

**AGREEMENT BETWEEN  
THE CITY OF SAN MARCOS AND  
PROFESSIONAL FIRM FOR  
ENGINEERING SERVICES  
PURGATORY CREEK IMPROVEMENTS**

This Agreement is made as of \_\_\_\_\_, 2018 (the “**Effective Date**”), by and between:

**The Owner:**               The City of San Marcos, Texas

and

**The Professional Firm:**     Lockwood, Andrews & Newnam, Inc.

for

**The Project:** Purgatory Creek Improvements

Owner Standard Terms and Conditions: Parties have read and agree to be bound by the General Terms and Conditions found at <http://www.sanmarcostx.gov/DocumentCenter/Home/View/6608>.

**Further;**

The Owner and the Professional Firm agree as follows:

**ARTICLE 1**  
**PROFESSIONAL FIRM’S SERVICES**

Professional Firm agrees to perform the services specifically described in **Exhibit 1** and all other professional services reasonably inferable from **Exhibit 1** and necessary for complete performance of Professional Firm’s obligations under this Agreement (collectively, “**Professional Firm’s Services**”). To the extent of any conflict between the terms in **Exhibit 1** and this Agreement, the terms of this Agreement shall prevail.

**ARTICLE 2**  
**PROFESSIONAL FIRM’S RESPONSIBILITIES**

Professional Firm agrees to use Professional Firm's best efforts, skill, judgment, and abilities so as to perform Professional Firm's Services in an expeditious and timely manner consistent with professional standards of care and the orderly progress of the Project. Professional Firm shall at all times provide sufficient personnel to accomplish Professional Firm's Services in a timely manner. Professional Firm shall manage its services, administer the Project and coordinate other professional services as necessary for the complete performance of Professional Firm’s obligations under this Agreement.

Professional Firm agrees to perform Professional Firm's Services in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project.

Professional Firm's Services shall be reasonably accurate and free from material errors or omissions. Professional Firm shall promptly correct any known or discovered error, omission, or other defect in the plans, drawings, specifications, or other services provided by Professional Firm without any additional cost or expense to Owner.

Professional Firm shall designate a representative primarily responsible for Professional Firm's Services under this Agreement. The designated representative shall act on behalf of Professional Firm with respect to all phases of Professional Firm's Services and shall be available as required for the benefit of the Project and Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.

The Professional Firm shall carry such professional liability and errors and omissions insurance, covering the services provided under this Agreement, with a minimum limit of \$1,000,000 each claim and \$1,000,000 aggregate. The fees for such insurance will be at the expense of the Professional Firm. The Professional Firm shall deliver a Certificate of Insurance indicating the expiration date, and existence, of the Professional Firm's professional liability insurance before commencement or continuation of performance of the services under this Agreement.

### **ARTICLE 3** **THE OWNER'S RESPONSIBILITIES**

The Owner shall provide the Professional Firm with a full description of the requirements of the Project.

The Owner shall furnish surveys, geotechnical reports or other special investigations of the Project site as requested by the Professional Firm and as reasonably necessary for the completion of Professional Firm's Services. The Owner shall furnish structural, mechanical, chemical and other laboratory tests as reasonably required.

The Owner will review the Professional Firm's drawings, specifications and other documents of service produced by Professional Firm's in the performance of its obligations under this Agreement (collectively the "**Design Documents**") as required. Owner will notify Professional Firm of any design fault or defect in Professional Firm's Services or Design Documents of which Owner becomes aware.

The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Professional Firm's Services.

The Owner designates John Espinoza, PE, CFM, as its representatives authorized to act in the Owner's behalf with respect to the Project. The contact information for Owner's representative is listed below:

Name: John Espinoza, PE, CFM  
Title: Project Engineer  
630 East Hopkins  
San Marcos, Texas 78666  
Ph. 512-393-8241  
E-mail: jespinoza@sanmarcostx.gov

#### **ARTICLE 4** **OWNERSHIP AND USE OF DOCUMENTS**

The Design Documents prepared by Professional Firm as instruments of service are and shall remain the property of the Professional Firm whether the Project for which they are created is executed or not. However, the Owner shall be permitted to retain copies, including reproducible copies, of the Design Documents for information and reference in connection with the Owner's use and occupancy of the Project. In addition, Owner shall have an irrevocable, paid-up, perpetual license and right, which shall survive the termination of this Agreement, to use the Design Documents and the ideas and designs contained in them for any purpose, with or without participation of the Professional Firm.

#### **ARTICLE 5** **DISPUTE RESOLUTION**

If a dispute arises out of or relates to the Agreement or these Terms and Conditions, or a breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the Owner and the Professional Firm agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The Owner and Professional Firm will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**ARTICLE 6**  
**PROJECT TERMINATION OR SUSPENSION**

This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured in the seven day notice period. This Agreement may be terminated by the Owner for any reason upon 15 days written notice to Professional Firm.

In the event of termination through no fault of the Professional Firm, Professional Firm shall be equitably compensated for all Professional Firm Services performed and Reimbursable Expenses incurred prior to termination in accordance with this Agreement.

**ARTICLE 7**  
**MISCELLANEOUS PROVISIONS**

Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between Professional Firm and Owner and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

Assignment. This Agreement is a personal service contract for the services of Professional Firm, and Professional Firm's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

Applicable Law. The Agreement will be governed by and construed under the laws of the State of Texas. Any controversy, claim or dispute arising out of or relating to this Agreement will be brought in a state court of competent jurisdiction in Hays County or, if in federal court, in the Federal Western District of Texas, Austin Division for trial.

Waiver. A delay or omission by either party in exercising any right or power under the Agreement shall not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement shall not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement.

Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination shall not affect any other provision of this Agreement which shall be interpreted as if the invalid or unenforceable provision had not been included.

Independent Contractor. Professional Firm recognizes that Professional Firm is engaged as an independent contractor and acknowledges that Owner shall have no responsibility to provide Professional Firm or its employees with any benefits normally associated with employee status. Professional Firm will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner.

Family Code Child Support Certification. If State funds are being used in the procurement of the services described in Exhibit A, pursuant to Section 231.006, Texas Family Code, Professional Firm

certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Prohibition on Contracts with Companies Boycotting Israel. Pursuant to Chapter 2270 and 808, Texas Government Code, Professional Firm certifies that is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 2252 Compliance. Section 2252 of the Texas Government Code restricts the Owner from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. Professional Firm hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Proprietary Interests. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Professional Firm in the performance of services for Owner, which is not generally known to the public, shall be confidential and Professional Firm shall not disclose any such confidential information, unless required by law. Professional Firm shall not announce or advertise its engagement by Owner in connection with the Project or publicly release any information regarding the Project without the prior written approval of Owner.

Termination Due to Loss of Funding. If Owner funds are utilized to fund any part of this Agreement, the Professional Firm understands that those Owner funds for the payment for work performed by the Professional Firm under this Agreement have been provided through the Owner 's budget approved by Owner Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The Owner cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. The Professional Firm acknowledges and agrees that it will have no recourse against the Owner for its failure to appropriate funds for the purposes of this Agreement in any fiscal year other than the year in which this Agreement was executed. The fiscal year for the Owner extends from October 1st of each calendar year to September 30th of the following calendar year.

Ethics Matters; No Financial Interest. Professional Firm and its employees, agents, representatives, and subcontractors have read and understand Owner's Ethics Policy available at <http://www.sanmarcostx.gov/380/Ethics>, and applicable state ethics laws and rules. Neither Professional Firm nor its employees, agents, representatives or subcontractors will assist or cause Owner employees to violate Owner's Conflicts of Interest Policy, provisions described by Owner's Standards of Conduct Guide, or applicable state ethics laws or rules. Professional Firm represents and warrants that no member of the City Council of San Marcos has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

Subcontracting. The Professional Firm will not subcontract any work under this Agreement without prior written approval from the Owner. In the event approval is given by the Owner, the Professional Firm will specify any work or services, the appropriate insurance requirements and miscellaneous provisions by separate written agreement with the subcontractor.

Mutual Waiver of Consequential Damages. In no event shall either party be liable, whether in contract or tort or otherwise, to the other party for loss of profits, delay damages, or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

Texas Tax Code 171.1011(g)(3). Notwithstanding anything in this agreement and for the purpose of complying with Texas Tax Code 171.1011(g)(3), the City agrees to the following:

- (1) Prior to commencing performance under this Agreement, Professional Firm will provide the City with a list of proposed subconsultants, subcontractors, or agents to be used in Professional Firm's services under this Agreement. The City shall have the right to accept or reject the use of any subconsultant, subcontractor, or agent on the Professional Firm's list. Such acceptance or rejection shall be given within a commercially reasonable time from the date the Professional Firm delivers it. and;
- (2) Any payment made by the Owner to Professional Firm that includes fees payable to a subconsultant, subcontractor or agent of Professional Firm under this Agreement shall constitute an acceptance by the Owner of Professional Firm's use of any such subconsultant, subcontractor or agent of Professional Firm under this Agreement.

Limitation of Liability. In recognition of the relative risks and benefits of the Agreement to both the Owner and Professional Firm, to the fullest extent permitted under applicable law, Owner agrees that Professional Firm's total liability for any and all claims, losses, costs, damages, or expenses including, without limitation, reasonable attorneys' fees and costs, of any nature whatsoever, shall not exceed the Professional Firm's total fee under the Agreement. It is intended that this limitation of liability shall apply to any and all liability or cause of action, whether in contract, warranty, tort, or otherwise, however alleged or arising.

Force Majeure. Professional Firm shall have no liability for any delay caused by an event of force majeure, the Owner or any of its consultant's or contractors, or circumstances outside of its reasonable control.

Termination for Convenience. The Owner may terminate the Agreement at any time upon 30-calendar days notice in writing to Professional Firm. Upon receipt of such notice, Professional Firm shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Agreement. As soon as practicable after the receipt of notice of termination, Professional Firm shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under the Agreement to date of termination. The Owner agrees to compensate the Professional Firm for that portion of the prescribed charges for which the services were actually performed or items delivered under the Agreement and not previously paid.

Notices. All notices referenced in this Agreement shall be provided in writing. Notices shall be deemed effective when delivered by hand delivery or on the third business day after the notice is deposited in the U.S. Mail. Notices shall be sent to the following addresses:

If to Owner: The City of San Marcos

630 East Hopkins  
San Marcos, Texas 78666  
Attn: Engineering & Capital Improvements  
jespinoza@sanmarcostx.gov

With Copies to: The City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666  
Attn: City Attorney's Office  
LegalInfo@sanmarcostx.gov

If to Professional Firm [Brian K. Reis, PE, CFM]  
[Lockwood, Andrews, & Newnam, Inc.]  
[407 S. Stagecoach Trail, Suite 207]  
[San Marcos, TX 78666]  
[BKReis@lan-inc.com]

The parties may designate alternative persons or addresses for receipt of notices by written notice.

Changes in Service. If a Party requires a change or amendment to this Agreement or its Exhibits, the Parties agree to use the Authorization on Change in Services Form in **Exhibit 2** to do so. The Authorization on Change in Services Form must be agreed to and signed by both Parties before any change to this Agreement is effective.

## **ARTICLE 8** **REIMBURSABLE EXPENSES**

Reimbursable Expenses are in addition to Compensation for Professional Firm's Services and include actual and reasonable expenses incurred by the Professional Firm, that are (i) outside the services listed in **Exhibit 1**; and (ii) solely and directly in connection with the performance of Professional Firm's Services. Such Reimbursable Expenses must be approved in writing by the Owner and may include the following:

Expense of transportation (coach class air travel only) and living expenses in connection with out-of-state travel as directed and approved in advance by the Owner. Transportation and living expenses incurred within the State of Texas are not reimbursable unless expressly approved by the Owner in advance.

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

Professional models and renderings if requested by the Owner.

Reproductions, printing, binding, collating and handling of reports, and drawings and specifications or other project-related work product, other than that used solely in-house for Professional Firm.

Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project.

Expense of any additional insurance coverage or limits, excluding professional liability and errors and omissions insurance, required under this Agreement or requested by the Owner that is in excess of that normally carried by the Professional Firm.

**ARTICLE 9**  
**ADDITIONAL SERVICES**

Additional Services are services not included in the Professional Firm's Services and not reasonably inferable from Professional Firm's Services. Additional Services shall be provided only if authorized or confirmed in writing by the Owner. Prior to commencing any Additional Service, Professional Firm shall prepare for acceptance by the Owner an Additional Services Proposal detailing the scope of the Additional Services and the proposed fee for those services. Professional Firm shall proceed to perform Additional Services only after written acceptance of the Additional Services Proposal by Owner.

Upon acceptance by Owner, each Additional Services Proposal and the services performed by Professional Firm pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement.

**ARTICLE 10**  
**PAYMENTS TO PROFESSIONAL FIRM**

Professional Firm shall present monthly Applications for Payment to the Owner detailing the Professional Firm's Services and approved Additional Services performed and the approved Reimbursable Expenses incurred for the Project in the previous month. With each application for payment, Professional Firm shall submit payroll information, receipts, invoices and any other evidence of payment which Owner or its designated representatives shall deem necessary to support the amount requested.

Owner shall promptly review the Application for Payment and notify Professional Firm whether the Application is approved or disapproved, in whole or in part. Owner shall promptly pay Professional Firm for all approved services and expenses. For purposes of Texas Government Code § 2251.021(a)(2), the date performance of services is completed is the date when the Owner's representative approves the Application for Payment.

Owner shall have the right to withhold from payments due Professional Firm such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Professional Firm or failure of Professional Firm to perform its obligations under this Agreement.

**ARTICLE 11**  
**PROFESSIONAL FIRM’S ACCOUNTING RECORDS**

Records of Professional Firm costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for three years after final Payment or abandonment of the Project, unless Owner otherwise instructs Professional Firm in writing. Professional Firm’s records shall be kept on the basis of generally accepted accounting principles.

**ARTICLE 12**  
**INSURANCE**

For services performed on Owner's premises, Professional Firm shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement.

Worker's Compensation	Statutory Limits
Employer's Liability	\$1,000,000 each occurrence
	\$1,000,000 aggregate
Comprehensive General Liability	\$1,000,000 each occurrence
	\$1,000,000 aggregate
Comprehensive Auto Liability	\$1,000,000 each person
Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
Professional Liability	\$1,000,000

Professional Firm shall include the Owner as an additional insured on the General Liability policy, and the Worker’s Compensation policy shall include a waiver of subrogation in favor of the Owner.

Required insurance shall not be cancelable without thirty (30) days’ prior written notice to Owner.

Upon request Professional Firm shall furnish complete sets of its insurance policies to Owner for review. If additional insurance or changes to this article are required, they shall be explicitly laid out in **Exhibit 1**.

**ARTICLE 13**  
**INDEMNITY**

Professional Firm shall hold Owner, The City of San Marcos, and its City Council, officers, agents and employees harmless and free from any loss, damage or expense arising out of any occurrence relating to this Agreement or its performance and shall indemnify Owner, and its City Council, officers, agents and employees, customers, agents, successors and assigns against any damage or claim of any type arising to the extent caused by the negligent or intentional acts or omission of Professional Firm, its employees, agents and/or assigns.

**ARTICLE 14**  
**PROFESSIONAL FIRM'S COMPENSATION**

The Professional Firm's compensation for Professional Firm's Services shall be as follows:

**Service Fees:** The maximum fee for Professional Firm's Services shall not exceed Four hundred sixty-seven thousand four hundred forty and 0/100 dollars (\$467,440.00).

**Reimbursable Expenses:** For Reimbursable Expenses approved by the Owner (ref. Article 8 and **Exhibit 3**), Professional Firm shall be compensated for the actual expense incurred by Professional Firm. Notwithstanding the foregoing, Owner's payment to Professional Firm for Reimbursable Expenses will not exceed a maximum of amount agreed upon in this Agreement and Exhibits without the prior written approval of the Owner.

**Additional Services:** The Professional Firm's Compensation for any approved Additional Services shall be as described in the Additional Services Proposal accepted by the Owner.

The Owner and Professional Firm have entered into this Agreement as of the Effective Date.

**OWNER:**

**PROFESSIONAL FIRM:**

**THE CITY OF SAN MARCOS**

**LOCKWOOD, ANDREWS, & NEWNAM, INC**

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: \_\_\_\_\_

Name: Brian K. Reis \_\_\_\_\_

Title: City Manager \_\_\_\_\_

Title: Manager \_\_\_\_\_

Date: \_\_\_\_\_

Date: 04/27/2018 \_\_\_\_\_

**Exhibits:**

**EXHIBIT 1 – Scope of Services and Deliverables**

**EXHIBIT 2 – Authorization of Change in Service Form**

**EXHIBIT 3 – Detailed Fee Schedule**

**EXHIBIT 4 – Project Schedule**

**EXHIBIT 5 – Other Language as Required by Federal, State, or Local Laws**

**EXHIBIT 1**  
**SCOPE OF SERVICES AND DELIVERABLES**

EXHIBIT 1  
CITY OF SAN MARCOS  
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### **Project Understanding**

The work to be performed by Lockwood Andrews & Newnam, Inc. (LAN or the Consultant) under this contract will consist of providing Preliminary Engineering Services for the Purgatory Creek Improvements project. The work consists of the development of a preliminary engineering report (PER) for the Purgatory Creek Improvement project. Development of design documents (60%, 90%, 99% and 100%), bid phase services, construction phase services and record drawings will be authorized under a separate authorization.

The purpose of this project is to develop preliminary designs that improve existing flooding conditions for approximately 6,100 linear feet along Purgatory Creek from South Mitchell Avenue to the San Marcos River (see Attachment A.1). PER results will provide conceptual options to reduce the water surface elevations and improve water quality and current erosion and sedimentation issues to support outside funding requirements. The limits of the study extend from NRCS Dam No. 5 to the San Marcos River; however, these improvements are part of the City's Capital Improvement Project # 679 and #477. Other adjacent drainage projects will be evaluated for appropriateness to be included with this creek improvement project or as a separate project. The Purgatory Creek Improvement project also consists of the following improvements:

1. Drainage improvements described in the City of San Marcos Drainage Master Plan for the following Purgatory Creek project options. (These improvements are part of the City's Capital Improvement Project # 679)
  - a. Drainage Master Plan Project # 6 – Modification to the Jackman Street low water crossing over Purgatory Creek. Possible modifications could include removal of culvert grates and creek improvements near the low water crossing. This would address flooding starting during the 2 year event due to grade restriction near D/S RR crossing.
  - b. Drainage Master Plan Project #13 – Modification to Children's Park low water crossing over Purgatory Creek (Comal Street). Possible modification could include installation of culvert to improve level of service and creek stabilization to improve water quality.
  - c. Drainage Master Plan Project #14 – Bridge upgrade at the South LBJ crossing and creek improvements. These improvements would address erosion downstream of Purgatory Creek crossing at South LBJ Drive; damage to the retaining wall next to the wing wall on the upstream face, and crossing being flooded during the 2-year storm event.
  - d. Drainage Master Plan Project # 15 - Curb cuts along Mitchell Avenue and creek improvements due to the area being flat, large drainage area and lack of storm drain infrastructure. In addition, stabilize scour occurring on the downstream side of the crossing.
  - e. Drainage Master Plan Project #25 – This project is located near the 300 block of S LBJ Drive and Cheatham Street. Possible options include extending the storm drain pipe along S. LBJ Drive, constructing a drainage channel along railroad tracks, and or constructing a culvert under the railroad. These improvements would address flooding along the area since the local storm drain system has no outfall.
2. In addition to the Drainage Master Plan Purgatory Creek projects, the following drainage improvements would also be considered as part of this project. The design engineer will develop a recommendation regarding if these projects would be beneficial to be included as part of the Purgatory Creek Improvements project. These improvements are part of the City's Capital Improvement Project # 477.

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- a. Drainage Master Plan Project #19 – Storm drain pipe, curb inlets and channel improvements along the 100 block of Edward Gary to address flooding on the roadway and adjacent properties.
- b. Drainage Master Plan Project #21 – Culvert repair and channel improvements for the area located north of the railroad between S. Guadalupe Street and South LBJ.
3. Purgatory Creek improvement concepts for the project area identified in the San Marcos Comprehensive Watershed Master Plan which include:
  - a. Bridge/culvert modifications or replacements at: Mitchell Street, Jackman Street, Guadalupe Street, LBJ Street, CM Allen Parkway and Comal Street.
  - b. Channel improvements that include: top width of 160 feet to 200 feet, bottom width approximately 100 feet to 140 feet, pilot channel for low flows and 4:1 (horizontal to vertical) side slopes.
4. The following improvements may also be required:
  - a. Wastewater Master Plan Project # 4 – Replace the existing 12” wastewater main along Jackman Street from Valley Street to Gravel Street, 12” wastewater main along Gravel Street from Jackman Street to Patton Street and along Patton Street the railroad. The downstream segment (south) has already been designed and constructed.
  - b. Mill and overlay of street pavement impacted by the proposed improvements.
  - c. Sidewalk improvements as identified in the City’s Sidewalk Plan including new sidewalks along S. Mitchell Avenue and Gravel Street.

**Basic Scope of Services**

1. Project Management and QA/QC: This task consists of effort associated with project administration, coordination with City staff, coordination and supervision of the project team, and quality management so that project milestones and deliverables meet schedule and budget constraints.
2. Meetings
  - a. Project Meetings: Eight (8) project meetings have been budgeted for the PER Phase.
  - b. Public Meetings: One (1) public meeting is budgeted in the PER phase which includes preparing exhibits and attendance.
3. CDBG-DR Infrastructure Feasibility Support: LAN will provide support to the City including ranking of this project and the prioritization matrix methodology from the Feasibility Study dated September 2017 by AECOM.
4. Tasks
  - a. Property Ownership Map: Conduct research for the area along Purgatory Creek from the confluence with the San Marcos River to South Mitchell Avenue to determine property ownership. Research will be conducted using data from the Hays County Appraisal District and summarized for presentation on a property ownership map.
  - b. Utility Coordination:
    - i. Conduct utility coordination including contracting area utility providers via email to request utility records and information regarding the planned project.

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- ii. The design engineer will identify potential conflicts between existing utilities and proposed improvements. Findings will be summarized in a utility conflict matrix.
  - c. Hydraulic Analysis:
    - i. Review of Purgatory Creek hydraulic model currently being developed for the Comprehensive Watershed Master Plan.
    - ii. Evaluate existing storm drainage systems, culverts and channels to determine whether sufficient capacity exists to collect and convey flows during the 25-year storm event within this reach of Purgatory Creek.
    - iii. Prepare 2D analysis (Infoworks 2D or HEC-RAS 2D) as appropriate to reflect conditions at and near the confluence of Purgatory Creek, the Purgatory diversion and Willow Springs Creek to reflect flow characteristics during project analysis storm events.
    - iv. Determine proposed project improvements impacts to the Purgatory Creek flooding conditions including the 25- and 100-year storm events considered to be effective by the City and FEMA.
    - v. Provide hydraulic models and calculations to support proposed improvements.
  - d. Permitting:
    - i. Determine if permits and/or reviews may be required from other agencies such as Federal Emergency Management Agency (FEMA), US Environmental Protection Agency (EPA), US Army Corps of Engineers, etc. (see also Attachment A.2, RPS).
5. Deliverables:
- a. Monthly Status Report: LAN will provide a monthly status report, including a brief summary of work completed as well as a status plan set.
  - b. Preliminary Engineering Report (PER): LAN will provide two (2) hard copies and one (1) PDF electronic copy of a concise report summarizing the following:
    - i. An evaluation of previous recommended Drainage Master Plan, Wastewater Master Plan and Comprehensive Watershed Master Plan improvements and confirm previous recommendations are still viable for this project. This evaluation could also identify other improvements not previously recommended. Proposed drainage improvements should consider criteria as defined in the Stormwater Technical Manual and the updated Land Development Code including designs to mitigate their impact to water quality through use of approved controlled strategies to control erosion, sediment, naturalize contaminates and despoite energy, whenever practical.
    - ii. Schematics of proposed improvements including drainage, wastewater, streets, sidewalks and other recommended improvements.

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- iii. Location of existing utilities including water, wastewater, storm water, gas, electric and communications.
- iv. Hydraulic calculations of proposed improvements including the 100-year floodplain boundary.
- v. Environmental and permitting considerations.
- vi. Existing and proposed easement and right-of-way requirements (temporary and permanent)
- vii. Erosion and sedimentation controls
- viii. Engineer's Opinion of Probable Construction Costs (OPCC)
- ix. Utility conflict matrix

**Schedule**

The following project milestones are estimated and may require modification pending preliminary engineering results and construction timeframe constraints:

- Preliminary Engineering Report Submittal (240 days)

The estimated timeframes identified do not include time for City review of submittals.

**City Responsibilities**

1. The City will contact Union Pacific Railroad and coordinate any improvements that may impact their facilities.
2. The City will provide to LAN all data in the City's possession relating to LAN's services on the Project. LAN will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the City. This includes copies of the following:
  - a. Copies of sections from the City of San Marcos Drainage and Wastewater Master Plans pertinent to this project.
  - b. Copy of the ongoing San Marcos Comprehensive Watershed Master Plan report including hydraulic models.
  - c. Plan Review Check List.
  - d. Purgatory Creek hydraulic models.
3. The City will give prompt notice to LAN whenever the City observes or becomes aware of any development that affects the scope or timing of LAN's services.
4. The City will examine information submitted by LAN and render in writing or otherwise provide comments and decisions in a timely manner.
5. The City will obtain all necessary right-of-entries from required landowners.

EXHIBIT 1  
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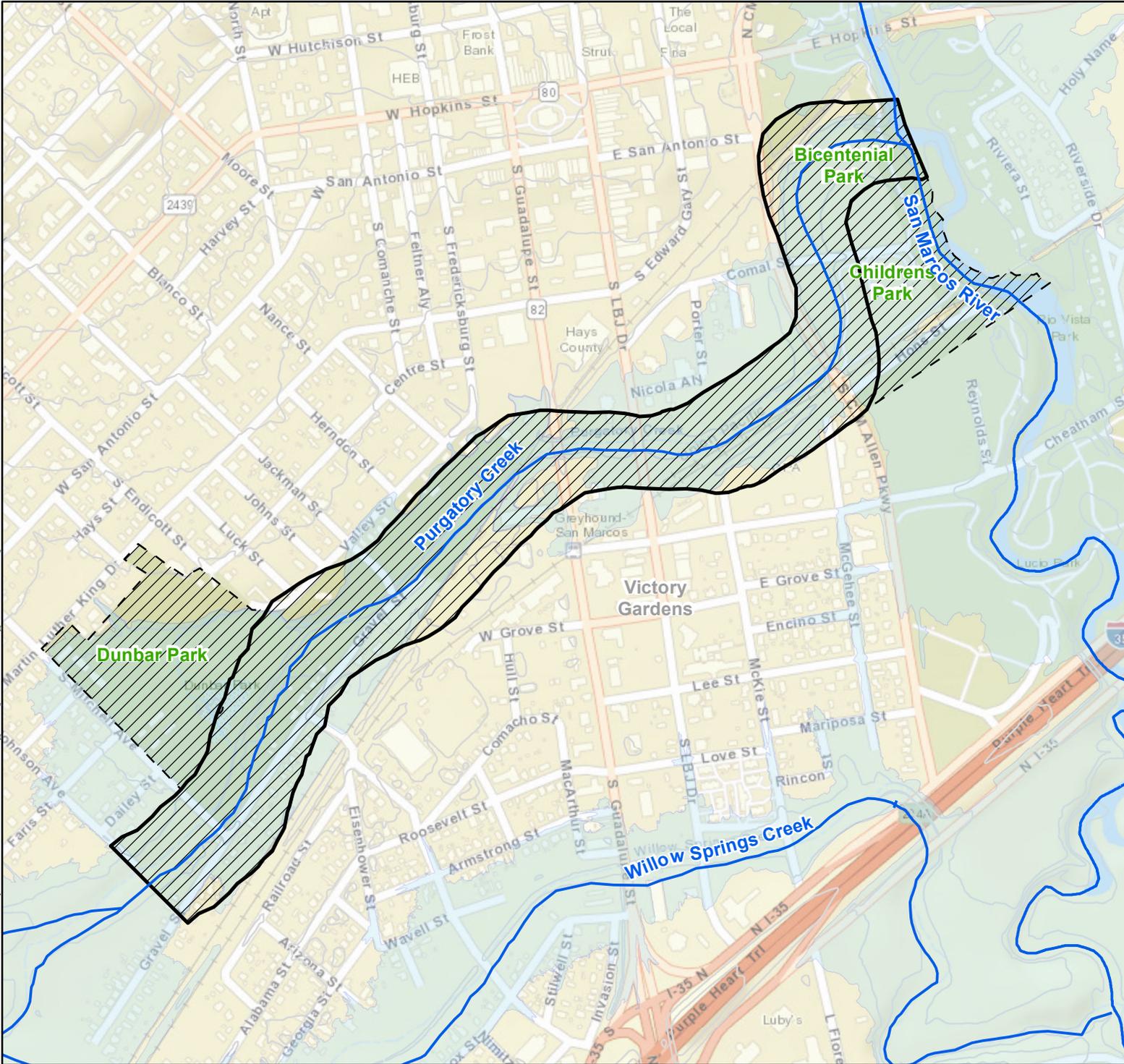
6. The City will provide Title Reports for properties with proposed easements.
7. The City will obtain all permanent, access, and temporary construction easements, including services such as appraisal of properties, negotiations with the property owners, and actual purchase of the easements.

**Additional Services**

Additional Services to be performed, if authorized in writing by the City, but which are not included in the above-described Basic and Supplemental Scope of Services, and once a mutually agreed upon fee is negotiated are as follows:

1. Performing topographic and tree surveys.
2. Performing Geotechnical Investigation or Subsurface Utility Engineering.
3. Performing Environmental Investigation or Environmental permit preparation and submittal.
4. Performing title searches for easement or joint-use agreement preparation.
5. Preparation of additional easement/ boundary exhibits beyond the number identified in the Scope of Services.
6. Acting as an agent of the City in the acquisition of permanent or temporary easements.
7. Preparation of platting documents and/or real property survey for site acquisition.
8. Accompanying the City when meeting with the TCEQ, U.S. Environmental Protection Agency, or other regulatory agencies during the course of the Project, beyond those meetings identified above.
9. Preparing applications and supporting documents that may be required to request a letter of map revision from FEMA.
10. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the City.
11. Providing professional services associated with the discovery of any hazardous waste or materials in the project site.

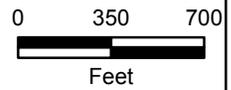
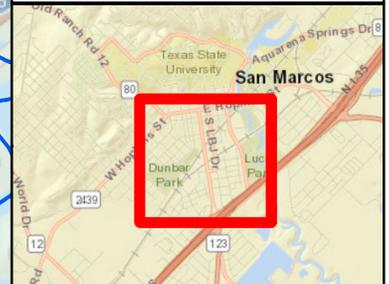
File Location - N:\GIS-Proposals\San\_Marcos\PurgatoryCreek\PurgCreekStudyArea.mxd



### PURGATORY CREEK EXHIBIT 1-A: PROJECT LOCATION MAP

#### LEGEND

- PROJECT AREA
- CREEK CENTERLINES
- 10ft CONTOURS 2009
- EXISTING 100YR FLOODPLAIN



Lockwood, Andrews & Newnam Inc. makes no representations or warranties regarding accuracy or completeness of the information depicted on this map or the data from which it was produced. This map is NOT suitable for survey purposes and does not purport to depict or establish boundaries between land owners or locations of utility infrastructure where survey data is available and field locations have been established.



4801 Southwest Parkway, Parkway 2, Suite 150, Austin, Texas 78735  
T 512 326 5659 F 512 326 5723 W rpsgroup.com

March 30, 2018

Lockwood, Andrews & Newnam, Inc.  
8911 N. Capital of Texas Hwy., Bldg. 2, Suite 2300  
Austin, TX 78759

Re: Purgatory Creek Improvements – Preliminary Engineering Report  
City of San Marcos  
Proposal for Professional Services

Dear Sirs:

RPS appreciates the opportunity to submit the following proposal to Lockwood, Andrews, and Newnam, Inc. (LAN) for professional services in support of their the Purgatory Creek Improvement Project with the City of San Marcos (Client). The City has proposed to improve existing flooding conditions for approximately 6,100 linear feet along Purgatory Creek from South Mitchell Avenue to the San Marcos River within the City of San Marcos. The proposed project will impact the FEMA floodplain/Special Flood Hazard Zone and involves work within Waters of the US, Waters of the State. This scope of services includes HEC-RAS modeling support and technical review; and environmental evaluation and permit assessment to mitigate adverse impacts as may be caused by the project as defined by FEMA, USACE, USFWS, and the TCEQ.

For this project, RPS proposes Thomas W. Mountz, PE, D.WRE, CFM as Project Manager. Mr. Mountz has more than 45 years' experience on flooding and drainage projects. He will be the primary point of contact and will manage all work and deliverables required to complete this scope of services on time and within budget.

This proposal includes a scope of services, general understanding of the work, estimated fees, and schedule. The specific tasks to complete this work are further described in the following scope of services.

## **SCOPE OF SERVICES**

### **Task I Floodplain Analysis and Review**

RPS will assist LAN with hydraulic modeling and technical review of existing and proposed HEC-RAS models developed by RPS as part of the San Marcos Stormwater master Plan for the Preliminary Engineering Report (PER) phase of the project. RPS evaluate models for design alternatives providing technical guidance and QAQC Review. RPS will study the impacts from the proposed site and floodplain improvements and a maximum of two (2) design alternatives, as needed.

RPS will coordinate with LAN on the selection of the proposed alternatives and review the Draft and Final Preliminary Engineering Report submissions. Task work products include technical guidance and QAQC of:

- Hydraulic modeling; and
- PER

This scope does not include preparation of construction plans or specifications for proposed alternative site improvement measures within the regulatory flood zones. Should the Client desire detailed plans, an Additional Services request can be developed and submitted upon request.

## Task 2 PER Environmental Evaluation

RPS will meet with LAN and the Client evaluate specific courses of action with regard to performing environmental evaluations of the project site in preparation for the permitting of the proposed channel and bridge construction project. The findings of this analysis will be provided in a stand-alone report to be included as an appendix to the PER submittal to the City of San Marcos.

### 2.1 Data Collection

RPS will perform a site visit to the Purgatory Creek Improvement project reach in San Marcos to investigate existing and adjacent conditions. LAN will provide copies of proposed channel design and project limits proposed to local and federal agencies, as appropriate, upstream and downstream of the reach. RPS will obtain from LAN and/or other resources the most recent digital data files for LiDAR aerial topography and land use, effective FEMA floodplain models, and other current development and floodplain information as is available. **RPS will review the provided data for completeness regarding the proposed flood study.** Should additional information be required, it will be requested in writing from LAN and reviewed for completeness when received.

Based on the conceptual design prepared by RPS, it is believed that the project will result in impacts to wetlands and other special aquatic sites. Section 404(b)(1) Guidelines requires that a United States Corps of Engineers (USACE) permit cannot be issued if a practicable alternative exists that would have less adverse impact on the aquatic ecosystem (known as the Least Environmentally Damaging Practicable Alternative). The reach is 6100 linear feet, and it is preliminarily proposed that channel improvements be made that include modification of the channel to a top width of 160 feet to 200 feet, bottom width approximately 100 feet to 140 feet, pilot channel for low flows and 4:1 (horizontal to vertical) side slope, and bridge/culvert replacements at Mitchell Street, Jackman Street, Guadalupe Street, LBJ Street, CM Allen Parkway, and Comal Street. This activity will result in the need to coordinate with the USACE, and ultimately to apply for and secure an Individual Permit (IP) before any work is done. As such, a preliminary data collection design, and all QA/QC data requirements will need to be met for not only Section 404 IP submittal, but also evaluation of preliminary designs as Least Environmentally Damaging Practicable Alternatives. **RPS therefore suggests a preapplication consultation with the USACE be scheduled before collection of data.** In the PER phase to evaluate possible alternative drainage plans in relation to Section 404(b)(1), existing stream drainage banks and centerlines will be needed to be geolocated, **all sensitive features will need to be identified and geolocated, and wetlands and other special aquatic sites will need to be delineated.** This data will allow the **estimation of impacts** due to channel modification, bridge/culvert replacement, and all drainage master plan improvements under #679 (#6, #13, #14, #15, and #25), under #477 (#19, and #21), and possible relocation of a wastewater main (waste water master plan #4). This task does not include actual filing and securing the issuance of a Section 404 permit, but is the collection of the baseline data needed for the Client and the USACE to assess improvement designs under Section 404(b)(1). Should additional meetings be required it will be requested as Additional Services with prior authorization.

### 2.2 Biologic Assessment

The proposed project is also a reach of Purgatory Creek identified as potentially involving up to 20 threatened, endangered, or candidate species (surface and sub-surface), and the reach contains 3 critical habitats. A Biological Assessment is required for projects that are major Federal actions as defined in the National

Environmental Policy Act (42 U.S.C. 4332(2) (c)). This project would be a federally permitted IP activity under the USACE Section 404, and as such the USACE is required to consult with the United States Fish and Wildlife Service (USFWS) pursuant to 50 CFR 402. It is unlikely that the USACE will determine will not jeopardize any listed species or result in the destruction or adverse modification of any designated critical habitat state without concurrence from USFWS. Therefore consultation with the USFWS on a determination of jeopardy or adverse modification should be undertaken in this PER stage. This will allow solutions to be worked out prior to the structured process mandated by formal Section 7 consultation of Reasonable and Prudent Measures, to minimize incidental take. The USFWS also assists the USACE with the determination to authorize a project. All USACE permits with Section 7 concerns, include special conditions on the permit requiring for compliance with the terms and conditions of the biological opinion and mitigation measures in the letter of concurrence. One informal consultation in this PER phase will be made to evaluate sampling designs and possible alternative drainage plans in relation to Section 7.

This task does not include formal Section 7 consultation, which may be required. Should additional meetings be required it will be requested as Additional Services with prior authorization.

### **2.3 Archeological Investigation**

The San Marcos River and Purgatory Creek have several known archeological sites, including the Zatopec site on Purgatory creek upstream of this project reach, which is stated to have been intermittently occupied throughout the last 10,000 years. The project is locally funded and would take place on land and easements controlled by a political subdivision of the State of Texas. Therefore the Antiquities Code of Texas (ACT) will apply to the project. Federal permitting or consultation under the Clean Water Act and the Endangered Species Act will likely be required and consequently Section 106 of the National Historic Preservation Act (Section 106) will also apply. AmaTerra, as a subconsultant to RPS, proposes to assist RPS and LAN in complying with the ACT and Section 106 prior to construction. AmaTerra assumes that Area of Potential Effects for the project is limited to the footprint of ground disturbing alterations. See the attached subconsultant scope and fee proposal attached.

### **2.4 Other/Report**

RPS will review requirements of, and coordinate with LAN and the resource agencies concerning development within the action area. We will perform one pre-collection and one post collection site visit with LAN representatives and will meet with LAN to discuss and review regulatory issues, requirements, and proposed site modification to provide direction for the flood study options and investigations. RPS will prepare an Environmental Assessment report with Executive Summary to be included in the Appendix of the draft and final PER for submittal to the City of San Marcos for review and approval.

Work products for this task include:

- Information Evaluation
- Field Data Gathering
- Environmental Assessment Document (Draft/Final)
  - Executive Summary
  - Field Data Inventory
  - Information Evaluation
  - Archeological investigation and report
  - Federal, State, Regional Permitting Authority Coordination



**REIMBURSABLE EXPENSES**

Miscellaneous expenses including printing, mileage, courier, etc. will be provided for this project and reimbursed by the Client as outlined on the attached effective rate schedule.

**GENERAL UNDERSTANDING OF WORK**

In preparing this proposal, RPS has made the following assumptions:

- Any additional work not specifically included in the above scope of services will be accomplished as Additional Services per the attached effective rate schedule.
- This proposal does not include the preparation, submittal, processing for approval of an Individual Permit with the Fort Worth USACE.
- No services for obtaining a USACE IP, or design or calculations for any mitigation that might be required by the USACE are included.
- This proposal does not include the preparation, submittal, processing for approval of a Section 7 consultation with the USFWS.
- This proposal does not include the preparation, submittal, processing for approval of a LOMR to the City and/or FEMA.
- This proposal excludes design fees or the preparation of construction plans and specifications.
- The dedication of any easements is not included.
- Review fees and fees associated with permitting, review, and approval will be paid directly by the City and/or LAN.
- Survey work required for the study will be provided in a timely manner upon request. All topography and boundary information will be taken from existing data provided by the City.
- Geotechnical and Structural engineering services are not included.
- Analysis or design of secondary conveyance systems (i.e. storm sewer); or tributary channels unless specifically mentioned in the tasks outlined above are excluded.

**FEE ESTIMATE**

The total Estimated Fee budget for labor and expenses is **\$103,964.20**. Payments for services of the Engineer will be based on time & materials not to exceed One Hundred Three Thousand, Nine Hundred Sixty-Four Dollars & 20 Cents (\$103,964.20). Charges for Basic Services of RPS will be based on payroll costs of salaries and wages times a factor for general overhead and profit of 2.5. This budget represents an estimated maximum; RPS will not exceed the budgeted amount without prior notification and approval by LAN. The budget breakdown is as follows:

**LABOR**

1. Floodplain Analysis & Review – 246 hrs.	\$ 16,280.00
2. PER Environmental Evaluation – 488 hrs.	\$ <u>66,210.00</u>

**LABOR SUBTOTAL** \$ **82,490.00**

**EXPENSES**

AmaTerra (archeological Survey) \$ 18036.70

**Estimated Reimbursable Expenses** \$ 3,437.50

**TOTAL FEE** \$ **103,964.20**



**SCHEDULE**

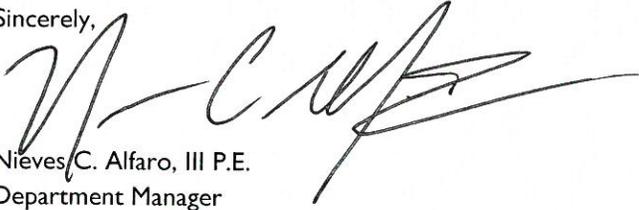
The proposed schedule for completion of the tasks is as follows:

- Task 1            8 weeks after NTP with receipt of Client provided site data.
- Task 2            10 weeks after NTP with receipt of Client provided site data.

At your direction and in an effort to complete this project as soon as possible, RPS will begin work on this project when notified by mail or email of contract signature.

RPS thanks you for this opportunity to provide this proposal and we look forward to working with you and your representatives. If you have any questions or need to discuss any aspect of this proposal, please contact the Project Manager, Thomas Mountz, P.E., D.WRE, CFM at (512) 328-5771 or by email at [tom.mountz@rpsgroup.com](mailto:tom.mountz@rpsgroup.com).

Sincerely,



Nieves C. Alfaro, III P.E.  
Department Manager

Attachments:    AmaTerra – Proposal for Archeological Assessment

**Purgatory Creek Design Analysis  
San Marcos, Texas  
Professional Services Fee Schedule**

Date: 3/30/2018

TASK NO	TASK DESCRIPTION	TOTAL MAN HOURS RATE (\$/Hr.)	LABOR CATEGORIES										SUB Contractor	TASK EXPENSES	LABOR COST
			QA/QC	Sr PM	Project Engr	SR ENV Scientist	Biologist	Assoc Engr I	CADD Tech	ADMIN					
1	<b>Floodplain Analysis &amp; Review</b>		250	230	165	145	120	100	110	90					
a	Review Existing Models	4		4										\$0.00	\$920.00
b	Design Alternative Analysis	32		32										\$25.00	\$7,360.00
c	Alternative Selection Review	25		24						1				\$0.00	\$5,610.00
d	PER Preparation & Review	11		10						1				\$50.00	\$2,390.00
	<b>Sub-Total</b>	<b>72</b>	<b>0</b>	<b>70</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$75.00</b>	<b>\$16,280.00</b>
2	<b>PER Environmental Evaluation</b>														
a	USACE Permit Investigation	320		16		256	48							\$0.00	\$46,560.00
b	USFWS Investigation/Coordination	72		4		68	0							\$220.00	\$10,780.00
c	Section 106 Investigation	60		2		58	0							\$220.00	\$8,870.00
d	Archeological (Ama Terra, subconsultant)	0												\$0.00	\$0.00
	<b>Sub-Total</b>	<b>452</b>	<b>0</b>	<b>22</b>	<b>0</b>	<b>382</b>	<b>48</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$3,050.00</b>	<b>\$66,210.00</b>
3															
a		0												\$0.00	\$0.00
b		0												\$0.00	\$0.00
c		0												\$0.00	\$0.00
d		0												\$0.00	\$0.00
	<b>Sub-Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$0.00</b>	<b>\$0.00</b>
4															
a		0												\$0.00	\$0.00
b		0												\$0.00	\$0.00
c		0												\$0.00	\$0.00
d		0												\$0.00	\$0.00
	<b>Sub-Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$0.00</b>	<b>\$0.00</b>
	<b>TOTAL HOURS</b>	<b>524</b>	<b>0</b>	<b>92</b>	<b>0</b>	<b>382</b>	<b>48</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		
	<b>TOTAL LABOR COST</b>		\$0	\$21,160	\$0	\$55,390	\$5,760	\$0	\$0	\$180				\$1,639.70	\$82,490.00
	<b>TOTAL SUBCONTRACTOR EXPENSES + 10%</b>													\$3,125.00	\$18,036.70
	<b>TOTAL COST</b>														\$103,964.20



## **Proposal for Archeological Assessment: Purgatory Creek Improvements in San Marcos Hays County, Texas**

### **Introduction and Project Understanding**

The City of San Marcos (the City) is planning to make improvements to Purgatory Creek from its confluence with the San Marcos River to Johnston Avenue in San Marcos, Hays County, Texas. The total length of the project is about 1.2 miles (1.9 kilometers). The improvements would involve bank modifications, channelization, and a high flow bypass to control flooding. The project is locally funded and would take place on land and easements controlled by a political subdivision of the State of Texas. Therefore the Antiquities Code of Texas (ACT) will apply to the project. Federal permitting or consultation under the Clean Water Act and the Endangered Species Act will likely be required and consequently Section 106 of the National Historic Preservation Act (Section 106) will also apply. AmaTerra proposes to assist the City's consulting engineer, RPS Group (RPS) in complying with the ACT and Section 106 prior to construction. AmaTerra assumes that Area of Potential Effects for the project is limited to the footprint of ground disturbing alterations.

### **Proposed Scope Items**

#### **Archeological Resources Survey**

Following background review and consultation with the Texas Historical Commission (THC), an archeological survey will likely be warranted for the project area. The cultural resources survey would be performed under a state Antiquities Permit. AmaTerra will prepare a permit application and submit it for approval to the Texas Historical Commission. Once a permit has been issued for field investigations, AmaTerra will conduct the field survey in accordance with the THC's standards. The survey would involve visual inspection and shovel testing at a rate of about one test every 328 feet (100 meters) along both sides of the creek and along the high flow bypass to identify cultural materials and disturbances. It is estimated that up to 45 tests may be excavated as part of the discovery tactic with additional shovel tests excavated in support of archeological site delineation. Located with the floodplain of Purgatory Creek deep alluvial deposits are anticipated. Additionally, sites within the vicinity of the project area contain deeply buried deposits extending to a depth of over eight feet (2.5 meters) below the surface. Thus, backhoe trenching may be used to assess the potential for deeply buried cultural materials within the project area. AmaTerra anticipates excavating up to 10 backhoe trenches within the proposed project area.

Any artifacts that are identified will be recorded in the field then returned to their find location. Archeological sites will be defined at the field crews' discretion within the study are; sites will be assessed for their potential for inclusion as State Antiquities Landmarks (SALs) or listed on the National Register of Historic Places (NRHP). Following field survey, these sites will be submitted to the Texas Archeological Research Laboratory (TARL) for a trinomial.

## **Reporting Consultation and Curation**

Following field investigations, AmaTerra will prepare a draft cultural resource survey report that will summarize cultural background data, previous investigations, current investigation findings, and regulatory recommendations. This report will be submitted electronically for review by RPS, revised according to that review, then submitted to the City for final review and approval. Following draft final revision, AmaTerra will submit the report to the THC for regulatory review. AmaTerra will revise the draft final in accordance with any THC comments then provide RPS with a final report. In accordance with antiquities permit requirements, all field-generated documents, forms, and photographs will be prepared and submitted for formal curation.

## **Budget**

To complete the work described above, AmaTerra proposes a total project budget of **\$16,397.00**. For a breakdown of costs, see the attached spreadsheet. AmaTerra would bill monthly, based on percentage complete of the total lump sum amount.

## **Assumptions**

AmaTerra has prepared this scope of services with the following assumptions. Any deviation from those listed below may be considered supplemental.

1. The project is assumed to extend along Purgatory Creek for about 1.2 miles and include portions of Children's Park. The APE would be limited to the footprint of disturbance.
2. AmaTerra assumes visual inspection and shovel testing with up to 45 tests; and excavation of up to 10 backhoe trenches as needed.
3. The project is locally funded with the potential for federal involvement
4. Mitigation for adverse effects to Historic Properties and/or SALs is not included.
5. Rights of entry will be acquired by others prior to initiating field survey and all fieldwork will be completed in a single mobilization.
6. AmaTerra assumes timely review of all submittals

*AmaTerra Environmental*

**Purgatory Creek Improvements  
San Marcos, Texas**

LABOR	Permit Application	Prefield	Field	Draft Report	Curation	Final	MGMT	total	units	Price	Cost
Principal							1	1	hrs	\$ 216.00	\$ 216.00
Archeologist VI				4			2	6	hrs	\$ 136.00	\$ 816.00
Archeologist IV	2		30	8		2	2	44	hrs	\$ 91.00	\$ 4,004.00
Archeologist II	8	2	30	40	4	2		86	hrs	\$ 73.00	\$ 6,278.00
Archeologist I					8			8	hrs	\$ 62.00	\$ 496.00
GIS Specialist	2	1						3	hrs	\$ 91.00	\$ 273.00
GIS Tech				8		1		9	hrs	\$ 68.00	\$ 612.00
Editor				6				6	hrs	\$ 68.00	\$ 408.00
Admin Assistant	1					1	2	4	hrs	\$ 88.00	\$ 352.00
<b>TOTAL LABOR HOURS</b>	13	3	60	66	12	6	7	167			\$ 13,455.00
<b>EXPENSES</b>											
copies, b/w	10		50	250	100	250	10	670	each	\$ 0.10	\$ 67.00
copies, color	5		10	250	50	250	5	570	each	\$ 0.75	\$ 427.50
Site Recording				4				4	Site	\$ 68.00	\$ 272.00
Backhoe Rental			2					2	Day	\$ 1,000.00	\$ 2,000.00
Mileage			325					325	mile	0.54	\$ 175.50
<b>TOTAL EXPENSES</b>											\$ 2,942.00
<b>TOTAL</b>											<b>\$ 16,397.00</b>

**EXHIBIT 2**

**AUTHORIZATION OF CHANGE IN SERVICES  
CITY OF SAN MARCOS, TEXAS**

**AGREEMENT/ SERVICES:  
CITY REPRESENTATIVE:  
CONTRACTOR:  
AUTHORIZATION NO.:  
CONTRACT EFFECTIVE DATE:  
THIS AUTHORIZATION DATE:**

**WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES**

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Previous contract amount: \$ \_\_\_\_\_ (NTE annual fee)  
Net increase/decrease in contract amount: \$ -0-  
Revised annual Agreement amount: \$ \_\_\_\_\_ (NTE annual fee)

Contractor Name

By: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name, Title

Approved by:

City of San Marcos:

Date: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name, Title

***City Department (PM, etc.) only below this line.***

Account Number(s): \_\_\_\_\_

Previous Changes in Service:

# \_\_\_\_\_; date; amount

# \_\_\_\_\_; date; amount

# \_\_\_\_\_; date; amount

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**EXHIBIT 3**  
**DETAILED FEE SCHEDULE**

<b>I LABOR</b>										
		Labor Hours Estimated by Labor Category							Time	Budget
Task	Description	Prin	PM	Engineer	EIT	Designer	CAD Tech	Admin	(hours)	(\$)
1	Project Management and QA/QC	40	140		40		40	40	300	\$ 46,100
2a	Project Meetings (8)	32	64	32					128	\$ 24,000
2b	Public Meetings (1)	8	12	8		24			52	\$ 7,900
3	CDBG-DR Infra. Feasibility Support	24	40	40	40				144	\$ 22,760
4a	Property Ownership Map	2	8	40		40			90	\$ 11,960
4b	Utility Coordination	1	8	16	40		40		105	\$ 11,360
4c	Hydraulic Analysis									
i	Review (RPS)	4	24		24				52	\$ 7,800
ii	Existing Conditions	4	40	40	80		8		172	\$ 22,640
iii	Split Flow Analysis (Purgatory / Wilow)	12	40	80			24		156	\$ 23,520
iv	Proposed Conditions	24	40	40	80	40			224	\$ 31,160
v	Summarize & Provide Hydraulic Models	8	40		80		24		152	\$ 19,360
4d	Permitting									
i	FEMA, USEPA, USACE, etc. (RPS)	4	40		40				84	\$ 12,360
5a	Monthly Status Report	8	40						48	\$ 9,320
5b	Preliminary Engineering Report									
i	Project definition/scope	24	40	16			16	40	136	\$ 19,960
ii	Schematic designs	8	40	40			40		128	\$ 18,320
iii	Existing utilities		8	8					16	\$ 2,600
iv	Hydraulic calculations	2	8		24		24		58	\$ 6,400
v	Environmental and permitting	4	16						20	\$ 3,920
vi	Existing and proposed easements/ROW	8	40	40			40		128	\$ 18,320
vii	Erosion / sedimentation controls	4	8	40					52	\$ 8,040
viii	Engineer's opinion of probable cost		16	40	40		40		136	\$ 15,960
ix	Utility conflict matrix	2	4	40					46	\$ 6,820
		223	716	520	488	104	296	80	2427	\$ 350,580
	approximate billing rate	\$ 240	\$ 185	\$ 140	\$ 100	\$ 110	\$ 85	\$ 80		
		\$ 53,520	\$ 132,460	\$ 72,800	\$ 48,800	\$ 11,440	\$ 25,160	\$ 6,400		
<b>II EXPENSES</b> (e. g. mileage, reprographics, etc.)										\$ 2,500
<b>III SUBCONSULTANTS</b> (includes 10% markup)										
RPS	h/h support and environmental permitting						\$ 103,964			\$ 114,360
<b>TOTAL:</b>										<b>\$ 467,440</b>

**EXHIBIT 4**  
**PROJECT SCHEDULE**

TASK	June				July					August				September				October					November				December					January				February									
	4	11	18	25	2	9	16	23	30	6	13	20	27	3	10	17	24	1	8	15	22	29	5	12	19	26	3	10	17	24	31	7	14	21	28	4	11	18	25						
<b>Task 1: Project Management and QA/QC</b>	[Solid blue bar]																																												
<b>Task 2b: Project Meetings</b>	▲							▲					▲						▲						▲						▲						▲						▲		
<b>Task 2a: Public Meetings</b>																										▲																			
<b>Task 3: CDBG-DR Infra. Feasibility Support</b>	[Solid blue bar]																																												
<b>Task 4a: Property Ownership Map</b>	[Solid blue bar]																																												
<b>Task 4b: Utility Coordination</b>	[Solid blue bar]																																												
<b>Task 4c: Hydraulic Analysis</b>	[Solid blue bar]																																												
<b>Task 4d: Permit Coordination</b>	[Solid blue bar]																																												
<b>Task 5b: Preliminary Engineering Report</b>	[Solid blue bar]																																												
	▲ approximate weeks for scheduled meetings																																												

**EXHIBIT 5**  
**FEDERALLY REQUIRED PROVISIONS**

**A. NATIONAL OBJECTIVES**

All activities funded with CDGB-DR funds must meet one of the CDBG-DR program's National Objectives: (a) benefit low- and moderate- income persons; (b) aid in the prevention or elimination of slums or blight; or (c) meet community development needs having a particular urgency, as defined in 24 CFR 570.208. The Engineer certifies that the activities carried out under this Agreement will meet a National Objective.

**B. COPELAND ANTI-KICKBACK ACT COMPLIANCE**

The Professional Firm will comply with the requirements of 29 CFR Part 3 (the Copeland Act). The "Anti-Kickback" section of the Act precludes a contractor or subcontractor from inducing an employee -- in any manner -- to give up any part of his/her compensation to which he/she is entitled under his/her contract of employment.

**C. CONFLICTS OF INTEREST (24 CFR 570.611; 2 CFR 200.112 AND 200.318(c); 24 CFR 85.35; AND 24 CFR 84.42**

There are two sets of conflict of interest provisions applicable to activities carried out with CDBG funding. The first set, applicable to the procurement of goods and services by subrecipients (*funded applicants*), is the procurement regulations located at 24 CFR 84.42 and 85.36. The second set of provisions is located at 24 CFR 570.61 l(a)(2). These provisions cover situations not covered by parts 84 and 85.

With respect to procurement activities, the Professional Firm must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. At a minimum, these standards must:

- 1) Require that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for an award:
  - a) An employee, officer, or agent' of the Professional Firm;
  - b) Any member of an employee's, officer's, or agent's immediate family;
  - c) An employee's, agent's, or officer's partner; or
  - d) An organization which employs or is about to employ any of the persons listed in the preceding sections.
- 2) Require that employees, agents, and officers of the Professional Firm neither solicit nor accept gratuities, favors, or anything of value from contractors, or parties to sub-agreements. However, Professional Firms may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

- 3) Provide for disciplinary actions to be applied for any violations of such standards by employees, agents or officers of the subrecipient.

With respect to all other CDBG-assisted activities, the general standard is that no employee, agent or officer of the subrecipient, who exercises decision-making responsibility with respect to CDBG funds and activities is allowed to obtain a financial interest in or benefit from CDBG activities, or have a financial interest in any contract, subcontract, or agreement regarding those activities or in the proceeds for the activities. Specific provisions include that:

- a) This requirement applies to any person who is an employee, agent, Professional Firm, officer, or elected or appointed official of the City, a designated public agency, or a subrecipient, and to their immediate family members and business partner(s).
- b) The requirement applies for such persons during their tenure and for a period of one year after leaving the grantee or subrecipient organization.
- c) Upon written request, exceptions may be granted by HUD on a case-by-case basis.

#### **D. CERTIFICATION OF ELIGIBILITY**

By submitting a proposal in response to the Invitation for Bids, the Professional Firm certifies that at the time of submission, he/she/it is not listed on the government- wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p 189) and 12689 (3 CFR part 1989 Comp., p 235), "Debarment and Suspension".

- 1) In the event of placement on the list between the time of bid/proposal submission and time of contract award, the bidder/proposer will immediately notify the City.
- 2) Professional Firm certifies that its subcontractors are not presently debarred, suspended, or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.
- 3) Placement of Professional Firm on the federal government's list of suspended, ineligible, or debarred contractors, false certification, or failure to notify City as required may result in City's termination of this Contract for default.
- 4) Contractor will furnish a copy of the certification in accordance with 24 C.F.R. Part 24 (Debarment and Suspension). The Contractor and all subcontractors will be active and not debarred on the website, [www.sam.gov](http://www.sam.gov). and provide a copy of the certification to the City before the entity performs work under this contract.

The Contractor must ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" and the UAR. Contractor will have each contractor and subcontractor complete a contractor eligibility form in a format that is provided or approved by the City. This form will provide the information necessary to verify contractor eligibility.

#### **E. NON-COLLUSION CERTIFICATION**

The Professional Firm certifies that, if a proposal was provided that resulted in a contract, that proposal was made without collusion with any other person, firm or corporation.

**F. BYRD ANTI-LOBBYING AMENDMENT**

(31 U.S.C. 1352) Contractors that bid for an award exceeding \$100,000 must file the required certification that it will not and has not used Federal appropriated funds to pay any persons or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

**G. SECTION 3 COMPLIANCE**

Compliance with Section 3 [These provisions are applicable to projects for which the amount of HUD assistance exceeds \$200,000 and the contract or subcontract exceeds \$100,000.]

- 1) The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- 2) The parties to this Contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- 3) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- 4) The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.
- 5) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment

opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. Part 135.

- 6) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.
- 7) When required, Contractor shall furnish the City or HUD with satisfactory proof of its compliance herewith.

## **H. COMPLIANCE WITH RULES AND REGULATIONS**

Funding for the Project has been made available by HUD through the CDBG-DR Program. The Professional Firm will comply with all of the applicable uniform administrative regulations related to the application, acceptance and use of federal funds as contained in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Professional Firm is encouraged to obtain the necessary information but failure to do so will not relieve it from compliance with the applicable regulations. The Professional Firm will be responsible for compliance and conformance with applicable federal and state laws, rules, regulations and codes, City permitting requirements, and City ordinances currently in effect. Federal and state laws, rules, regulations and codes include but are not limited to:

### **a. WORKERS COMPENSATION LAWS;**

- 1) Minimum and maximum salary and wage statutes and regulations, including but not limited to:
  - a) Fair Labor Standards Act of 1938, as amended;
  - b) Equal Pay Act of 1963, PL 88-38; and
  - c) All applicable regulations implementing the above laws;
- 2) Non-discrimination statutes and regulations, including but not limited to:
  - a) Title VII of the Civil Rights Act of 1964, as amended;
  - b) Section 504 of the Rehabilitation Act of 1973, as amended;
  - c) The Age Discrimination Act of 1975, as amended; and
  - d) all applicable regulations implementing the above laws;
- 3) Licensing laws and regulations;
  - a) Compliance with Texas Accessibility Standards ("TAS") and ADA requirements, issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, or other applicable Texas law;
- 4) Requirements under the Architectural Barriers Act and the Americans with Disabilities Act set forth in 24 C.F.R. Section 570.614;
- 5) All applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401-7671q), and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387, as amended).
- 6) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PUB L 94-163, 89 Stat. 871) codified at 42 U.S.C.A. Section 6321 et seq.;

- 7) National Environmental Policy Act ("NEPA") including Environmental Protection Agency regulations (40 C.F.R. Part 15), applicable HUD regulations set forth in 24 C.F.R. Parts 50 and 58 including authorities cited therein, and National Historic Preservation Act of 1966, including Federal Historic Preservation Regulations (36 C.F.R. Part 800), which require environmental clearance of federal aid projects; and in connection with NEPA requirements, Professional Firm is responsible for the preparation of NEPA documents required for environmental clearance of the Project covered hereunder; G) 24 C.F.R. Section 5.105, including applicable authorities cited therein, as well as applicable provisions of 24 C.F.R. Part 58, including Section 58.5 and applicable authorities cited therein and Section 58.6 and applicable authorities cited therein.

**b. AFFIRMATIVE ACTION - WOMEN-AND MINORITY-OWNED BUSINESSES (W/MBE)**

The Contractor will take all necessary affirmative steps to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro- Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Contractor may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

Affirmative steps must include:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises, are solicited whenever they are potential sources.
- iii. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;
- iv. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- v. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

**c. LABOR STANDARDS**

The Contractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work

Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.

The Contractor agrees to comply with the Copeland Anti-Kick Back Act (18U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

The Contractor agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Contractor of its obligation, if any, to require payment of the higher wage. The Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

**d. USE OF ASSETS AND ASSET REVERSION**

City assets used by the Contractor during the contract shall be given back to the City at the conclusion of the contract.

**e. PROGRAM INCOME**

The City will accept and report program income to the federal government.

**f. FEDERAL FUNDING AND ACCOUNTABILITY TRANSPARENCY ACT (FFATA)**

Contracts equal to or greater than \$25,000 must be entered into the Federal Service Reporting System. Contractor information is needed to complete the compliance reporting for the Federal Funding and Accountability Transparency Act. The Contractor will complete the Federal Funding and Accountability Transparency Act form attached to this Contract.

**g. LOBBYING**

The Contractor hereby certifies that:

(i.) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the

making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(ii.) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

(iii.) It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Contractors shall certify and disclose accordingly:

(iv.) Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**h. LEAD-BASED PAINT**

The Contractor agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-DR-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

**i. FLOOD DISASTER PROTECTION**

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Contractor shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

**j. HISTORIC PRESERVATION**

The Contractor agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

**k. RELIGIOUS ACTIVITIES**

The Contractor agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200G), such as worship, religious instruction, or proselytization. The acquisition, construction, or rehabilitation of structures used for inherently religious activities is not allowable under this program.

**l. COPYRIGHT**

If this contract results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

**m. EQUAL EMPLOYMENT OPPORTUNITY**

The Professional Firm will comply with Executive Order 11246 of 9/24/65, entitled "Equal Employment Opportunity," (30 FR 12319, 12935, 3 CFR Part, 1964-65 Comp., p. 339) as amended by Executive Order #11375 of 10/13/67, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).