsville Independent School District

Agenda Category: Bids/Proposals/Purchases

Board of Education Meeting: 04/06/2021

Item Title: RFQ #20-119 Mechanical/Electrical/Plumbing
(MEP) Engineering Services - Revised

X **Action**
Information
Discussion

BACKGROUND:

On November 6, 2019, the Board of Trustees approved RFQ #20-119 Mechanical/Electrical/Plumbing Engineering Services. The term was for a one-year contract with an option to renew the contract for two additional years following satisfactory delivery of the services specified in the Request for Qualifications (RFQ). Administration is requesting approval to renew the current RFQ to expire June 30, 2021.

Amount expended for the previous 12 months \$809,407.70

FISCAL IMPLICATIONS:

Estimated usage of \$849,878.00 from Local and Categorical Funds.

RECOMMENDATION:

Recommend approval to exercise the option to renew RFQ #20-119 Mechanical/Electrical/Plumbing (MEP) Engineering Services to Ethos Engineering, Harlingen, TX, Sigma HN Engineering, McAllen, TX, and Half Associates, Inc., McAllen, TX. Services to be provided on a project by project rotational basis to expire June 30, 2021. (Annual RFQ)

Rosario Peña *Rosario Peña*
Submitted by: Purchasing Director

David Robledo *DR*
Recommended by: CFO

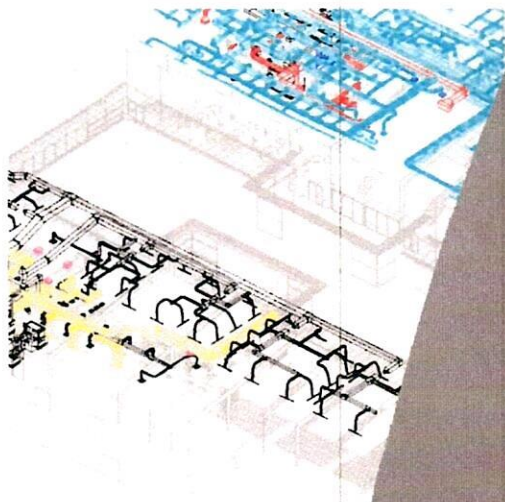
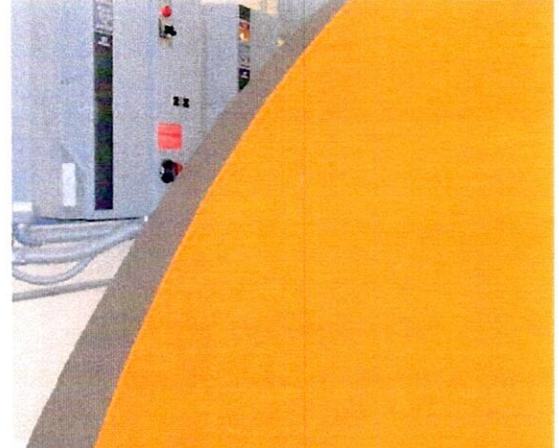
Dr. Nellie Cantu *Dr. Nellie Cantu*
Approved by: Deputy Superintendent

3/26/21

Approved for Submission to Board of Education:

René Gutiérrez
Dr. René Gutiérrez
Superintendent

When Necessary, Additional Background May Follow This.



AGREEMENT

BETWEEN OWNER
AND CONSULTANT

ethos
engineering



Brownsville ISD

2021 Lighting Upgrades

Agreement between Owner
and
Consulting Engineer

April 21, 2021

Submitted to Brownsville ISD

AGREEMENT made as of April 21, 2021.

BETWEEN the Owner:

Brownsville ISD
Brownsville Independent School District
1900 East Price Road
Brownsville, Texas 78521

And the CONSULTING ENGINEER:

Ethos Engineering, LLC
119 West Van Buren, Suite 101
Harlingen, TX 78550

ARTICLE 1 – DESCRIPTION OF SCOPE

The Consulting Engineer shall provide the owner with the following professional engineering services in connection with Lighting Upgrades to the following campuses: Burns ES, Egly ES and Perez ES:

Scope of work includes performing onsite assessments and providing recommendations replacement/upgrades. Once the recommendations are approved by the Owner, Consulting Engineer shall proceed with Preliminary Design, and Construction Documents, Bid Assistance, Construction Administration Phases – see Exhibit “A”

It is expressly understood that work identified above is to be designed and constructed as one (1) project.

ARTICLE 2 – GENERAL PROVISIONS

§ 2.1 CONSULTING ENGINEER shall perform professional services as hereinafter stated which include normal mechanical and electrical engineering services. CONSULTING ENGINEER shall provide for OWNER professional engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER’s professional engineering representative for the Project, providing professional engineering consultation and advice on electrical engineering services.

§ 2. 4. The CONSULTING ENGINEER shall be the general administrator of the professional services for the Project. All communications between the CONSULTING ENGINEER and the Owner, Contractor or other consultants for the Project shall be forwarded through the CONSULTING ENGINEER.

ARTICLE 3 – CONSULTING ENGINEER’S RESPONSIBILITIES

§ 3.1 GENERAL RESPONSIBILITIES

§ 3.1.1 The services performed by the CONSULTING ENGINEER, CONSULTING ENGINEER’s employees and CONSULTING ENGINEER’s sub consultants shall be as enumerated in Articles 4, 5 and 14.

§ 3.1.2 The CONSULTING ENGINEER shall designate a representative authorized to act on behalf of the CONSULTING ENGINEER with respect to This Part of the Project

§ 3.1.3 The CONSULTING ENGINEER shall recommend to the Owner that appropriate investigations surveys tests, analyses and reports be obtained as necessary for the proper execution of the CONSULTING ENGINEER’s services. Costs associated with these tests, analyses and reports are not part of the basic services.

§ 3.1.4 The CONSULTING ENGINEER’s services shall be coordinated with the Owner and other consultants for the Project in order to avoid unreasonable delay in the orderly and sequential progress of the CONSULTING ENGINEER’ services.

§ 3.1.5 The CONSULTING ENGINEER shall provide copies of drawings, reports, specifications and other necessary information to the Owner and other consultants for coordination and review during the course of the Project. All aspects of the Work designed by the CONSULTING ENGINEER shall be coordinated by the CONSULTING ENGINEER, and other consultants as necessary for the proper coordination of This Part of the Project. Costs associated with production, copying and delivery of drawings, reports, specifications and other documentation shall be invoiced as reimbursable expenses.

§ 3.1.6 The CONSULTING ENGINEER shall prepare budget for the Cost of the Work of the Project.

§ 3.1.7 The CONSULTING ENGINEER shall maintain the confidentiality of information specifically designed as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the CONSULTING ENGINEER from establishing a claim or defense in an adjudicatory proceeding. The CONSULTING ENGINEER shall require of the CONSULTING ENGINEER’s sub consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

§ 3.1.9 Except with the Owner knowledge and consent, the CONSULTING ENGINEER shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the CONSULTING ENGINEER’s professional judgment with respect to this Project.

§ 3.1.10 The CONSULTING ENGINEER's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The CONSULTING ENGINEER shall not be responsible for delays beyond the CONSULTING ENGINEER's control. CONSULTING ENGINEER's schedule shall be based on number of days required to complete work after receiving from OWNER all the information required by CONSULTING ENGINEER to complete each phase of the work. Modifications issued by CONSULTING ENGINEER while CONSULTING ENGINEER's work is in progress will require adjustments to the schedule.

§ 3.2 EVALUATION OF BUDGET AND COST OF WORK

§ 3.2.1 CONSULTING ENGINEER shall be responsible for developing estimates of the Cost of the Work.

§ 3.2.2 CONSULTING ENGINEER shall review estimates of the Cost of the Work prepared by others and make recommendations to adjust scope of work if necessary, to meet the Owner's budget for the project.

§ 3.2.3 CONSULTING ENGINEER shall be entitled to compensation for all work related to modifications to the Project scope, including those necessary to adjust the Cost of the Work.

ARTICLE 4 – SCOPE OF CONSULTING ENGINEER'S SERVICES

§ 4.1 PRELIMINARY DESIGN

§ 4.1.1 The CONSULTING ENGINEER shall ascertain the requirements for This Part of the Project and shall confirm such requirements to the OWNER.

§ 4.1.2 The CONSULTING ENGINEER shall review alternative systems with the OWNER, attend necessary conferences, prepare necessary analyses, drawings and other documents, be available for general consultation, and make recommendations regarding basic systems for This Part of the Project. When necessary, the CONSULTING ENGINEER shall consult with public agencies and other organizations concerning utility services and requirements.

§ 4.1.3 In consultation with OWNER and on the basis of the accepted Summary Report, determine the scope of the Project, Project Constraints, Construction Budgets, and Schedule requirements.

§ 4.1.4 Based upon the mutually agreed-upon scope of work, Engineer shall prepare Preliminary Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

§ 4.2 CONSTRUCTION DOCUMENTS

§ 4.3.1 When authorized by the OWNER, the CONSULTING ENGINEER shall prepare, from the PRELIMINARY DESIGN Documents approved by the Owner and confirmed by the OWNER, Drawings and Specifications setting forth in detail the requirements for the construction of This Part of the Project, all of which are to be approved by the Owner. The CONSULTING ENGINEER shall prepare the Drawings and Specifications in such format as the OWNER may reasonably require.

§ 4.3.2 The CONSULTING ENGINEER shall assist the Owner's responsibility for filing the documents concerning This Part of the Project required for the approval of governmental authorities having jurisdiction over the Project.

§ 4.4 BIDDING OR NEGOTIATION

§ 4.4 .1 The CONSULTING ENGINEER shall assist the Owner in obtaining and evaluating bids or negotiated proposal, and assist in awarding and preparing contracts for construction or installation.

§ 4.5 CONTRACT ADMINISTRATION SERVICES

§ 4.5.1 The CONSULTING ENGINEER's responsibility to provide the Contract Administration services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the CONSULTING ENGINEER shall be entitled to a Change in Services in accordance with Section 5.1 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.

§ 4.5.3 The CONSULTING ENGINEER shall visit the site at biweekly intervals during active construction appropriate to the stage of the Contractor's operations for This Part of the Project, to become generally familiar with and to keep the OWNER informed about the progress and quality of the portion of the Work complete for This Part of the Project, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with time Contract Documents. However, the CONSULTING ENGINEER shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work for This Part of the project. The CONSULTING ENGINEER shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work for This Part of the Project, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.5.4 The CONSULTING ENGINEER shall report to the OWNER known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTING ENGINEER shall not be

responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTING ENGINEER shall be responsible for the CONSULTING ENGINEER's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work. CONSULTING ENGINEER shall not participate in meetings with Contractor to discuss deviations from Contract Documents. Requests for attendance to such meetings shall entitle CONSULTING ENGINEER to additional compensation.

§ 4.5.5 The CONSULTING ENGINEER shall at all times have access to the Work for This Part of the Project, wherever it is in preparation or progress.

§ 4.5.6 Based on the CONSULTING ENGINEER's evaluations of the Work and of the Contractor's Applications for Payment, the CONSULTING ENGINEER shall assist the OWNER in determining the amounts due the Contractor for This Part of the Project and shall certify such amounts to the OWNER in writing. CONSULTING ENGINEER requires a minimum of three days to schedule site visit, review Application for Payment and issue opinion to OWNER.

§ 4.5.7 Certification for payment by the CONSULTING ENGINEER to the OWNER of the amounts due the Contractor shall constitute a representation to the OWNER based on the CONSULTING ENGINEER's evaluation of the Work as provided in section 4.5.3 and on the data comprising the Contractor's Application for Payment that the Work for This Part of the Project has progressed to the point indicated and that to the best of the CONSULTING ENGINEER's knowledge information and belief the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract documents prior to completion, and (4) to specific qualifications expressed by the CONSULTING ENGINEER.

§ 4.5.8 Upon written request of the OWNER, the CONSULTING ENGINEER shall furnish to the OWNER with reasonable promptness, in writing or in the form of drawings, interpretations of the Contract Documents prepared by the CONSULTING ENGINEER, if, in the opinion of the OWNER, such interpretations are necessary for the proper execution or progress of the Work.

§ 4.5.9 The CONSULTING ENGINEER shall within a reasonable time render written recommendations on claim disputes and other matters in question between the Owner and Contractor relating to the execution or progress of This Part of the Project as provided by the Contract Documents. CONSULTING ENGINEER shall be entitled to additional compensation for services under this article.

§ 4.5.10 The CONSULTING ENGINEER shall assist the OWNER in determining whether the OWNER shall reject Work for This Part of the Project which does not conform to the Contract Documents or whether additional inspection or testing is required. CONSULTING ENGINEER shall be entitled to additional compensation for services under this article.

§ 4.5.11 The CONSULTING ENGINEER shall review and approve or take other appropriate action upon the Contactor's submittals pertaining to This Part of the Project, such as Shop Drawings Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Following such appropriate action, the CONSULTING ENGINEER shall forward the Contractor's submittals to the GENERAL CONTRACTOR. The CONSULTING ENGINEER's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the CONSULTING ENGINEER's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor, as required for this Part of the Project the, Contract Documents. The CONSULTING ENGINEER's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the CONSULTING ENGINEER, of any construction means, methods techniques, sequences or procedures. The CONSULTING ENGINEER's approval of a specific item shall not indicate approval of an assembly of which the item is a component. CONSULTING ENGINEER will set aside fifteen (15) days for initial review of submittals for each discipline. CONSULTING ENGINEER will not conduct review of partial or incomplete Mechanical, Electrical or Plumbing submittals. CONSULTING ENGINEER shall set aside seven (7) days for review of revised submittals. CONSULTING ENGINEER shall be entitled to additional compensation for any submittals that need to be reviewed more than twice.

§ 4.5.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTING ENGINEER shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTING ENGINEER. The CONSULTING ENGINEER shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 4.5.13 The CONSULTING ENGINEER shall be responsible to assist in preparing Change Orders and Construction Change Directives for This Part of the Project for the

Owner's approval and execution in accordance with the Contract Documents, and may recommend to the Owner minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. CONSULTING ENGINEER shall be entitled to additional compensation for preparing Change Order and Construction Change Directives.

§ 4.5.14 The CONSULTING ENGINEER shall conduct inspections, to determine the date or dates of Substantial Completion and the date of final completion, shall review and approve, or take other appropriate action on, the Contractor's list of items to be completed or corrected, and shall forward the list to the GENERAL CONTRACTOR for final disposition. The CONSULTING ENGINEER shall receive and review from the Contractor and forwarding to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor with respect to This Part of the Project. The CONSULTING ENGINEER shall issue to the OWNER a final certification in writing with respect to final payment for this Part of the Project.

ARTICLE 5 – OTHER SERVICES

§ 5.1 CHANGE IN SERVICES

§ 5.1.1 Change in Services of the CONSULTING ENGINEER, including services required of sub consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the CONSULTING ENGINEER's control, or if the CONSULTING ENGINEER's services are affected as described in section 5.1.2. In the absence of mutual agreement in writing, the CONSULTING ENGINEER shall notify the OWNER prior to providing such services. If the CONSULTING ENGINEER deems that all or a part of such Change in Services is not required, the CONSULTING ENGINEER shall give prompt written notice to the OWNER and the CONSULTING ENGINEER shall have no obligation to provide those services Except for a change due to the fault of the CONSULTING ENGINEER, Change in Services of the CONSULTING ENGINEER shall entitle the CONSULTING ENGINEER to an adjustment in compensation pursuant to Section 13.2.2, and to any Reimbursable Expense described in Section 12.6.

§ 5.1.2 If any of the following circumstances affect the CONSULTING ENGINEER's services for the Project the CONSULTING ENGINEER shall be entitled to an appropriate adjustment in the CONSULTING ENGINEER's schedule and compensation.

1. change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service,
2. enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;

3. decisions of the Owner not rendered in a timely manner,
4. significant changes in the Project including, but not limited to size, quality, complexity, the Owner's schedule or budget, or procurement method,
5. evaluation of the Owner's or CONSULTING ENGINEER's proposals, including the preparation or revision of Instruments of Service, and provision of other services in connection with Change Orders and Construction Change Directives,
6. providing consultation concerning replacement of Work resulting from fire or other causes during construction.
7. failure of performance on the part of the Owner, the Owner's consultants or contractors;
8. evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work;
9. preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the CONSULTING ENGINEER is party thereto;
10. evaluation of substitutions proposed by the Owner or the Contractor after the award of the Contract for Construction;
11. preparation of design and documentation for alternate bids or proposal requests proposed by the Owner;
12. change in the Preliminary Project information contained in the Agreement between Owner and CONSULTING ENGINEER; or
13. Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.
14. Aspects of work entitling CONSULTING ENGINEER to additional compensation under Article 3.
15. Aspects of work entitling CONSULTING ENGINEER to additional compensation under Article 4.
16. Aspects of work not listed as CONSULTING ENGINEER's responsibility.
17. ADA/TDLR Review (plans and site)
18. Fire Protection
19. Attendance at construction meetings beyond those listed.
20. Design services due to a change in Scope of Basic Services.

21. Design of significant bid alternates requested by the Owner.
22. Should the Engineer be required to make more than two (2) inspection for Substantial Completion and/or more than two (2) inspection for Final Completion, such service shall be provided by the Engineer as a Change in Services, in accordance with the Architect-Engineer.
23. Statements of detailed probable construction costs.
24. Engineering studies of alternative systems and equipment locations.
25. Energy studies.
26. Economic analysis.
27. Commissioning including the preparation of systems acceptance specifications, pre-functional test checklist, and functional performance checklists shall be provided as an Optional service.
28. Modification to the MEP design systems due to change in building code during the design or construction phase.
29. Value engineering design services after approval of the Design Development submission

§ 5.2 PROJECT REPRESENTATION SERVICES

§ 5.2.1 If more extensive representation at the site than is described under Section 4.5.3 is required for This Part of the Project, the CONSULTING ENGINEER shall, if requested by the OWNER, provide one or more Project Representatives to assist the CONSULTING ENGINEER in carrying out such additional on-site responsibilities.

§ 5.2.2 Project Representatives shall be selected, employed and directed by the CONSULTING ENGINEER, and the CONSULTING ENGINEER shall be compensated therefore as agreed by the OWNER and CONSULTING ENGINEER. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in an exhibit to this Agreement.

§ 5.2.3 Through the presence at the site of such Project Representatives, the CONSULTING ENGINEER shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work for This Part Of the Project, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the CONSULTING ENGINEER as described elsewhere in this Agreement.

ARTICLE 6 – OWNER’S RESPONSIBILITIES

§ 6.1 The Owner shall provide available information in a timely manner regarding requirements for and limitations on This Part of the Project as not to delay the CONSULTING ENGINEER services.

§ 6.1 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONSULTING ENGINEER's services for the Project.

§ 6.2. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

§ 6.3. Assist CONSULTING ENGINEER by placing at CONSULTING ENGINEER all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

§ 6.4. Furnish to CONSULTING ENGINEER, as required for performance of CONSULTING ENGINEER Basic services, except as noted the following:

1. Data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;
2. Appropriate professional interpretations of all of the foregoing;
3. Environmental assessment and impact statements;
4. Property, boundary, easement, right-of-way, topographic and utility surveys;
5. Property descriptions;
6. Zoning, deed and other land use restriction; and
7. Other special data or consultations not covered in Section 2; all of which CONSULTING ENGINEER may use and rely upon in performing services under this Agreement.

§ 6.5. Provide engineering surveys to establish reference points for construction (except to the extent provided on Basic Engineering Services to enable Contractor(s) to proceed with the layout of the work.

§ 6.6. Arrange for access to and make all provisions for CONSULTING ENGINEER to enter upon public and private property as required for CONSULTING ENGINEER to perform services under this Agreement.

§ 6.7. Examine all studies, reports, sketches, Drawings, Specifications, Proposals and other documents presented by CONSULTING ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTING ENGINEER.

§ 6.8. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

§ 6.9. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or CONSULTING ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

§ 6.10. If OWNER designates a person to represent OWNER at the site who is not ENGINEER or ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities of ENGINEER and the Resident Project Representative (and any assistants) will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

§ 6.11. If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

§ 6.12. Furnish to CONSULTING ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER so that CONSULTING ENGINEER may make the necessary findings to support opinions of probable Total Project Costs.

§ 6.13. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.

§ 6.14. Give prompt written notice to CONSULTING ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.

§ 6.15. Furnish, or direct CONSULTING ENGINEER to provide, Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.

§ 6.16. Bear all costs incident to compliance with the requirements of this Section 6.

ARTICLE 7 – COST OF THE WORK

§ 7.1 DEFINITION

§ 7.1.1 The Cost of the Work shall be the total cost or to the extent the Project is not completed the estimated cost to the Owner of all elements of the Project designed or specified by the CONSULTING ENGINEER. The Cost of the Work for This Part of the Project shall be the total cost or estimated cost to the Owner as designed or specified by the CONSULTING ENGINEER.

§ 7.1.2 The Cost of the Work or the Cost of the Work for This Part of the Project shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or special provided for by the CONSULTING ENGINEER, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor plus a reasonable allowance for their overhead and profit. In addition a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 7.1.3 The Cost of the Work does not include the compensation of the CONSULTING ENGINEER and the CONSULTING ENGINEER's consultant the costs of the land rights-of-way and financing or other costs that are the responsibility of the CONSULTING ENGINEER as provided in Article 6 of this Agreement, or that are the responsibility of the Owner as defined in the Agreement.

ARTICLE 8 – INSTRUMENTS OF SERVICE

§ 8.1 Drawings, specifications and other documents, including those in electronic form prepared by the CONSULTING ENGINEER are Instruments of Service for use solely with respect to this Project unless otherwise provided, the CONSULTING ENGINEER shall be deemed the author and owner of the CONSULTING ENGINEER's Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

§ 8.2 Upon execution of this Agreement, the CONSULTING ENGINEER grants to the OWNER a nonexclusive 'license to reproduce the CONSULTING ENGINEER's Instruments of Service for purposes of designing, administering, using and maintaining the Project, provided that the OWNER shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Such license shall permit the OWNER to include the CONSULTING ENGINEER's Instruments of

Service in a similar nonexclusive license to the Owner in the Agreement, authorizing the Owner and the Owner's contractors to reproduce applicable portions of the CONSULTING ENGINEER's Instruments of Service solely for purposes of constructing, using and maintaining the Project. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the OWNER shall refrain from making further reproductions of the CONSULTING ENGINEER's Instruments of Service and shall return to the CONSULTING ENGINEER within seven days of termination all originals and reproductions in the OWNER's possession or control. If and upon date the CONSULTING ENGINEER is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license that permits the the Owner, to continue to use and to reproduce the CONSULTING ENGINEER's Instruments of Service and to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 8.3 Except for the licenses granted in Section 8.2, no other license or right shall be deemed granted or implied under this Agreement. The OWNER shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the CONSULTING ENGINEER. Submission or distribution of Instruments of Services to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the CONSULTING ENGINEER. Owner shall not use the CONSULTING ENGINEER's Instruments of Service for future additions or alterations to This Project or for other projects, unless the CONSULTING ENGINEER obtains the prior written agreement of the CONSULTING ENGINEER. Any unauthorized use of the Instruments of Service shall be at the OWNER's sole risk and without liability to the CONSULTING ENGINEER.

§ 8.4 Prior to the CONSULTING ENGINEER providing to the OWNER any Instruments of Service in electronic form any electronic data for incorporation into the Instruments of Service, the OWNER and CONSULTING ENGINEER shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data including any special limitations or licenses not otherwise provided in this Agreement.

§ 8.5 The CONSULTING ENGINEER shall maintain on file and make available to the OWNER design calculations for This Part of the Project, and shall furnish copies thereof to the OWNER on request.

ARTICLE 9 – DISPUTE RESOLUTION

§ 9.1 MEDIATION

§ 9.1.1 Any claim dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the CONSULTING ENGINEER's services the CONSULTING ENGINEER may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation.

§ 9.1.2 The OWNER and CONSULTING ENGINEER shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 9.1.3 The parties agree to split the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 9.2 Any claim or dispute arising of this agreement shall be adjudicated in a court of competent jurisdiction in Cameron County Texas

§ 9.2 ARBITRATION

~~§ 9.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 9.1.1.~~

~~§ 9.2.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.~~

~~§ 9.2.3 A demand for arbitration shall be made within a reasonable time after the claim; dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.~~

~~§ 9.2.4 An arbitration arising out of or related to this Agreement may be consolidated with an arbitration between the OWNER and any other person or entity if such arbitration involves common issues of fact relating to the performance by the CONSULTING ENGINEER of the CONSULTING ENGINEER's obligations under this Agreement.~~

~~§ 9.2.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may e entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 9.3 CLAIMS FOR CONSEQUENTIAL DAMAGES

The OWNER and CONSULTING ENGINEER waive consequential damages for claims, disputes or other Matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 10.

ARTICLE 10 – TERMINATION OR SUSPENSION

§ 10.2 If the OWNER fails to make payments to the CONSULTING ENGINEER in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the CONSULTING ENGINEER's option, cause for suspension of performance of services under this Agreement. If the CONSULTING ENGINEER elects to suspend services, prior suspension of services, the CONSULTING ENGINEER shall give seven days' written notice to the OWNER. In the event of a suspension of services, the CONSULTING ENGINEER shall have no liability to the OWNER for delay or damage caused because of such suspension of services. Before resuming services, the CONSULTING ENGINEER shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the CONSULTING ENGINEER's services. The CONSULTING ENGINEER's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 10.3 If the Project is suspended by the Owner for more than 30 consecutive days, the CONSULTING ENGINEER shall be compensated for services performed prior to notice of such suspension. When the project is resumed, The CONSULTING ENGINEER shall be compensated for expenses incurred in the interruption and resumption of the CONSULTING ENGINEER's services. The CONSULTING ENGINEER's fees for the remaining services and the tune schedules shall be equitably adjusted.

§ 10. 4 If the Project is suspended for more than 90 consecutive days by either party, the CONSULTING ENGINEER may terminate this Agreement by giving not less than seven days' written notice.

§ 10.5 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance

with the terms of this Agreement through no fault of the party initiating the termination.

§ 10.6 This Agreement may be terminated by the OWNER upon not less than seven days for the OWNER's convenience and without cause.

§ 10.7 In the event of termination not the fault of the CONSULTING ENGINEER, the CONSULTING ENGINEER shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 10.8.

§ 10.8 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the CONSULTING ENGINEER is not otherwise compensated, plus amount for the CONSULTING ENGINEER's anticipated profit on the value of the services not performed by the CONSULTING ENGINEER.

ARTICLE 11 – MISCELLANEOUS PROVISIONS

§ 11.1 This Agreement shall be governed by the law of the principal place of business of the OWNER, unless otherwise provided in Article 14.

§ 11.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date identified in the Agreement.

§ 11.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitation commence to run any later than the date when the services are substantially completed.

§ 11.4 To the extent damages are covered by property insurance during construction, the CONSULTING ENGINEER waive all rights against the Owner, contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction. The CONSULTING ENGINEER, as appropriate, shall require of the Owner, Contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 11.5 The CONSULTING ENGINEER, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors assigns and legal representatives of such other party with respect to all covenants of this Agreement.

§ 11.6 This Agreement represents the entire and integrated agreement for This Part of the Project between the OWNER and the CONSULTING ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both OWNER and CONSULTING ENGINEER.

§ 11.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the OWNER or CONSULTING ENGINEER.

§ 11.8 Unless otherwise provided in this Agreement the OWNER and CONSULTING ENGINEER shall have no responsibility for the discovery, presence, handling removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

ARTICLE 12 – PAYMENTS TO THE CONSULTING ENGINEER

§ 12.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the CONSULTING ENGINEER's statement of services. No deductions shall be made from the CONSULTING ENGINEER's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the CONSULTING ENGINEER has been adjudged to be liable.

§ 12.3 The CONSULTING ENGINEER shall submit invoices for services and Reimbursable Expenses in accordance with the provisions of the Agreement. The OWNER shall review such invoices and, if they are considered incorrect or untimely, the OWNER shall review the matter with the CONSULTING ENGINEER and confirm in writing to the CONSULTING ENGINEER, within ten days from receipt of the CONSULTING ENGINEER's billing, the OWNER's understanding of the disposition of the issue.

§ 12.4 If and to the extent that the time initially established in Section 13.4.1 of this Agreement is exceeded or extended through no fault of the CONSULTING ENGINEER, compensation for services tendered during the additional period of time shall be computed in the manner set forth in Section 13.2

§ 12.6 REIMBURSABLE EXPENSES

§ 12.6.1 Reimbursable Expenses are in addition to compensation for the CONSULTING ENGINEER's services and include expenses incurred by the CONSULTING ENGINEER and CONSULTING ENGINEER's employees and sub consultants directly related to the Project, as identified in the following Clauses:

1. transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
2. fees paid for securing approval of authorities having jurisdiction over the Project;
3. reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
4. expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
5. renderings, models and mock-ups requested by the Owner; and
6. expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the CONSULTING ENGINEER.
7. providing services relative to Architectural, Structural, Civil, and ADA consultants and inspections.

§ 12.6.2 Records of Reimbursable Expenses and expenses pertaining to a Change in Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the OWNER authorized representative at mutually convenient times.

§ 12.7 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of the CONSULTING ENGINEER's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans, and similar contributions.

§12.8 INSURANCE

§ 12.8.1 ~~If required by the OWNER,~~ the CONSULTING ENGINEER shall obtain insurance covering claims arising out of the performance of professional services under this Agreement and caused by errors omissions or negligent acts for which the CONSULTING ENGINEER is liable. The CONSULTING ENGINEER shall maintain this insurance in force if available after the completion of professional services under this Agreement until the expiration of the applicable statutes of limitations. In the event there is no such statute specifically applicable to design and construction of improvement to real property, this insurance, if available, shall be maintained in

force by the CONSULTING ENGINEER for a reasonable period after the date of Substantial Completion of the Project as agreed to by the CONSULTING ENGINEER.

§ 12.8.2 Unless otherwise agreed, the CONSULTING ENGINEER shall each provide insurance to protect themselves from claims under workers' compensation acts, from claims for damages because of bodily injury including personal injury, sickness, disease, or death of any employees or of any other person, from claims for damages because of injury to or destruction of property including loss of use resulting therefrom, and front damage to, or destruction of property including valuable papers and records coverage and including loss of use resulting therefrom.

§ 12.8.3 The insurance required pursuant to Sections 12.8.1 and 12.8.2 shall be in not less than the minimum limits required by law or by Section 13.5.

§ 12.8.4 The CONSULTING ENGINEER shall furnish to the OWNER certificates of insurance evidencing the insurance required by Sections 12.8.1 and 12.8.2, including appropriate evidence that each type of insurance includes appropriate coverage for this specific Project. Certificates shall contain provisions that at least 30 days' prior written notice will be given to the OWNER in the event of cancellation, reduction in or no renewal of the insurance.

ARTICLE 13 – BASIS OF COMPENSATION

The OWNER shall compensate the CONSULTING ENGINEER as follows:

§ 13.1 COMPENSATION

§ 13.1.1 For services as described in Section 4.1 through Section 4.5.14, Engineer's initial fee amounts shall be determined as follows:

See attached Exhibit "A"

§ 13.2 COMPENSATION FOR OTHER SERVICES

§ 13.2.1 For other services of the CONSULTING ENGINEER, as described in Article 5, compensation shall be computed as follows:

See attached Exhibit "A"

§ 13.2.2 For other services of sub consultants for other than normal consulting services for This Part of the Project, as provided under Section 13.2.2 or identified in Article 5 as Other Services, a multiple of 1.1 times the amounts billed to the CONSULTING ENGINEER for such services.

§ 13.3 REIMBURSABLE EXPENSES

13.3.1 All special consultants, reproduction costs, delivery costs, delivery costs, and postage will be reimbursed at cost plus ten percent. Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the A/E in the interest of the Project, as identified in the following clauses.

13.3.2 Expense of reproductions postage and handling of Drawings, Specifications and other documents required in the Bidding or Negotiation and Construction Phases.

13.3.3 Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of the amount currently carried by the Engineer (\$1M).

§ 13.4 ADDITIONAL PROVISIONS

The CONSULTING ENGINEER agree in accordance with the Terms and Conditions of this Agreement that:

§ 13.4.1 If services covered by this Agreement have not been completed within 18 months of the date thereof through no fault of the CONSULTING ENGINEER for This Part of the Project, extension of the CONSULTING ENGINEER’s service beyond that time shall be compensated on the basis of hourly rates and multiples as provided in Section 13.2.1

§ 13.4.2 The rates and multiples set forth for services shall be annually adjusted in accordance with normal salary review practices of the CONSULTING ENGINEER.

§ 13.4.3 PAYMENT PROVISIONS

CONSULTING ENGINEER shall submit Statements for Services monthly according to the following schedule for portions of the work completed at the end of the current billing month.

<i>Project Phase</i>	<i>NTE</i>
<i>Preliminary Design</i>	<i>30%</i>
<i>Construction Documents</i>	<i>45%</i>
<i>Bidding</i>	<i>5%</i>
<i>Construction Administration</i>	<i><u>25%</u></i>
<i>Total</i>	<i>100%</i>

§ 13.5 INSURANCE COVERAGES

Type of insurance	Minimum limit (\$ 0.00)
Professional Liability	\$1,000,000

ARTICLE 14 – OTHER CONDITIONS OR SERVICES

This Agreement entered into as of the day and year first written above.

 5/5/21

 OWNER (Signature)



 CONSULTANT (Signature)

Dr. Rene Gutierrez,
 BISD Superintendent

Guillermo Quintanilla - Principal

Printed Name and Title

Printed Name and Title