

**PROFESSIONAL CONSULTING SERVICES AGREEMENT  
CONTRACT NUMBER: 217-448**

This Agreement is effective the 06 day of September 2017, between the City of San Marcos, Texas, (the "City"), 630 East Hopkins, San Marcos, Texas 78666 and Freese and Nichols, Inc. (the "Engineer"), 10431 Morado Circle, Suite 300, Austin, Texas 78759, for the Engineers provision of engineering services in connection with the CDBG-DR Uhland Road Improvements Project ("Project").

The City and the Engineer agree as follows:

**ARTICLE 1  
ENGINEER'S SERVICES (BASIC AND ADDITIONAL)  
AND RESPONSIBILITIES**

**1.0 STANDARDS OF PERFORMANCE**

**1.0.1** The Engineer is responsible for the proper, accurate and adequate delivery of services to develop plans, specifications, and opinions of probable construction cost for the Uhland Road Improvements including field investigations, local drainage improvements, reconstruction of Uhland Road, water and wastewater improvements, sidewalk improvements, environmental clearance, and construction phase support services in connection with the City's use of CDBG-DR funding that has been awarded directly to the City due to the May and October 2015 floods (the "Floods").

**1.0.2** The Engineer understands that the City has received funding for this Project from the United States Department of Housing and Urban Development (HUD) through the Community Development Block Grant - Disaster Recovery Program (CDBG-DR). This funding has been awarded directly to the City. Details regarding the utilization of this funding were published by HUD in the Federal Register Notice (PL-114-113). The Engineer will perform all of its services so that the Project will proceed in accordance with the detailed provisions of the Notice.

**1.0.3** The Engineer's Basic Services consist of the services described in Sections 1.0 and 1.1 which include civil engineering services and the following services the Engineer will perform through subconsultants approved by City:

- (1) Desktop and field investigations necessary to complete the Environmental Review Record Checklist for a HUD EA project and providing supporting mapping and documentation.
- (2) Professional Land Surveying services including topographic survey, boundary survey, and preparation of easement and right-of-way documents, if needed.

**1.0.4** The performance of all services by the Engineer in connection with this Agreement will be by persons appropriately licensed or registered under the State of Texas, local and Federal laws governing their respective consulting disciplines as applicable. In performing all services under this Agreement, the Engineer will use that degree of care and skill normally exercised for similar

projects by professional Engineers who possess special expertise in the types of services included in this Agreement.

The Engineer understands and agrees that it will comply with the Federal Register notice as issued, all HUD, CDBG-DR, and cross-cutting federal requirements as well as with all local, State and other applicable federal rules, laws, regulations, ordinances and policies all in accordance with Article 9 of this Agreement.

The Engineer will not subcontract any work under this Agreement without prior written approval from the City. The Engineer will specify any work or services subcontracted under this Agreement by separate written Agreements and those Agreements will be subject to each provision of this Agreement.

Any provisions in this Agreement pertaining to the City's review, approval and/or acceptance of written materials prepared by the Engineer and/or its subconsultants, contractors, and subcontractors in connection with this Agreement will not diminish the Engineer's responsibility for the materials.

The Engineer will perform all of its services in coordination with the City. The Engineer will advise the City of data and information the Engineer needs to perform its services and the Engineer will meet with City representatives at mutually convenient times to assemble this data and information.

Jerome Scanlon, P.E., CFM, ENV-SP, Associate, is the Engineer's Project Representative assigned to this Project. The Engineer will not substitute another representative for this Project unless approved in writing by the City in advance of such proposed substitution. In the event the City and the Engineer cannot agree to the substitution of the Project Representative, the City may terminate this agreement in accordance with Article 8.

## **1.1 BASE SCOPE OF SERVICES**

Refer to Attachment A

## **1.2 ADDITIONAL SERVICES/CHANGE OR DELAY IN SERVICES/PROJECT ASSUMPTIONS**

The City may direct the Engineer to perform services outside of the scope of the Basic Services described in Sections 1.0 and 1.1. The Engineer will submit a written estimate of fees to the City and obtain the City's authorization before initiating any additional services. The Contractor will submit a written estimate of fees to the City and obtain the City's authorization before initiating any additional services.

Each material change (deletion or addition) in the services to be provided by the Engineer must be authorized by the City on the Authorization of Change in Services form, to be provided by the City when applicable. Compensation for additional services will be in addition to that specified for Basic Services in accordance with Article 4 of this Agreement. The approval of the San Marcos

City Council is necessary for all additional services, the compensation for which exceeds \$50,000.00.

A list of possible additional services includes:

1. Geotechnical Borings and Design Recommendations: Provided by others.
2. Subsurface Utility Locate (SUE Level A): Provided by others.
3. Permitting Submittals (FNI / Cox McLain) - TxDOT Permits, TCEQ SWPPP Permit, or any other permits not specifically identified in this document.
4. FNI will design dry utility conduit bank for incorporation into the roadway and drainage design sheets.
5. Preparation and submittal of NEPA related documents other than those specially identified herein (Cox McLain).
6. Design of stormwater control measures or BMPs for water quality other than pretreatment manufactured devices.

The City will provide GIS shapefiles of infrastructure within the project area. Engineer will review this data at a high level, but it is assumed to be up to date and accurate;

The City will provide the InfoWorks/HEC-RAS models previously developed by Halff and Associates, Inc. in the City's possession. In addition, the City will provide all documentation, reports, or presentations related to model development, alternatives considered, and findings in its possession; that no changes to the regional hydrology are necessary. Additional local hydrology will be determined, as necessary for select areas, and will reflect fully developed land use conditions;

Storm sewer analysis may be conducted separately from the InfoWorks model, if appropriate.

The City will provide any budgetary constraint information at the inception of the project.

The Engineer, will complete its Services in accordance with the schedule negotiated (Attachment C) with the City and has taken into consideration and made allowance for all hindrances and delays incident to such work, whether growing out of delays in securing material, workers, weather or otherwise. No charge will be made by the Engineer for any hindrance or delay from any cause whatever during the progress of any portion of its work that can reasonably be contemplated by the scope of work, but the City may grant an extension of time for the completion of the work, provided it has satisfied that such delays or hindrances were due to extraordinary causes or to the acts of omission or commission by the City. Any such extension of time will be provided utilizing the City's Authorization of Change in Services form.

## **ARTICLE 2 THE CITY'S RESPONSIBILITIES**

The City will:

2.1 Provide full information to the Engineer regarding the City's requirements for the Engineer's services under this Agreement. The City will furnish the Engineer with copies of data and information in the City's possession needed by the Engineer at the Engineer's request. The City will provide this information and render decisions expeditiously for the orderly progress of the Engineer's services. The City will provide GIS data and as-built plans for infrastructure within the proposed project limits, coordination with utilities and the Jail, and staff input.

Designate Kirk Abbott, P.E., Engineer or his designee as the City's Project Manager and authorized representative to act on the City's behalf with respect to this Agreement. The City will examine the documents and information submitted by the Engineer and promptly render responses to the Engineer on issues requiring a decision by the City.

Provide access to and make all necessary provisions for the Engineer to enter public and private property as required for the Engineer to perform its services under this Agreement.

Be responsible for securing all federal and state required permits required for the construction of this Project with the assistance of the Engineer.

Bear all other costs incidental to this Article.

## **ARTICLE 3 REIMBURSABLE EXPENSES**

3.1 Reimbursable expenses, including such things as expenses for plotting, reproduction of documents, auto travel mileage (at the prevailing IRS rate), delivery charges, long distance communications, freight, and state accessibility review are included in the Engineer's basic services compensation.

## **ARTICLE 4 PAYMENTS TO THE ENGINEER**

### **4.1 PAYMENTS FOR BASIC SERVICES**

The City will pay the Contractor for Basic Services on a monthly basis following receipt by the City of the Contractor's invoices showing direct and indirect labor costs, expenses for materials and supplies and any other reimbursable expenses if applicable, and appropriate payment requisitions. The Contractor will base its invoices upon the extent of work it has completed on an hourly basis within each task of services less any disputed amounts, pending resolution thereof.

The total not-to-exceed amount the City will pay the Contractor for the professional services described in this Agreement is \$677,419. The costs of the services are described in the Price

Proposal attached to this Agreement as Attachment B and incorporated for all purposes.

Reimbursable expenses, include such things as expenses for reproduction of documents, auto travel mileage at the prevailing IRS rate, lodging, delivery charges, long distance, communications and freight and are included in the total compensation. Reimbursable costs will be billed as they occur, but will not exceed the stipulated maximum. This compensation is divided among the Basic Services and Reimbursable Expenses as follows:

| Task                           | Total Labor Hours | Total Labor Cost | Other Direct Costs | Subconsultants  | TOTALS           |
|--------------------------------|-------------------|------------------|--------------------|-----------------|------------------|
| 1. General                     | 56                | \$8,752          | \$476              | \$0             | \$9,228          |
| 2. Preliminary Phase (30%)     | 722               | \$107,154        | \$6,600            | \$86,450        | \$200,204        |
| 3. Design Phase (60%/90%/100%) | 2,300             | \$307,508        | \$20,039           | \$0             | \$327,547        |
| 4. Bidding Phase               | 84                | \$12,286         | \$793              | \$0             | \$13,079         |
| 5. Construction Phase          | 412               | \$63,040         | \$4,893            | \$0             | \$67,933         |
| 6. Record Drawing Phase        | 80                | \$10,312         | \$680              | \$0             | \$10,992         |
| 7. Project Management          | 229               | \$44,879         | \$3,557            | \$0             | \$48,436         |
| <b>SUPPLEMENTAL TOTAL:</b>     | <b>3883</b>       | <b>\$553,931</b> | <b>\$37,038</b>    | <b>\$86,450</b> | <b>\$677,419</b> |

Compensation for the Engineer's additional services will be computed based on the following hourly rates, plus reimbursable expenses at direct cost.

#### Labor Classifications

#### Billing Rate

|                       |              |
|-----------------------|--------------|
| Project Manager/ QC   | \$225 / hour |
| Lead Engineer         | \$197 / hour |
| Senior Engineer       | \$169 / hour |
| Project Engineer      | \$146 / hour |
| EIT                   | \$130 / hour |
| Senior Env. Scientist | \$169 / hour |
| Env. Scientist        | \$146 / hour |
| GIS Analyst           | \$146 / hour |
| Senior CAD Designer   | \$145 / hour |
| CAD Technician        | \$ 97 / hour |
| Construction Manager  | \$131 / hour |
| Accounting            | \$139 / hour |
| Administrative        | \$105 / hour |

## **4.2 PAYMENTS FOR ADDITIONAL SERVICES**

The City will pay the Engineer for Additional Services as those are defined in Section 1.2, monthly upon presentation of the Engineer's statement of services rendered or expenses incurred, less any

disputed amounts, pending resolution thereof and an Authorization of Change in Services form executed by the Engineer and the City.

#### **4.3 TAXES**

The Engineer will not include Federal taxes or State of Texas limited sales excise and use taxes in its invoices or vouchers and statement of costs. The City is exempt from payment of such taxes and the Engineer may retrieve a resale certificate for use on this Project from the State of Texas Comptroller's website.

### **ARTICLES 5 ENGINEER'S RECORDS**

**5.1** The Engineer will keep all of its expense records in a recognized accounting format acceptable to the City and these records will be available to the City at mutually convenient times.

**5.2** The City, its auditors, federal auditors, and state agencies that have monitoring or auditing responsibilities for this Agreement will have access to any books, documents, papers and records of the Engineer which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, copying and transcriptions.

**5.3** The Engineer will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by this Agreement. Information provided pursuant to this subsection will be held in strict confidence to the extent permitted by applicable law.

### **ARTICLE 6 OWNERSHIP AND USE OF DOCUMENTS**

**6.1** All documents prepared by the Engineer in connection with this Agreement are the property of the City whether any project related to this Agreement is executed or not.

**6.2** The Engineer will retain all of its records and supporting documentation relating to this Agreement, and not delivered to the City, for a period of four years except in the event that the Engineer goes out of business during that period, it will turn over, to the City, all of its records relating to the Project for retention by the City.

**6.3** As applicable, the Engineer will pay all license fees, royalties, and other costs incident to the use of any invention, design, process, product or device subject to a patent right or copyright held by others in performing the work or in the completed project.

## **ARTICLE 7**

### **TERM; TERMINATION OF AGREEMENT**

**7.1** The term of this Agreement begins on the effective date established in the first paragraph of the Agreement and will end upon the Engineer's completion, and the City's acceptance of all services described in this Agreement unless this Agreement is terminated under Sections 7.2 or 7.3 below. Both the City and the Engineer assume the Project/Services will be finally completed in accordance with the Schedule attached and incorporated into this Agreement as Attachment C.

**7.2** This Agreement may be terminated by either party upon 15 calendar days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. The Engineer will provide the City with at least a 30 calendar day period of opportunity to cure before the Engineer initiates termination.

**7.3** The City may terminate this Agreement for convenience and without cause upon at least 15 calendar days prior written notice to the Engineer. In the event of termination for convenience the City may require the Engineer to transfer title and deliver to the City in the manner and to the extent directed by the Purchasing Manager: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing material") as the Engineer has specifically produced or specially acquired for the performance of the terminated part of the agreement. Upon such termination, the Engineer will (a) stop work to the extent specified (b) terminate any subconsultants as they relate to the terminated work, and (c) be paid the following amounts without duplication, subject to the other terms of this contract: (i) contract prices for supplies or services accepted under the agreement (ii) costs incurred in performing the terminated portion of the work, and (iii) any other reasonable costs that the Engineer can demonstrate to the satisfaction of the City, using its standard record keeping system, have resulted from the termination. The Engineer will not be paid for any work performed or costs incurred that reasonably could have been avoided. As a condition of payment, the Engineer will submit within three months of the effective date of the termination a claim specifying the amounts due because of the termination. The absence of an appropriate termination for convenience clause in any subcontract will not increase the obligation of the City beyond what it would have been had the subcontract contained such a clause.

## **ARTICLE 8**

### **INSURANCE AND INDEMNITY**

**8.1** The Engineer will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising solely from the negligent or intentional wrongful acts or omissions of the Engineer, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, expert witness fees and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property, alleged or actual infringement of patents, copyrights and trademarks in the performance of the work or the incorporation in the work of any invention, design, process, product or device

and without limitation by enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising from any negligent or intentional wrongful act, error or omission of the Engineer and/or its agents and/or employees; This obligation by the Engineer will not be limited because of the specification of any particular insurance coverage in this Agreement.

For claims related to Professional Liability - The Engineer will indemnify, hold harmless the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising solely from the negligent or intentional wrongful acts or omissions of the Engineer, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, expert witness fees and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property, alleged or actual infringement of patents, copyrights and trademarks in the performance of the work or the incorporation in the work of any invention, design, process, product or device and without limitation by enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising from any negligent or intentional wrongful act, error or omission of the Engineer and/or its agents and/or employees; This obligation by the Engineer will not be limited because of the specification of any particular insurance coverage in this Agreement.

**8.2** The Engineer will procure and maintain at the Engineer's expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by Engineer or Engineer's agents, subcontractors or employees. Before commencing the work, the Engineer will furnish to the City a certificate or certificates in form satisfactory to the City, showing that Engineer has complied with this paragraph (Attachment D). All certificates will provide that the policy will not be canceled until at least 30 calendar days written notice has been given to the City. Failure of the Engineer to demand a certificate or other sufficient evidence of full compliance with these insurance requirements or failure of the Engineer to identify a deficiency from the evidence that is provided as proof of insurance will not be construed as a waiver of the Engineer's obligation to maintain the required insurance coverage specified herein. Commercial general liability insurance and motor vehicle insurance will be written with the City of San Marcos, Texas as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City. The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance and/or Employer's Liability: In accordance with the provisions of the Workers' Compensation Act of the State of Texas and/or \$500,000.00/\$500,000.00 for Employer's Liability.

Liability Insurance: (1) Commercial general liability insurance (standard ISO version) with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate, providing coverage for, but not limited to, bodily injury and property damage, premises/operations, products/completed operations, independent Engineers as applicable (2) Business Motor Vehicle liability insurance (standard ISO version) in an amount not less than \$1,000,000 per occurrence (3) professional liability coverage to cover lawful claims arising in connection with the Project in the combined single limit amount of at least \$1,000,000.00 as applicable. Should the Contractor



not own any automobiles, the business auto liability requirement will be amended to allow the Contractor to agree to maintain only Hired and Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability or separate Business Auto Policy.

The stated limits of insurance required by this Paragraph are **minimum only**-they do not limit the Engineer's indemnity obligation, and it will be the Engineer's responsibility to determine what limits are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of Certificates of Insurance that do not comply with these requirements in any respect does not release the Engineer from compliance with these requirements.

## **ARTICLE 9 FEDERALLY REQUIRED PROVISIONS**

Refer to Attachment E "Supplemental Conditions for CDBG-DR Contracts" for further information relating to federal requirements which are included in the following sub-sections.

### **9.1 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.

### **9.2 COPELAND ANTI-KICKBACK ACT COMPLIANCE**

The Engineer 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.

### **9.3 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 Engineer 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:

- (a) 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:
  - 1) An employee, officer, or agent' of the Engineer;
  - 2) Any member of an employee's, officer's, or agent's immediate family;
  - 3) An employee's, agent's, or officer's partner; or
  - 4) An organization which employs or is about to employ any of the persons listed in the preceding sections.
- (b) Require that employees, agents, and officers of the Engineer neither solicit nor accept gratuities, favors, or anything of value from contractors, or parties to sub-agreements. However, Engineers may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- (c) 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:

- 1) This requirement applies to any person who is an employee, agent, Engineer, 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).
- 2) The requirement applies for such persons during their tenure and for a period of one year after leaving the grantee or subrecipient organization.
- 3) Upon written request, exceptions may be granted by HUD on a case-by-case basis.

#### **9.4 CERTIFICATION OF ELIGIBILITY**

By submitting a proposal in response to the Invitation for Bids, the Engineer 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".

- (a) 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.

- (b) Engineer 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.
- (c) Placement of Engineer 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.
- (d) 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.

#### **9.5 NON-COLLUSION CERTIFICATION**

The Engineer 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.

#### **9.6 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.

#### **9.7 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.]

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) When required, Contractor shall furnish the City or HUD with satisfactory proof of its compliance herewith.

## **9.8 COMPLIANCE WITH RULES AND REGULATIONS**

Funding for the Project has been made available by HUD through the CDBG-DR Program. The Engineer 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 Engineer is encouraged to obtain the necessary information but failure to do so will not relieve it from compliance with the applicable regulations. The Engineer 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:

**9.8.1 WORKERS COMPENSATION LAWS:**

- (a) Minimum and maximum salary and wage statutes and regulations, including but not limited to:
  - 1) Fair Labor Standards Act of 1938, as amended;
  - 2) Equal Pay Act of 1963, PL 88-38; and
  - 3) All applicable regulations implementing the above laws;
- (b) Non-discrimination statutes and regulations, including but not limited to:
  - 1) Title VII of the Civil Rights Act of 1964, as amended;
  - 2) Section 504 of the Rehabilitation Act of 1973, as amended;
  - 3) The Age Discrimination Act of 1975, as amended; and
  - 4) all applicable regulations implementing the above laws;
- (c) Licensing laws and regulations;
  - 1) 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;
- (d) Requirements under the Architectural Barriers Act and the Americans with Disabilities Act set forth in 24 C.F.R. Section 570.614;
- (e) 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.
- (f) 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.;
- (g) 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, Engineer 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.

### **9.8.2 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.

### **9.8.3 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.

#### **9.8.4 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.

#### **9.8.5 PROGRAM INCOME**

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

#### **9.8.6 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.

#### **9.8.7 LOBBYING**

The Contractor hereby certifies that:

- (a.) 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;
- (b.) 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
- (c.) 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:

(d.) 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.

### **9.8.8 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.

### **9.8.9 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).

### **9.8.10 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.



### **9.8.11 RELIGIOUS ACTIVITIES**

The Contractor agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CPR 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.

### **9.8.12 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.

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

**10.1** This Agreement is governed by the law of the State of Texas. This Agreement is to be performed in Hays County and exclusive venue for any dispute arising under this Agreement is in Hays County, Texas. In the event of a dispute in federal court, venue will be in the United States District Court for the Western District of Texas, Austin Division.

**10.2** As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act(s) or failure(s) to act.

**10.3** The Engineer will not use funds received by it directly or indirectly under the terms of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.

**10.4** The Engineer hereby affirms that neither the Engineer, the Engineer's firm nor any of its associates or employees have made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of Engineers to provide consulting services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by the Texas Election Code or the San Marcos City Code is not considered a valuable gift for the purposes of this Agreement. The Engineer further agrees that none of its paid personnel will be employees of the City or have any contractual relationship with the City. All activities, investigations, and other efforts made by Engineer pursuant to the Agreement will be conducted by employees, associates, or independent contractors of the Engineer.

**10.5** In performing the services required under this Agreement, the Engineer will not discriminate against any person on the basis of race, color, religion, sex, national origin, age, disability or ancestry. The Engineer agrees not to engage in employment practices, which have the purpose or effect of discriminating against employees or prospective employees because of race,

color, sex, religion, national origin, age, disability or ancestry. A breach of this covenant by the Engineer may be regarded as a default of the Agreement.

**10.6** All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term "will" is mandatory in this Agreement.

**10.7** Should any provision in this Agreement be found or deemed invalid, this Agreement will be construed as not containing the provision and all other provisions, which are otherwise lawful, will remain in full force and effect, and to this end, the provisions of this Agreement are declared severable. Paragraph and Section headings included in the Agreement are for convenience only and are not intended to define or limit the scope of any provisions of the Agreement.

**10.8** All services provided pursuant to this Agreement are for the exclusive use and benefit of the City and this Agreement does not create rights in third parties.

**10.9** The Engineer 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).

**10.10** The City will have the right to declare the Engineer in breach of the Agreement for cause when the City determines that this Agreement has not been performed in accordance with its written terms and conditions.

**10.11** In the event of a default or breach of this Agreement by the Engineer, the City reserves the right to choose among the remedies for the default or breach available to the City. These remedies may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce this Agreement with respect to one or more defaults by the Engineer will not waive the City's ability to enforce the Agreement after that time.

**10.12** The City's execution of and performance under this Agreement will not act as a waiver by the City of any immunity from suit or liability to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

**10.13** The City of San Marcos is governed by the Texas Public Information Act (the "Act"), Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this agreement may be subject to release under the Act. The Engineer will not make any reports, information, data, etc. generated under this Agreement available to any individual or organization without the written approval of the City.

**10.14** In the event that the performance by either the City or the Engineer of any of its obligations under this Agreement is interrupted or delayed by events outside of their control such as acts of God, war, riot or civil commotion, then the party is excused from such performance for the period

of time reasonably necessary to remedy the effects of such events.

**10.15** If applicable, the Engineer will pay all license fees, royalties and other costs incident to the use of any invention, design, process, product or device subject to a patent right or copyright held by others in performing the work or in the completed Project.

**10.16** It is expressly agreed that the Engineer is an independent contractor and not an employee, agent partner or joint venture with the City. The Engineer will not pledge or attempt to pledge the credit of the City.

**10.17** It is the City's intent to be proactive with regard to the environment. The City encourages "value purchasing" of environmentally friendly products. The Engineer is encouraged to utilize green solutions in performing any services under the Agreement, as appropriate.

**10.18** The Engineer's attention is called to the fact that pursuant to San Marcos Ordinance No. 2013-57, as amended, all City of San Marcos owned and rented/leased properties are smoke free properties. All Engineers, their subconsultants and employees are prohibited from smoking while on City property. This prohibition includes the enclosed areas of public places and workplaces and within 10 feet of doors and windows of City-owned or rented buildings, all City parks and the grounds outside of any City building. This prohibition includes e-cigarettes and other inhaled vapor devices. The City may terminate this Agreement for noncompliance with this ordinance.

**10.19** If City funds are utilized to fund any part of this Agreement, the Engineer understands that those City funds for the payment for work performed by the Engineer under this Agreement have been provided through the City's budget approved by City 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 City cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. The Engineer acknowledges and agrees that it will have no recourse against the City 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 City extends from October 1st of each calendar year to September 30th of the following calendar year.

**10.20** The Engineer is required to electronically generate a Certificate of Interested Parties Form 1295 through the Texas Ethics Commission ("TEC") website ([https://www.ethics.state.tx.us/whatsnew/elf info form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf%20info%20form1295.htm)) and submit a signed and notarized copy of the form to the City prior to the award of the contract. This contract, including a City-issued purchase order, will not be enforceable or legally binding until the City receives and acknowledges receipt of the properly completed Form 1295 from the vendor.

## **ARTICLE 11 SUCCESSORS AND ASSIGNS**

**11.1** The City and the 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. The City and the Engineer will not assign, sublet or transfer any interest in this Agreement without the prior written consent of the other.

**11.2** The Engineer will notify the City, in writing, of any change in its partnership/ownership within 30 calendar days of such change.

## **ARTICLE 12 EXTENT OF AGREEMENT**

**12.1** This Agreement, including appendices and referenced attachments represents the entire and integrated Agreement between the City and the Engineer and supersedes all prior proposals, negotiations, representations or agreements either written or oral between the parties. In the event of a dispute between the City and Engineer regarding the intent of this Agreement, both parties agree that they will construe this Agreement in a manner consistent with the City's Request for Proposals, the Engineer's proposal response and the public record of the City Council's approval of this agreement as applicable. The Engineer's expenses for travel, office, production and other expenses associated directly or indirectly with this Agreement are included as part of the total fee. This Agreement may be amended only by written instrument, which must be signed by both the City and the Engineer. The San Marcos City Council must approve any such authorization of change in services or amendment if the compensation for which exceeds \$50,000.00.

**12.2** Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein.

**12.3** In the event of any conflict between this Agreement and the provisions of any exhibit or attachment to this Agreement, this Agreement will govern and control.

**ARTICLE 13**  
**NOTICES**

13.1 Notices required under this Agreement will be provided by the parties to one another by certified mail, return receipt requested, or by confirmed facsimile transmission, to the following addresses:

To the City:

City Manager  
630 E. Hopkins  
San Marcos, Texas 78666

To the Engineer:

Jerome Scanlon, Associate  
10341 Morado Circle, Suite 300  
Austin, Texas 78759

Each of the persons executing this Agreement represents that he or she has full power and authority to execute this Agreement on behalf of the party that person represents. This Agreement will be effective as of the day and year established in the first paragraph of this Agreement

**City of San Marcos**

**Freese and Nichols, Inc.**

By: \_\_\_\_\_  
Bert Lumbreras, City Manager

By:  \_\_\_\_\_  
John M New, Principal

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

Date: 8/28/17

## **ATTACHMENT A – BASIC SCOPE OF SERVICES**

### **TASK 1 - GENERAL**

#### **A. Federal Funding Requirements**

FNI will schedule a meeting with the City's Disaster Relief TxCDBG administrator prior to the start of work to review current FNI forms for reporting and invoicing. If appropriate, FNI will customize existing forms and processes to meet CDBG-DR requirements. FNI will be available for additional meetings or phone conferences that may be required to ensure continued compliance with U S Department of Housing and Urban Development (HUD) and Texas Department of Agriculture (TDA) regulations throughout the project duration. FNI will perform tasks as outlined in the City's Action Plan and will clarify with the City any change orders to ensure the change does not impact compliance with regulations. We understand that contractors must comply with requirements which includes addressing Davis-Bacon wage requirements and other labor guidelines. FNI will utilize forms provided by TDA as appropriate.

Additionally, FNI will provide access to all records regarding the project to HUD, Inspector General, Comptroller General of the United States, TDA, the City or any authorized representatives for the purpose of audits, examination, excerpts, and transcripts to facilitate closeout of the City's TxCDBG. Records can include documents, papers or other records as appropriate. Toward that end, FNI will retain all required records for three years after the City makes its final payment and all pending matters are closed.

TxDOT Coordination (only for IH 35 interface) – FNI will follow the Local Government Project Procedures (LGPP) as outlined by TxDOT. Included as needed will be coordination meetings and involvement in any public outreach required for environmental compliance.

### **TASK 2 PRELIMINARY PHASE (30%)**

#### **A. Meetings**

##### **i. Project Meetings**

Attend one (1) kickoff meeting after FNI receives NTP to discuss path forward and approved schedule. Confirm all Federal Requirements are being met and discuss design direction. FNI will prepare and submit a baseline project schedule using Microsoft Project.

Conduct one (1) phone meeting after the PER Submittal to discuss major planning/preliminary design elements that require changing and respond to City Comments.

Attend 1 (one) meeting with Jail representatives to discuss coordination of project schedules and designs (support for up to 3 staff members).

##### **ii. Prepare Exhibits**

FNI will prepare up to three (3) 22-inch by 34-inch colored exhibits, prepare presentation materials in Powerpoint format, respond to questions in the meeting as

needed, and prepare meeting minutes for the Public Meeting in Item iii for City to make decisions regarding the design path with FNI input.

FNI will prepare one (1) roll plot of the project area for the utility coordination meeting. All available utility and survey information will be shown along with initial County Road and Uhland Road design to illustrate potential conflicts.

iii. **Public Meetings**

Plan, participate in, and assist the City with one (1) Public Meeting during the PER phase. The City will schedule, host, and be responsible for conducting the meetings. FNI will meet in-person with City staff at least two weeks prior to the public meeting to discuss the preferred presentation process and go over mockups of presentation materials.

iv. **Utility Coordination Meetings**

Prepare for and attend 1 (one) utility coordination meeting at the end of the PER phase with all identified utility companies within the project limits. Discuss current design path and schedule and receive input from utilities.

**B. Data Collection/Review**

i. **Review Reports/Studies/Drawings**

- Review and summarize previously prepared analyses and design such as the University Heights drainage report and the feasibility study.
- Review provided as-builts for Uhland Road, County Road, and River Road, as available.
- Review development plans for existing developments along the corridor including the current jail plans.
- Review City GIS data.
- Review previous reports, as provided by City.
- Review traffic count data, as provided by City.

ii. **Site Visits:** Perform one (1) site visits to take photographs, investigate possible design issues, and determine local project issues. One site visit will be performed at the kick off meeting while the second will be performed after the PER phase.

iii. **Staff Meetings:** FNI will meet with City staff one (1) times to review and discuss existing, available data and to coordinate field investigations, if needed.

**C. Field Investigations**

i. **Topographic Surveying**

The survey limits will include right-of-way to right-of-way along: County Road from Uhland Road to the private property line; Uhland Road from IH-35 Northbound Frontage Road to 150 feet northeast of the intersection with River Road; River Road from the intersection with Uhland Road to 500 feet south of Aquarena Springs Drive; and Aquarena Springs Drive from intersection with River Road to 200 feet west of the intersection with River Road. Additional survey 20 feet outside of right-of-way along

the entirety of the project limits previously described. Survey limits will also include a new outfall to the Blanco River from River Road along W Uhland Road to the river confluence.

The survey will include horizontal and vertical control adequately documented on the construction plans and all points necessary to establish project construction in the field. Horizontal controls shall be North American Datum 1983 on the Texas State Grid Coordinate System South Central Zone Grid Coordinates, with values in U.S. Survey feet, carried to second-order accuracy to permit construction staking to third order accuracy. The vertical control for the survey shall be based on the U.S. Geological Survey North American Vertical Datum 1988 (NAVD 88) datum; benchmarks shall be established with a maximum separation of 1,000 feet and shall be accurate to 0.01 feet.

All surveys must meet or exceed the standards set in the Professional Land Surveying Practices Act, the General Rules of Procedures and Practices promulgated by the Texas Board of Professional Land Surveying (TBPLS), and the Texas Department of Transportation (TxDOT) TxDOT Survey Manual, latest edition, and shall be accomplished in an organized and professional manner.

Surveyor shall provide FNI one signed and sealed hard copy of the survey drawings and one digital AutoCAD copy with an ASCII file of points collected on CD-ROM or other acceptable delivery method.

The design survey will:

- Obtain or collect data to create cross-sections and digital terrain.
- Locate depths of existing utilities such as clean outs, manholes, inlets.
- Locate visible topographical features and existing improvements utilities and appurtenances, roadways, structures, trees, and other features within the limits of the survey.
- Provide details of existing drainage features (e.g., culverts, manholes, ditches, etc.).
- Locate environmental features flagged in the field by the environmental team.
- Establish additional and verify existing control points (City of San Marcos and TxDOT). Horizontal and Vertical control ties must be made and tabulated, to other control points in the vicinity, which were established by other sources such as, the National Geodetic Survey (NGS), and the Federal Emergency Management Agency (FEMA), and any other local entities as directed by City.
- Locate boreholes and SUE potholes (if performed)
- Update existing control data and prepare survey control data sheets, as directed by FNI for inclusion into a construction plan set.

A TIN-file including the full project information and one-foot contours will be provided.

- ii. Boundary Surveying (Tie into City Survey Monuments): A boundary survey will be provided within the limits of the project previously described and will include right-of-



way research for all parcels within the project limits tied to existing right-of-way as surveyed on the ground including right-of-way monumentation found.

- iii. Identify all Utilities: SUE Level C/D will be included for verification of the underground utility locations. SUE level B will be performed by coordinating surveyed utility features with record and City GIS data. Tickets and calls to One Call or Texas 811 will be submitted by the survey team.
- iv. Tree Survey: Significant existing trees (all trees with trunk diameter >6-inches) within or adjacent to the project area will be located and tagged per the City standards (size, tag number, species) to facilitate the tree mitigation plan.
- v. Subsurface Utility Locate (SUE Level A): See Additional Services
- vi. Geotechnical Borings: See Additional Services
- vii. Geologic Assessment: Not Included
- viii. Environmental Clearance: FNI will coordinate with and support Cox McLain Environmental Consulting to develop the environmental documentation for the improvements in accordance with 24 CFR part 58 Environmental Review Procedure for Entities Assuming HUD Environmental Responsibilities – Subpart E (Environmental Assessment) along with the Statutory Worksheet and Checklist for the 58.5 authorities and 24 CFR 58.6 as described in the attached, detailed scope.
- ix. Archeological: Coordination with the Texas Historical Commission will occur under task C viii above; however, if field investigations/archeological digging or mitigation is required it will be an additional service.

#### **D. Water/Sanitary Sewer Utilities**

- i. Determine preliminary alignments and potential conflicts.

#### **E. Streets**

- i. Traffic Counts: to be provided by the City.
- ii. Cross-Section Alternatives: FNI will develop 2 (two) cross-section alternatives based on City Staff, local stakeholder, and public input. Additionally, if traffic counts are performed, FNI will develop lane configurations matching existing and 20-year traffic counts.
- iii. Complete Street Alternatives: A complete streets analysis will be performed on the Uhland Road corridor. Based on City Staff, local stakeholder, and public input, FNI will develop alternatives balancing, pedestrian facilities (standard-width sidewalk, shared-use path), bicycle facilities (shared lane, bike lane, shared-use path), landscape and LID elements, and vehicular lane configuration as determine in Item E ii. Additionally, existing bus routes and bus stops will be considered.

iv. **Traffic Signals: Not Included**

v. **Sidewalks:** Existing sidewalks will remain, as possible, and FNI will determine completion of sidewalk along the remaining corridor as determined by the complete street analysis.

vi. **Intersection with River Road Alternatives:** FNI will evaluate 2 intersection alternatives for the intersection of Uhland Road and River Road to improve safety and the operational efficiency of the intersection.

**F. San Marcos Electric (SMEU)**

i. **Underground Conduit: Not Included**

ii. **Photometric for Street Lighting: Not Included**

iii. **Coordination:** FNI will evaluate impacts on the SMEU and will coordinate design improvements with SMEU.

**G. Drainage**

i. **Watershed Analysis:** Not included in this contract. FNI will obtain the latest available HEC-RAS model of the Blanco River from the City and use this model to evaluate tailwater conditions as described below.

ii. **Determine Alignments:** FNI will evaluate installing a storm drainage system that outfalls to the Blanco River and will evaluate up to two alternatives (one potential new alignment) that will improve local drainage and avoid adverse downstream impacts per criteria outlined in the City of San Marcos drainage criteria. This will include preparation of up to two alternative preliminary plan-view alignments and supporting rational method calculations, to be summarized in a preliminary engineering report.

iii. **Preliminary Hydraulics/Modeling:** FNI will determine if the University Heights system can handle the existing and additional flows from the roadway improvements while meeting City drainage criteria. Because portions of the project are in the Blanco River floodplain, and because the Blanco River basin is much larger than the local system's drainage area, FNI will analyze the local system based on the expected coinciding tailwater. FNI will estimate the coincident tailwater using the latest available HEC-RAS model of the Blanco River, and compare with coincidental occurrence guidance from the TxDOT Hydraulic Design Manual.

iv. **Water Quality:** FNI will evaluate opportunities to incorporate pretreatment manufactured devices prior to discharge to the Blanco River.

**H. Determine Easement/Land Acquisition Requirements**

i. **Prepare Exhibits:** Easement and right-of-way documents will include exhibit and metes and bounds description for up to 10 parcels (assuming each less than 0.25 acre/parcel).

Task does not include ROW acquisitions, title search and reporting, and boundary conflict resolution.

ii. Field Notes

iii. Negotiations of Easements: Not Included

**I. Determine Project Permitting/Design Requirements**

Based on the alternatives developed and potential environmental constraints identified via site visits and desktop survey, determine potential permitting and design requirements that may be imposed by regulatory agencies other than the City such as TxDOT, County, TCEQ, USACE.

Prepare a section of the preliminary engineering report summarizing the permitting and design requirements for the alternatives.

**J. Identify Utility Providers**

Surveyor shall submit tickets to utility providers through Texas 811, One Call, or other service in order to identify franchise utility providers in the project area.

**K. Identify Utility Conflicts**

FNI will identify known or potential utility conflicts based on the preliminary design alternative(s).

**L. Develop Construction Cost Estimates**

FNI will develop opinion of probable construction costs for the proposed improvements and, with assistance of the City, will prepare opinions of total probable project costs.

**M. Deliverables**

- i. Monthly Status Report: A brief one page monthly status report summary will be developed and submitted to the City Project Manager. The status report shall summarize work completed; percent complete to date for the schedule and budget; work scheduled to be completed for the upcoming month; and any outstanding issues or decisions that must be resolved by City staff or the project team. Updates to the project schedule will be provided, as needed and determined by project status.
- ii. Preliminary Engineering Report Draft: FNI will prepare a report summarizing the efforts outlined above that will include final design recommendations, preliminary project cost, land needs, typical section alternatives. FNI will solicit the City's feedback on the report and will incorporate review comments as necessary.

Submittal includes:

- 3 (three) hardcopies
- 1 (one) electronic copy (PDF)

- iii. Final Preliminary Engineering Report: FNI will incorporate City comments and public comments from the public meeting (as directed by City) to develop the final PER. This will provide final direction for the continuation of the design phase.

Submittal includes:

- 3 (three) hardcopies
- 1 (one) electronic copy (PDF)
- 1 (one) CAD (DWG/DGN) files

### **TASK 3 DESIGN PHASE (60%, 90%, 100%)**

#### **A. Meetings**

- i. Project Meetings: Conduct and attend two (2) review workshops
  - 60% design review workshop. After the 60% submittal, meet with the City to discuss major design elements that require changing and respond to City Comments.
  - Once the 60% design has been updated per the client comments and prior the 90% design submittal, any design changes will be locked.
  - 90% design, after the 90% submittal, meet with the City to discuss and identify project conflicts and respond to City comments.

Attend 2 (two) meetings with Jail representatives to discuss coordination of project schedules and designs (support for up to 3 staff members).

- ii. Prepare Exhibits: FNI will prepare up to three (3) 22-inch by 34-inch colored exhibits per public meeting, prepare presentation materials in Powerpoint format, respond to questions in the meeting as needed, and prepare meeting minutes for the Public Meeting in Item iii for City to make decisions regarding the design path with FNI input.
- iii. Public Meetings: Plan, participate in, and assist the City with one (1) Public Meeting. The City will schedule, host, and be responsible for conducting the meeting. FNI will participate in a phone meeting with City staff at least two weeks prior to the public meeting to discuss the preferred presentation process and go over mockups of presentation materials.
- iv. Utility Coordination Meetings: FNI will attend up to one (1) utility coordination meetings arranged by the City and if requested by the City to attend.

#### **B. Design Sheet Categories**

- i. Index: FNI will develop and maintain the sheet index including all sheets included in the plan set. As the plan set progresses, FNI will designate which sheets are not included in the submittal.
- ii. Quantity Table: FNI will develop total quantities for the project to be used for the development of the OPCC and bid form. Sheet quantities will be provided in the 90% deliverable.

- iii. General Notes: General notes sheets will be developed using general notes provided by City and incorporated, as necessary per the FNI design team.
- iv. Typical Sections: One (1) existing typical sections will be developed for County Road and up to three (3) will be developed for Uhland Road. Typical sections will: demonstrate existing pavement widths and sections based on survey and as-builts of the area, include existing right-of-way, include existing sidewalks and ditches.

Proposed typical sections will be developed for County Road and Uhland Road which will include the proposed pavement section, curb & gutter, sidewalk, lane configurations, parkway width, proposed right-of-way, and other aspects of the roadway design.

- v. Construction Phasing: FNI will prepare a construction phasing matrix identifying three options to manage traffic during construction listing the advantages and disadvantages of each option. The matrix will be in the form of a memo describing the traffic control options, anticipated costs and construction time impacts for each phase, and a recommended option.
  - 1. Traffic Control Sheets: TCP developed per TMUTCD guidelines and utilizing City/TxDOT standard details. Provide typical roadway sections per phase and plan view layouts including phase limits, joint bid utility construction, storm drain construction, construction signage, construction pavement markings, and construction detour plans. The TCP will also be designed to work around the jail construction.
  - 2. Provide written sequence of construction on plan sheet(s) detailing the items of work to be accomplished per phase.
- vi. Road Design
  - 1. Development of horizontal and vertical alignment of County Road and Uhland Road including additional side street profiles to tie-in proposed alignment
  - 2. Development of base files including roadway plan view.
  - 3. Project layout sheets showing existing/proposed right-of-way lines, property lines, proposed permanent and temporary easement lines. Proposed right-of-way and permanent/temporary easements shall provide sufficient space for construction of all proposed work.
  - 4. Plan and profile sheets showing:
    - a) proposed horizontal roadway alignments;
    - b) plan view existing and proposed ROW;
    - c) plan view existing and proposed edges of pavement, curb, sidewalks, driveways, and curb ramps;
    - d) plan view proposed elevations at tie-in points for vertical intersections;
    - e) plan view limits of cross slope transitions;
    - f) plan view proposed lane dimensions and lane arrows,
    - g) plan view existing and proposed drainage structures,

- h) plan view existing and proposed utilities including water and sanitary sewer;
  - i) existing and proposed roadway vertical profiles, including crossing utilities, existing ground at the roadway centerline and ROW, and proposed vertical curve information for the centerline of the roadway only. If required, separate top of curb elevation profiles will be provided as an additional service.
- 5. Roadway cross sections at 100' intervals and centerline of proposed driveways.
- 6. Intersection plan view layouts at each cross street with elevations and offsets at points of vertical intersections.
- 7. Standard detail sheets for the roadway plans: City/City of Austin standards will be used primarily with TxDOT standards as supplement.
- vii. Drainage: Preliminary drainage sheets including drainage area maps, plan and profiles, and hydraulic computations including:
  - 1. Drainage area maps;
  - 2. Complete and final hydrologic and hydraulic analyses, catch basin analyses, and all other calculations (on hard copy and in digital format) conducted for design of the proposed drainage system. The analyses shall use the design survey data and final system profiles.
  - 3. Preliminary plan view layouts of the storm drainage system showing drainage areas boundaries, outfall locations, cross culvert locations, cross culvert sizes, inlet locations, inlet sizes, junction box locations, junction box sizes, storm conduit [pipe or box] sizes, slopes and hydraulic grade lines.
  - 4. Preliminary cross culvert profiles showing culvert locations, skew, size, elevations, slope, end treatments, and grading requirements. Cross culvert plan and profiles will be provided for all bridge class culverts showing culvert locations, skew, size, elevations, slope, end treatments, headwater and tail water elevations, end treatments and grading requirements.
- viii. Tree Mitigation: Tree Protection/Mitigation Sheets, including tree table, will show preserved and removed trees. FNI will endeavor to save protected trees within the project area to the extent practicable and, if needed, will propose locations for planting replacement trees within the project limits. Irrigation systems will not be needed, and watering requirements will be specified for the contractor during the warranty period.
- ix. Erosion Control: Prepare erosion control and sedimentation control (EC&S) sheets, including the SWPPP narrative, EPIC and standard details. EC&S sheets will follow the same sequence for the traffic control plan.
- x. Removal: Removal sheets will be prepared to designate all items to be removed as part of this contract.
- xi. Signing and Pavement Markings: Plan sheets will be developed showing proposed signing and pavement markings for the project. Sheets will be at a scale of 1-inch = 40-feet.
- xii. Electrical – Underground: See Additional Services.

- xiii. Utility Layout: FNI will provide color coded layout sheets of the existing utilities.
- xiv. Utility Coordination: FNI will identify conflicts with a utility conflict exhibit(s). The City will initiate discussions with utility owners, and FNI will support as requested by the City (e.g. attendance at meetings).
- xv. Utility Design: Improvements to the City utilities will include the following:
  - 1. Water: Design plan and profile layout of proposed pipeline, appurtenances and tie-in locations for approximately 1,800 LF of water main (12 inches in diameter).
  - 2. Wastewater: Design plan and profile of proposed pipeline, appurtenances, and tie-in locations for up to 1,000 LF of wastewater main.

**C. TDLR Review – See Additional Services**

**D. Permitting Submittals – See Additional Services**

**E. Deliverables (Plans will be 11-inch by 17-inch)**

- i. Monthly Status Report: A monthly status report will be developed and submitted to the City Project Manager. The status report shall summarize work completed; percent complete to date for the schedule and budget; work scheduled to be completed for the upcoming month; and any outstanding issues or decisions that must be resolved by City staff or the project team. Updates to the project schedule will be provided, as needed and determined by project status. Anticipated to be brief, one-page reports to accompany invoices.
- ii. 60% Submittal
  - 1. Plan Set
    - a. Cover Sheet using City title block
    - b. Project Layout Sheet: scale of 1-inch = 100-feet
    - c. Roadway and Drainage Plan Sheets: Horizontal scale of 1-inch = 40-feet and a vertical scale of 1-inch = 10-feet
    - d. List of Standard Details
    - e. List of Standard Specifications
    - f. Project Specific/Special Specifications
    - g. Project Specific/Special Details
  - 2. Opinion of Probable Construction Cost
  - 3. Construction Schedule: Time determination schedule per traffic control phase based on the critical path scheduling method using locally published production rates for construction. The construction time determination schedule will be based on a five (5) day work week with a normal eight (8) hour work day. If required, additional time determination schedule alternatives will be developed as an additional service.
  - 4. Submittal includes:
    - 4 (four) copies – 11"x17" plans
    - 1 (one) copy – supporting documents

- 1 (one) electronic copy (PDF)
- iii. 90% Submittal
1. Plan Set: Address review comments and include all items updated from 60% submittal and additionally:
    - a. Profile: Up to two (2) major modifications to the profile due to design comments
    - b. Details: Development and inclusion of any identified standard details or project-specific details, as necessary
    - c. Quantities (by page) including summary of small signs.
    - d. TCP Sheets based on option selected from 60% deliverable
    - e. Opinion of Probable Cost
    - f. Specifications: Detailed construction specifications using the City Standard Specifications and any necessary Special Specifications to cover those items of material, work and other conditions special to the project. The contract documents, technical specifications, geotechnical data report, and any permits (e.g., SWPPP) will be bound and submitted as the Project Manual for review. FNI will submit the bid form with quantities and estimate unit costs to the City's Project Manager for review;
  2. Bid Form
  3. Submittal includes:
    - 4 (four) copies – 11"x17" plans
    - 1 (one) copy – supporting documents
    - 1 (one) electronic copy (PDF)
- iv. 100% Sealed Submittal
1. Plan Set: Address comments if any, from the City on the 90% plans and Project Manual. Perform QA/QC review on the 100% sealed plans.
  2. Construction Check List
  3. Bid Form: Develop the final bid form and Opinion of Probable Cost to the City's Project Manager.
  4. Technical Specifications: Update specifications per received comments and develop final Project Manual.
  5. Submittal includes:
    - 2 (two) copies – 11"x17" sealed plans
    - 1 (one) electronic copy (PDF)
    - 1 (one) Bid Form (Word Format)
    - CAD files

#### **TASK 4 - BIDDING PHASE ASSISTANCE**

FNI shall work with the City to prepare the Notice to Bidders for the City's use in advertising the project. FNI will assist the City during the bid phase as follows:

- A. Attend Pre-Bid Meeting: FNI will attend one (1) pre-bid meeting to answer questions related to the bid documents. FNI will prepare and issue meeting minutes to the City. If



needed, questions or clarifications discussed during the meeting shall be prepared as an addendum.

- B. Answer Questions:** Respond to questions and interpret bid documents related to perspective bidder's questions. Provide official responses responding to questions or clarifying the bid documents as addenda as needed.
- C. Assist with Addenda:** FNI will prepare addenda, when necessary, to update bid documents and shall provide to the City for issuance to plan holders.
- D. Bid Tabulation and Recommendation of Award:** Assist City in the opening, tabulating, and analyzing of the bids received.
- E. Reference Check for Bid Qualification**
  - i. Review the qualification information provided by the apparent low bidder. FNI will perform qualification review and background check on subsequent bidders, as necessary.
  - ii. Letter of Recommendation: Recommend award of contract or other actions as appropriate to be taken by the City.
  - iii. Provide copy of above information to the City: FNI will provide all backup documentation collected during bidder review.
  - iv. Cost incurred performing background checks will be invoiced back to City at cost.
- F. Conformed Plans**
  - i. Provide itemized bid tabulation, Division 1 and technical specifications and conformed plans.
  - ii. Provide four (4) sets of 11"x17" drawings, two (2) 22"x34" drawings, 1 PDF file, and 1 CAD file.

#### **TASK 5 - CONSTRUCTION PHASE**

Upon completion of the bid phase services, proceed with the performance of construction phase services as described below. FNI will endeavor to protect Owner in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

- A. Project Meetings (Every 2 Weeks for a total of 24 meetings):** Attend project meetings and provide input on any open issues. FNI will prepare and disseminate meeting minutes to the project team.
- B. Attend Pre-Construction Conference:** Assist in conducting pre-construction meeting and disseminate meeting minutes with project contact list.

- C. Submittal Review: FNI will review submittals (up to 40 submittals with 1 re-review) and provide responses to the City and Contractor.
- D. Respond to Requests for Information/Modifications: FNI will review RFIs and modification requests (up to 20). Updates to plans related to RFIs will be performed as an additional service unless due to error/omission by FNI or one of its agents.
- E. Construction Observations: Site visits will be made in conjunction with periodic meetings; however, no site observation reports will be required by the City.
- F. Construction Inspection: Not Included
- G. Final Pay Estimate Review: Review pay estimates for accuracy after City review (up to 12). Because FNI will not perform on-site inspection we will rely on City staff to confirm actual quantities.
- H. Review Change Orders: FNI will assist in the preparation and review of change orders for conformity to pay estimates, and contract documents.
- I. Finalize Driveway Plats: Not included. FNI to advise only on extent needed.
- J. TDLR Inspection: See Additional Services
- K. Project Startup: Not Included
- L. Substantial and Final Completion: FNI will participate with the City in a walk-through of the project once the project is substantially complete. FNI will prepare a punchlist of outstanding items and issues and will participate in final walkthrough with the City to assess conformance with project completion. FNI will provide notifications to jurisdictional agencies on completion.
- M. Deliverables
  - i. Site Visit Reports – Not Included
  - ii. Submittal Log

#### **TASK 6 - RECORD DRAWING PHASE**

Develop record drawings per inspector and contractor comments, red-lines, and approved field changes.

##### **A. Deliverables:**

- i. Draft Drawings: one (1) copy 22"x34" plans for inspector review; one (1) electronic copy of 11"x17" plans; associated CAD (DWG/DGN) files.
- ii. Final Drawings: two (2) copies 22"x34" plan sets with inspector comments incorporated; one (1) electronic copy of updated 11"x17" plans; associated CAD (DGN) files.
- iii. Surface to grid conversion factor provided

iv. GIS Shapefiles (as available)

**TASK 7 - PROJECT MANAGEMENT**

- A.** Perform project management to include overall project monitoring. FNI will engage and coordinate with subconsultants, prepare a project work plan, prepare communication plan, perform risk identification, incorporate a process and communication management plan, develop critical path, project setup and invoicing. This includes managing change; effective communication; internal and external coordination; and control of the project quality, progress and budget for design/construction for a scoped period of seventeen (17) months.
- B.** Prepare a QA/QC plan by major discipline and for the overall project. FNI will conduct Quality Assurance reviews after each major submittal and will include monthly quality assurance visits from a senior technical advisory. Perform quality control reviews in accordance with the approved QA-QC Work Plan and will include the initial work plan, all major submittals and a constructability review at the 60% and 90% phase.
- C.** Submit the project documents for compliance review with Texas Accessibility Standards and provide a copy of the review letter to the City for the City files. Upon completion of construction arrange for on-site inspection of the completed project and provide a copy of the letter to the City for the City files.



**ENVIRONMENTAL SCOPE OF SERVICES**  
**For Freese and Nichols, Inc. – Uhland Road Reconstruction**  
**From IH 35 Frontage Road to South of Aquarena Springs Drive**  
**City of San Marcos**

**Project Understanding**

The Project includes reconstruction of Uhland Road to an urban section from the IH 35 Northbound Frontage Road to nearly 500-feet south of Aquarena Springs Drive along River Road (approx. 3,500'). Utility improvements will include upsizing 1,800 linear feet (LF) of water line and replacing or repairing up to 1,000 LF of wastewater line. The project will also include approximately 800 feet of new sidewalk extended to Aquarena Springs Drive. Freese and Nichols, Inc. (FNI) understands the City of San Marcos (City) intends to mitigate local drainage problems along County Road and Uhland Road by installing a storm drainage system with outfall to the Blanco River. This project is partially funded with Community Development Block Grant (CDBG) funds provided to the City by the United States Department of Housing and Urban Development (HUD) to help recovery from the fall 2015 flood disaster. Therefore, the project is subject to the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA). Improvements are assumed to take place within the existing right-of-way and within 20 feet of additional right-of-way or workspace for the length of the project: along County Road from Uhland Road to the private property line; Uhland Road from IH-35 Northbound Frontage Road to 150 feet northeast of the intersection with River Road; River Road from the intersection with Uhland Road to 500 feet south of Aquarena Springs Drive; and Aquarena Springs Drive from intersection with River Road to 200 feet west of the intersection with River Road. See attached map

**Environmental Services**

The anticipated level of effort is an Environmental Assessment in accordance with *24 CFR Part 58 Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities* – Subpart E (Environmental Assessment) along with the Statutory Worksheet and Checklist for the 58.5 authorities (related environmental laws) and 24 CFR 58.6. Excluded services as listed below under assumptions. CMEC will provide the documentation necessary to complete the Environmental Review Record Checklist for an EA project along with supporting mapping and documentation where necessary.

It is assumed that the No Build option will not meet the project purpose and need so one Build Alternative will be assessed. To meet the EA requirements, CMEC will investigate the following primary topics with research and analysis (see also additional information and exclusion):

- Cultural Resources
  - Historic Resources Coordination Letter to the Texas Historical Commission (THC)
  - Archeological Resources Background; Coordination Letter to THC
- Water Resources, Wetlands, and Floodplains (note: floodplain compliance will be limited to linear crossings of floodplains; does not include any hydrologic analysis or modelling)
- Threatened and Endangered Species Habitat Assessment
- Hazardous Materials Database Search and Analysis
- Socioeconomic/Environmental Justice
- HUD Noise Analysis (hand model to be completed according to HUD requirements)
- Airport Clear Zones/CZMA Proximity
- Draft language for the EA Finding and Request for Release of Funds to support the City of San Marcos' staff person to complete those required documents

The EA checklist will also be prepared to comply with *24 CFR Part 58.5 – Related Federal Laws and Authorities* including statements with regard to these categories mentioned in the guidance:



- the National Historic Preservation Act of 1966 and other cultural resources regulations
- Floodplain Management
- Wetland Protection
- Coastal Zone Management
- Sole Source Aquifers
- Endangered Species
- Wild and Scenic Rivers
- Air Quality
- Farmland Protection
- Noise Control and Abatement
- Explosive and Flammable Operations
- Airport Hazards (Runway Clear Zones)
- Contamination and Toxic Substances (an ASTM Hazardous Materials Database Search will be conducted)
- Environmental Justice (Executive Order 12898)

#### **Additional Clarifications and Exclusions**

The National Historic Preservation Act of 1966 and other cultural resources regulations: A search of the Texas Archaeological Resources Laboratory (TARL) and Texas Historical Commission (THC) databases will be conducted to determine any known archaeological sites in the project area. A coordination letter to the Texas Historical Commission will be prepared to determine whether or not they recommend a survey for historic resources or archeological resources. No historic resources or archaeological survey is included in the current scope and fee estimate. Historic/Archaeological coordination involving National Register Testing and/or Data Recovery-level excavation or mitigation or Section 106 coordination is not included in this scope and fee estimate.

Endangered Species Act: A vegetation/habitat assessment would be conducted to determine whether or not proposed project activities would affect threatened/endangered species habitat. Coordination with the U.S. Fish and Wildlife Service would be required for any potential impacts to endangered species in accordance with the Endangered Species Act. The scope does *not* include Endangered Species Presence/Absence Surveys; Endangered Species Section 7 or Section 10(a) Formal Consultation and/or the preparation of a Biological Assessment, Habitat Conservation Plan, assistance with a Biological Opinion.

Noise: According to HUD regulations (24 CFR Part 51 Subpart B, Noise Abatement and Control), HUD's goal is that exterior noise levels not exceed 55 dB. For the purposes of meeting this goal, noise levels not exceeding a day-night average of 65 dB are considered acceptable. Noise levels over 65 dB may require special approvals, environmental review, and attenuation; noise levels below 65 dB do not require these. HUD's manual determination of noise levels will be conducted (*no on-site noise monitoring will be conducted*).

Public Involvement: It is assumed that the City of San Marcos staff will handle any public notice of document availability for review or any public meeting requirements.

#### **Other services not included or available for additional scope and fee:**

- ☐ Clean Water Act Section 404 permitting or direct coordination with USACE
- ☐ Noise barrier analysis
- ☐ Air quality modeling
- ☐ Geologic Assessment
- ☐ Expert witness services
- ☐ Mitigation planning
- ☐ Construction phase monitoring or services
- ☐ Full Phase 1 or Phase 2 Environmental Site Assessment for Hazardous Materials



### Deliverables

CMEC will provide the information necessary to complete the Environmental Review Record Checklist for a HUD EA project along with supporting mapping and documentation. The deliverable will be in pdf format.

CMEC will complete the environmental deliverables for the not to exceed cost of \$29,988.

L. Ashley McLain, MCP

Principal

Cox|McLain Environmental Consulting, Inc.

| FREASE AND NICHOLS, INC. - UHLAND ROAD RECONSTRUCTION FROM IH35 FRONTAGE ROAD TO SOUTH OF AQUARENA SPRINGS DRIVE |                 |                |                          |                         |              |             |               |              |              |             |                 |                           |
|--|-----------------|----------------|--------------------------|-------------------------|--------------|-------------|---------------|--------------|--------------|-------------|-----------------|---------------------------|
| PROVIDER NAME: Cox/McLain Environmental Consulting, Inc.   |                 |                |                          |                         |              |             |               |              |              |             |                 |                           |
| TASK DESCRIPTION   | PROJECT MANAGER | QA/QC REVIEWER | SENIOR ENVL SCIENTIST II | SENIOR ENVL SCIENTIST I | ENVL PROF II | ENVL PROF I | ENVL STAFF II | ENVL STAFF I | ENVL TECH II | ENVL TECH I | ADMIN/ CLERICAL | TOTAL LABOR HOURS & COSTS |
| SOCIAL, ECONOMIC AND ENVIRONMENTAL STUDIES (CMC)   |                 |                |                          |                         |              |             |               |              |              |             |                 |                           |
| Informal Meetings and Project Communications   | 8               |                | 12                       |                         |              | 8           |               |              |              |             | 8               | 36                        |
| Project Management, meetings, communications   |                 |                |                          |                         |              |             |               |              |              |             |                 |                           |
| Agency Coordination - in person meetings (not included)  |                 |                |                          |                         |              |             |               |              |              |             |                 | 0                         |
| Public involvement; distribution of documents for public review (not included)                                   |                 |                |                          |                         |              |             |               |              |              |             |                 | 0                         |
| HUD EA: 58.5 Statutory Checklist and 58.5 Compliance   |                 |                |                          |                         |              |             |               |              |              |             |                 | 0                         |
| Environmental Review Record Documentation  |                 |                |                          |                         |              |             |               |              |              |             |                 | 0                         |
| Archaeology Background Study - THC Coordination Letter   | 1               | 2              | 2                        |                         | 5            |             | 6             |              |              |             | 1               | 17                        |
| Archaeology Pedestrian Survey (not included)   |                 |                |                          |                         |              |             |               |              |              |             |                 | 0                         |
| Historic Resources THC Coordination Letter   | 1               | 2              | 2                        |                         | 5            |             | 6             |              |              |             | 1               | 17                        |
| Research Design (not included)   |                 |                |                          |                         |              |             |               |              |              |             |                 | 0                         |
| Reconnaissance Survey (not included)   |                 |                |                          |                         |              |             |               |              |              |             |                 | 0                         |
| Water Resources and Wetlands; Floodplains  | 2               | 1              |                          | 16                      | 4            |             | 16            |              | 16           |             | 1               | 58                        |
| Geologic Assessment (not included)   |                 |                |                          |                         |              |             |               |              |              |             |                 | 0                         |
| Threatened/Endangered Species Habitat Assess. (state- and federal-listed)  | 2               | 1              |                          | 16                      |              |             | 16            |              | 20           |             | 1               | 56                        |
| Biological Evaluation for Section 7 ESA Consultation with USFWS (not included)                                   |                 |                |                          |                         |              |             |               |              |              |             |                 | 0                         |
| Hazardous Materials Database Search and Analysis   | 2               | 1              | 4                        |                         |              | 16          |               |              | 8            |             | 1               | 32                        |
| Socioeconomics/Environmental Justice   | 2               | 2              | 6                        |                         | 8            |             | 8             |              | 8            | 4           | 1               | 49                        |
| HUD Noise Analysis   | 1               | 1              |                          |                         | 20           |             |               |              | 8            |             | 1               | 31                        |
| Air Quality (not included)   |                 |                |                          |                         |              |             |               |              |              |             |                 | 0                         |
| Airport Clear Zones, CZMA Proximity  | 2               | 1              |                          |                         | 6            |             |               |              | 6            |             | 1               | 16                        |
| Comments and responses; coordination for Environmental Document  | 6               | 6              |                          | 6                       | 6            |             | 8             | 4            | 8            |             | 2               | 54                        |
| EA Finding - draft language; Request for Release of Funds support  | 3               |                | 3                        |                         |              |             | 4             |              |              |             |                 | 10                        |
|  |                 |                |                          |                         |              |             |               |              |              |             |                 | 0                         |
| HOURS SUB-TOTALS   | 30              | 17             | 31                       | 38                      | 42           | 36          | 64            | 12           | 74           | 12          | 18              | 374                       |
| CONTRACT RATE PER HOUR   | \$138.00        | \$138.00       | \$113.00                 | \$95.00                 | \$83.00      | \$73.00     | \$60.00       | \$53.00      | \$45.00      | \$38.00     | \$50.00         | \$0.00                    |
| TOTAL LABOR COSTS  | \$4,140.00      | \$2,346.00     | \$3,593.00               | \$3,610.00              | \$3,486.00   | \$2,628.00  | \$3,840.00    | \$636.00     | \$3,330.00   | \$468.00    | \$900.00        | \$28,887.00               |
| % DISTRIBUTION OF STAFFING   | 8.0%            | 4.5%           | 8.5%                     | 10.2%                   | 11.2%        | 9.6%        | 17.1%         | 3.2%         | 19.6%        | 3.2%        | 4.8%            | 0.0%                      |
| SUBTOTAL (FC 120)  |                 |                |                          |                         |              |             |               |              |              |             |                 | \$28,887.00               |
| ENVIRONMENTAL STUDIES AND PUBLIC INVOLVEMENT (FC120)   |                 |                |                          |                         |              |             |               |              |              |             |                 |                           |
| SUBTOTAL LABOR EXPENSES  |                 |                |                          |                         |              |             |               |              |              |             |                 |                           |
| OTHER DIRECT EXPENSES  |                 |                |                          |                         |              |             |               |              |              |             |                 |                           |
| Lodging/Hotel  | day/person      |                | \$80.00                  |                         |              |             |               |              |              |             |                 | \$0.00                    |
| Lodging/Hotel Taxes/fees   | day/person      |                | \$20.00                  |                         |              |             |               |              |              |             |                 | \$0.00                    |
| Meals  | day/person      |                | \$41.00                  |                         |              |             |               |              |              |             |                 | \$0.00                    |
| Mileage  | mile            | 600            | \$0.535                  |                         |              |             |               |              |              |             |                 | \$321.00                  |
| Standard Postage   | letter          |                | \$0.48                   |                         |              |             |               |              |              |             |                 | \$0.00                    |
| Overnight Mail - letter et/za  | each            | 1              | \$25.00                  |                         |              |             |               |              |              |             |                 | \$25.00                   |
| Overnight Mail - oversized box   | each            | 1              | \$30.00                  |                         |              |             |               |              |              |             |                 | \$30.00                   |
| Courier Services   | each            |                | \$0.10                   |                         |              |             |               |              |              |             |                 | \$25.00                   |
| Photocopies BW (8 1/2" X 11") (approx. 61 sheets x 10 copies/sub x 4 sub)  | each            |                | \$0.20                   |                         |              |             |               |              |              |             |                 | \$25.00                   |
| Photocopies BW (11" X 17") (approx. 260 sheets x avg of 10 copies /subinitial * 4sub)                            | each            |                | \$0.10                   |                         |              |             |               |              |              |             |                 | \$0.00                    |
| Plots (BW on Bond)   | each            |                | \$0.50                   |                         |              |             |               |              |              |             |                 | \$0.00                    |
| Plots (Color on Bond)  | square foot     |                | \$0.50                   |                         |              |             |               |              |              |             |                 | \$0.00                    |
| Hazardous Materials Database Search  | square foot     |                | \$1.00                   |                         |              |             |               |              |              |             |                 | \$0.00                    |
| Geologic Assessment (not included)   | search          | 2              | \$350.00                 |                         |              |             |               |              |              |             |                 | \$700.00                  |
| Archaeology Equipment - Backhoe Operator (not included)  | report          |                | \$3,000.00               |                         |              |             |               |              |              |             |                 | \$0.00                    |
| CDs  | day/person      |                | \$1,500.00               |                         |              |             |               |              |              |             |                 | \$0.00                    |
|  | each            |                | \$1.50                   |                         |              |             |               |              |              |             |                 | \$0.00                    |
| SUBTOTAL DIRECT EXPENSES   |                 |                |                          |                         |              |             |               |              |              |             |                 | \$1,101.00                |
| SUMMARY  |                 |                |                          |                         |              |             |               |              |              |             |                 |                           |
| TOTAL COSTS  |                 |                |                          |                         |              |             |               |              |              |             |                 | \$28,887.00               |
| NON-SALARY (OTHER DIRECT EXPENSES)   |                 |                |                          |                         |              |             |               |              |              |             |                 | \$1,101.00                |
| TOTAL PHASE 1  |                 |                |                          |                         |              |             |               |              |              |             |                 | \$29,988.00               |









## Gorrondona & Associates, Inc

Land Surveying • GIS • Aerial Mapping • Geotechnical Engineering/CMI

July 28, 2017

Freese and Nichols, Inc.  
4040 Broadway, Suite 600  
San Antonio, Texas 78209  
Attn: Mr. Ken Carper, P.E., CFM

### Re: City of San Marcos – Uhland Road Design Survey

Dear Mr. Carper:

Gorrondona & Associates, Inc. (G&AI) is pleased to submit this proposal for professional land surveying services for the above referenced project. The following itemized surveying services are to be provided by Gorrondona & Associates, Inc.:

I.

#### A. Field Investigations

##### i. Topographic Surveying

The survey limits will include right-of-way to right-of-way along: County Road from Uhland Road to the private property line; Uhland Road from IH-35 Northbound Frontage Road to 150 feet northeast of the intersection with River Road; River Road from the intersection with Uhland Road to 500 feet south of Aquarena Springs Drive; and Aquarena Springs Drive from intersection with River Road to 200 feet west of the intersection with River Road. Additional survey 20 feet outside of right-of-way along the entirety of the project limits previously described.

The survey will include horizontal and vertical control adequately documented on the construction plans and all points necessary to establish project construction in the field. Horizontal controls shall be North American Datum 1983 on the Texas State Grid Coordinate System South Central Zone Grid Coordinates, with values in U.S. Survey feet, carried to second-order accuracy to permit construction staking to third order accuracy. The vertical control for the survey shall be based on the U.S. Geological Survey North American Vertical Datum 1988 (NAVD 88) datum; benchmarks shall be established with a maximum separation of 1,000 feet and shall be accurate to 0.01 feet.

All surveys must meet or exceed the standards set in the Professional Land Surveying Practices Act, the General Rules of Procedures and Practices promulgated by the Texas Board of Professional Land Surveying (TBPLS), and the Texas Department of Transportation (TxDOT) TxDOT Survey Manual, latest edition, and shall be accomplished in an organized and professional manner.

## **Gorrondonga & Associates, Inc**

Land Surveying • GIS • Aerial Mapping • Geotechnical Engineering/CMI

Surveyor shall provide FNI one signed and sealed hard copy of the survey drawings and one digital AutoCAD copy with an ASCII file of points collected on CD-ROM or other acceptable delivery method.

The design survey will:

- Obtain or collect data to create cross-sections and digital terrain at 50-foot intervals.
- Locate depths of existing utilities such as clean outs, manholes, inlets.
- Locate visible topographical features and existing improvements utilities and appurtenances, roadways, structures, trees, and other features within the limits of the survey.
- Provide details of existing drainage features, (e.g., culverts, manholes, ditches, etc.).
- Locate environmental features flagged in the field by the environmental team.
- Establish additional and verify existing control points (City of San Marcos and TxDOT). Horizontal and Vertical control ties must be made and tabulated, to other control points in the vicinity, which were established by other sources such as, the National Geodetic Survey (NGS), and the Federal Emergency Management Agency (FEMA), and any other local entities as directed by City.
- Locate boreholes and SUE potholes (if performed)
- Update existing control data and prepare survey control data sheets, as directed by FNI for inclusion into a construction plan set.

A TIN-file including the full project information and one-foot contours will be provided.

ii. **Boundary Surveying (Tie into City Survey Monuments)**

A boundary survey will be provided within the limits of the project previously described and will include right-of-way research for all parcels within the project limits tied to existing right-of-way as surveyed on the ground including right-of-way monumentation found.

iii. **Identify all Utilities**

SUE Level C/D will be included for verification of the underground utility locations. Surveyor shall call Texas811 for utility locates along project corridor. Utility markings shall be located and incorporated into the design survey CAD file.

iv. **Tree Survey**

Significant existing trees (all trees with trunk diameter >6-inches) within or adjacent to the project area will be located and tagged per the City standards (size, tag number, species) to facilitate the tree mitigation plan.

## Gorrondonga & Associates, Inc

Land Surveying • GIS • Aerial Mapping • Geotechnical Engineering/LM1

### II.

#### A. Determine Easement / Land Acquisition Requirements

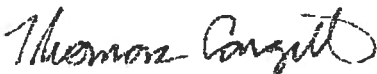
##### i. Prepare Exhibits

Easement and right-of-way documents will include exhibit and metes and bounds description for up to 10 parcels (assuming each less than 0.25 acre/parcel). Task does not include ROW acquisitions, title search and reporting, and boundary conflict resolution. Easements and right-of-way documents shall be at a unit rate of \$1,800.00 per document. All easements and right-of-ways shall be monumented with 5/8 inch rebar with a Gorrondonga cap, unless stated otherwise in the document.

Gorrondonga & Associates, Inc. can complete the above-itemized professional land surveying services for an hourly not to exceed of \$38,461.10 for Field Services. Easements and right-of-way shall be invoiced by unit ( $10 \times \$1,800 = \$18,000.00$ ). The total amount of this fee proposal is \$56,461.10 If you have any questions or require additional information please contact me at (512) 719-9933.

Sincerely,

**GORRONDONA & ASSOCIATES, INC.**



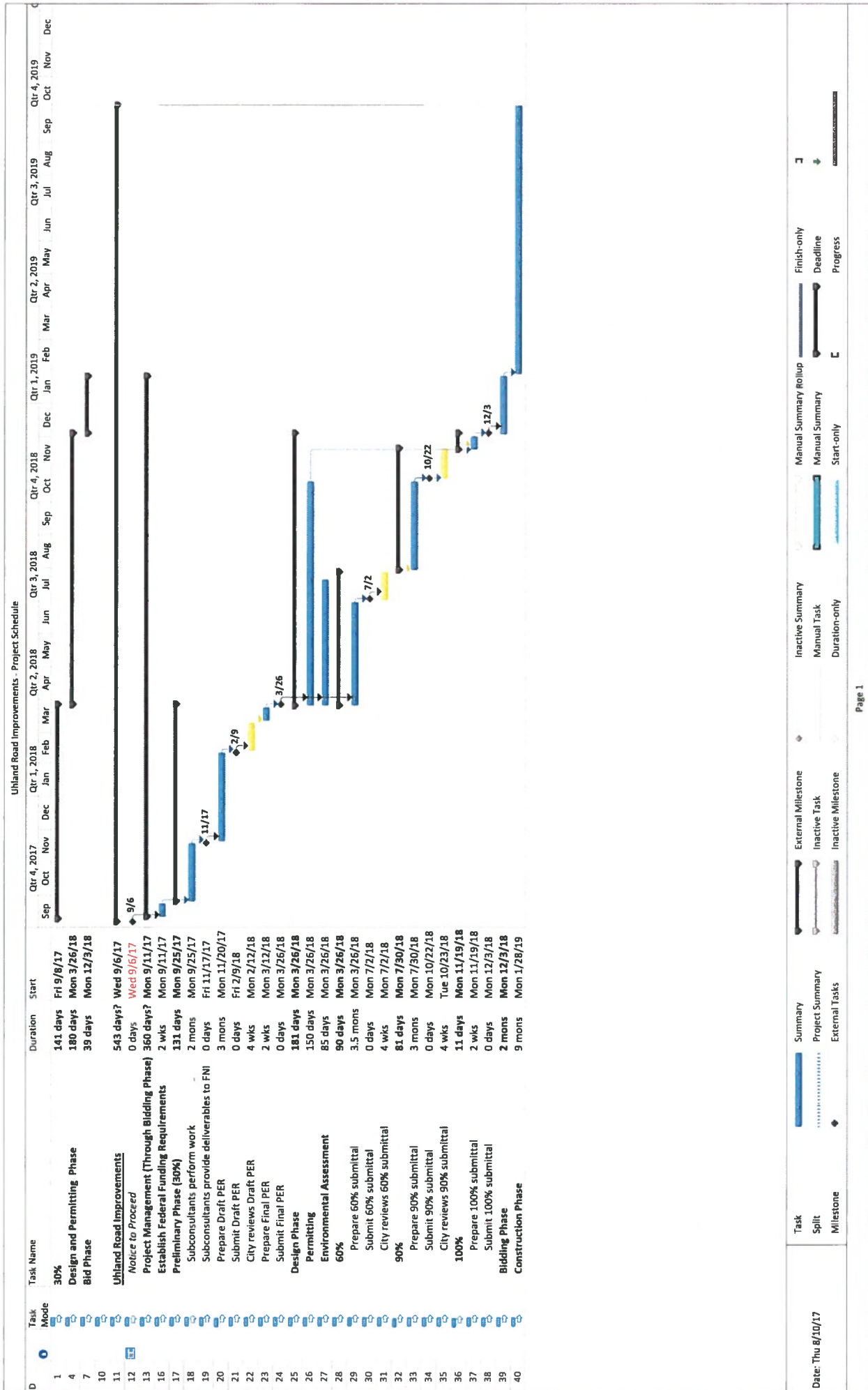
Thomas Cargill, RPLS, PLS  
Project Manager

## 6/15/2017

L. Neurospora OL CRN Shian Maroon Uland Road 603 : Fee Breakdown per City



2 of 2





## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/14/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|  |   |   |                                    |
|--|---|---|------------------------------------|
| <b>PRODUCER</b><br>Ames & Gough<br>8300 Greenboro Dr.<br>Suite 980<br>McLean VA 22102                    | <b>CONTACT NAME:</b>                                  | <b>PHONE (A/C, No, Ext):</b> 703-827-2277 | <b>FAX (A/C, No):</b> 703-827-2279 |
|  | <b>E-MAIL ADDRESS:</b> admin@amesgough.com            |   |                                    |
| <b>INSURED</b><br>Freese and Nichols, Inc.<br>4055 International Plaza, Suite 200<br>Fort Worth TX 76109 | <b>INSURER(S) AFFORDING COVERAGE</b>                  |   | <b>NAIC #</b>                      |
|  | <b>INSURER A:</b> Continental Casualty Company (CNA)  |   | 20443                              |
|  | <b>INSURER B:</b> Hartford Fire Insurance Company A+  |   | 19682                              |
|  | <b>INSURER C:</b> Hartford Casualty Insurance Company |   | 29424                              |
|  | <b>INSURER D:</b> Trumbull Insurance Company A+ (XV)  |   | 27120                              |
|  | <b>INSURER E:</b>                                     |   |                                    |
| <b>INSURER F:</b>  |   |   |                                    |

## COVERAGES

CERTIFICATE NUMBER: 1448917887

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE   | ADDL INSD                                    | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS  |
|----------|---|--|----------|---------------|-------------------------|-------------------------|---|
| B        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER: |  |          | 42UUNNI6224   | 10/23/2016              | 10/23/2017              | EACH OCCURRENCE \$1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000<br>MED EXP (Any one person) \$10,000<br>PERSONAL & ADV INJURY \$1,000,000<br>GENERAL AGGREGATE \$2,000,000<br>PRODUCTS - COMP/OP AGG \$2,000,000<br>\$ |
| C        | <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY<br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS                                      |  |          | 42UENNI6305   | 10/23/2016              | 10/23/2017              | COMBINED SINGLE LIMIT (Ea accident) \$1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$  |
| C        | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR<br><input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br><input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000   |  |          | 42RHUNI5748   | 10/23/2016              | 10/23/2017              | EACH OCCURRENCE \$10,000,000<br>AGGREGATE \$10,000,000<br>\$  |
| D        | <input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below  | Y/N<br><input checked="" type="checkbox"/> N | N/A      | 42WBCU2821    | 10/23/2016              | 10/23/2017              | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER<br>E.L. EACH ACCIDENT \$1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$1,000,000<br>E.L. DISEASE - POLICY LIMIT \$1,000,000                                      |
| A        | Professional Liability  |  |          | AEH008214422  | 10/23/2016              | 10/23/2017              | 5,000,000 / per claim 10,000,000 aggr   |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Uhland Road Project

The City and its employees, officers, officials, agents and volunteers are included as additional insureds with respects to General and Auto Liability. Waiver of Subrogation applies to General, Auto and Workers Compensation as required by written contract and allowed by law.

## CERTIFICATE HOLDER

## CANCELLATION

City of San Marcos  
Attn: Capital Improvements Department  
630 East Hopkins  
San Marcos TX 78666

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**Attachment "E"**  
**Supplemental Conditions for**  
**Community Development Block Grant- Disaster Recovery Contracts**

**Compliance with Applicable Laws and Acts.** This Project is being partially funded with Community Development Block Grant funds provided to the City of San Marcos, hereinafter known as "the City" by the United States Department of Housing and Urban Development ("HUD").

The Contractor shall comply with all applicable federal, state and local laws, regulations and ordinances related in any way to this Contract. Without limiting the foregoing, the Contract is subject to 24 C.F.R. Part 5 and all applicable legal authorities cited therein. Contractor shall notify the City in writing of any failure to comply with applicable laws, regulations, or ordinances, where such failure affects in any way Contractor's ability to provide service(s) under this Contract.

Without limiting the foregoing, Contractor shall comply with the following statutes and regulations as they may apply:

- A. Workers Compensation laws.
- B. 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;
  - c. The Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor Regulations (29 C.F.R. Part 5);
  - d. Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 C.F.R. Part 5); and
  - e. All other applicable regulations implementing the above laws.
- C. 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.

**Section 1. Required Registrations.** The Federal Funding Accounting and Transparency Act requires any consultant or contractor providing services in connection with projects receiving CDBG-DR funding to obtain a Data Universal Numbering System ("DUNS")

**Section 2. Termination for Cause and for convenience.**

- A. The contract, when executed, may be terminated by either party upon 10 calendar days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
- B. The City may terminate this Contract for convenience and without cause upon at least 7 calendar days prior written notice to the Contractor. In the event of termination for convenience, the City may require the Contractor to transfer title and deliver to the City in the manner and to the extent directed by the Purchasing Manager:
  - a. Any completed supplies and/or partially completed supplies and materials that the Contractor has specifically produced or specially acquired for the performance of the terminated part of the agreement.
  - b. Upon such termination the Consultant will:



i. Stop work to the extent specified; ii. Terminate any subcontractors as they relate to the terminated work; iii. Be paid for all work performed to date;

- c. The Contractor will not be paid for any work performed or costs incurred that reasonably could have been avoided.

**Section 3. Copeland Anti-Kickback Act Compliance.** The Contractor shall comply with the requirements of 40 U.C.S. 3145, as supplemented by 29 C.F.R. Part 3 (the Copeland Act). The "Anti-Kickback" section of the Act precludes a contractor or subcontractor from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. All suspected or reported violations must be reported to HUD.

**Section 4. Civil Rights / ADA Compliance.** The Contractor shall provide all work required under this Contract in a manner that complies with the Civil Rights Act of 1964, as amended, Title VII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title 1 of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 as amended by Executive Order 12259, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 120107, and 12086.

- A. The Contractor shall not discriminate against any employee or applicant for employment based on race, color, sex, age, religion, national origin or disability. Contractor also agrees that Contractor will not discriminate against any individual or group based on race, color, sex, age, religion, national origin, or disability and in accordance with 42 U.S.C.A. Section 53.09, 24 C.F.R. Parts 1, 6 and 8 as they relate to discrimination, 41 C.F.R. Part 60 and Executive Order No. 11246 as amended by Executive Order 11375, and all other applicable federal, state, and local Equal Employment Opportunity and Affirmative Action rules, regulations and laws.
- B. The Contractor shall comply with 42 U.S.C.A. Section 53.09 and 24 C.F.R. Parts 1, 6 and 8 as they relate to no discrimination, Executive Order 11246 titled "Equal Employment Opportunity" as amended by Executive Order 11375 (41 C.F.R. Part 60); and all other applicable federal, state and local Equal Employment Opportunity and affirmative action rules, regulations and laws.
- C. The Contractor, with regard to work performed by it during the term of this Contract, shall not discriminate on the grounds of race, color, sex, age, religion, national origin or disability.
- D. The contractor agrees to comply with all Federal regulations issued pursuant to compliance with 504 of the Rehabilitation Act of 1973 (29 U.S.C. 7940 which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program.
- E. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the regulations relevant to non-discrimination on the grounds of race, color, sex, age, religion, national origin, or disability.
- F. The Contractor shall provide all information and reports necessary for the City to comply with applicable HUD regulations and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by HUD or the City to be pertinent to ascertain compliance with HUD regulations.
- G. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the City and shall set forth what efforts it has made to obtain the information.

**Section 5. Equal Opportunity:** The Contractor hereby agrees to comply with Equal Opportunity Laws, except as otherwise provided under 41 CFR Part 60, for all work that meets the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3.

Contractor agrees that it will incorporate or cause to be incorporated into any contract [with subcontractors] for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- D. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the said labor union or workers' representatives of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant order of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures

authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- H. The Contractor will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Section 6. Certification of Eligibility.** Contract awards cannot be made to parties 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 and 12689. SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

By submitting a bid or proposal in response to the Request for Quote/Proposals, the Contractor certifies that at the time of submission, he/she/it is not on the federal government's list of suspended, ineligible, or debarred contractors.

- A. In the event of placement on the list between the time of bid/proposal submission and time of contract award, the bidder/proposer shall immediately notify the City.
- B. Contractor certifies that its contractors and subcontractors are not presently debarred, suspended, or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.
- C. Placement of Contractor on the federal government's list of suspended, ineligible, or debarred contractors, false certification, or failure to notify the City as required may result in the termination of this Contract for default.
- D. The Contractor shall furnish a copy of the certification in accordance with 24 C.F.R Part 24 (Debarment and Suspension) to the City of San Marcos with the bid packet.

#### **Section 7. "Section 3" Clause**

Provisions are applicable to covered projects for which the amount of HUD assistance exceeds \$200,000 and/or the contract or subcontract exceeds \$100,000.

- A. Compliance  
Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the City, the Contractor and any of the Contractor's Contractors and subcontractors. Failure to fulfill these requirements shall subject the City, the Contractor and any of the Contractor's Contractors and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Contractor certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Contractor further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

The Contractor further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Contractor certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

#### **Section 8. Subcontractors.**

- A. The Contractor shall not permit any subcontractor to perform any work included in the Project until the Contractor has verified the Subcontractor as eligible to participate in federally funded contracts.
- B. No proposed contractor will be disapproved by the City except for cause.
- C. The Contractor will be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them.
- D. The Contractor will cause appropriate provisions to be inserted in all subcontracts relative to the work and required compliance by each subcontractor with the applicable provisions of the Contract.
- E. Nothing contained in the Contract will create any contractual relationship between any subcontractor and the Owner.

#### **Section 8. Non-Segregated Facilities. [Applicable to contracts exceeding \$10,000.00]**

- A. The Contractor certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments; and that it does not and will not permit its employees to perform any of their services at any location, under its control, where segregated facilities are maintained. As used in this paragraph the term “segregated facilities” means waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or nation origin because of habit, local custom or otherwise.

- B. The Contractor further certifies that (except where it has obtained identical certification from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000.00 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:
- a) Obtain identical certifications from the proposed subcontractors;
  - b) Retain the certifications in its files; and
  - c) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods).

***Notice to Prospective Subcontractors of Requirement for Certifications of Non-Segregated Facilities***

*A Certification of Non-Segregated Facilities must be submitted before the award of a subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The Certification may be submitted either for each subcontract or for all subcontractors during a period (i.e. quarterly, semi-annually, or annually).*

**Section 9. Non-Collusion Certification.** The Contractor certifies that the bid covered in this Contract is made without collusion with any other person, firm or corporation.

**Section 10. Organizational Conflicts of Interest Certification.** The Contractor certifies that to the best of his/her knowledge and belief and except as otherwise disclosed, he/she does not have any organizational conflict of interest which is defined as a situation in which the nature of the work to be performed under this Contract and the Contractor's organizational, financial, contractual or other interests may, with some restriction on future activities:

- A. Result in an unfair competitive advantage to the Contractor; or B.
- Impair the Contractor's objectivity in performing the Contract work.

The Contractor agrees to abide by the provisions of 2 CFR 200.318(c) which states: *No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity [City] may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.*

**Section 11. Maintenance of and Right of Access to Records.**

- A. The Contractor shall maintain all books, documents, papers, accounting records, other records and other evidence directly pertaining to the work performed under this Contract, including the Exhibits and Attachments hereto, and costs and expenses of such work. With respect to accounting records, the Contractor shall maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the Project, including source documentation such as cancelled checks, paid bills, payrolls, time and attendance records, Contract award documents, and other documentation as required by the City.
- B. The records described in Paragraph 1 above shall be maintained during the Contract period and for four (4) years after receipt of final payment and all other pending matters are closed, whichever occurs last.

- C. At no expense to the Owner or the City of San Marcos, HUD, the Comptroller General of the United States or any of their duly authorized representatives shall have access to the records described in Paragraph 1 above for purposes of making audits, examinations, excerpts and transcripts.

#### **Section 12. Miscellaneous Provisions.**

- A. The Project is subject to the Texas Public Information Act. All information submitted by bidders is subject to release under this Act.
- B. 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 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.
- C. Rights to Inventions. The Contractor shall comply with 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements."

**Section 13. Davis-Bacon and Related Acts (DBRA) Compliance.** Generally applicable to construction contracts at or above \$2,000. For contracts subject to compliance with DBRA, applicable conditions are found in the attached "*Supplementary Conditions for the Contract for Construction*" and "*HUD Form 4010*", as well as the Wage Rates issued by the Department of Labor and attached hereto. 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 (18 U.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.

**Section 14. Federal Funding Accountability and Transparency Act.** The vendor agrees to report executive compensation information for the five most highly compensated executives in the preceding year if all of the following criteria are met:

1. The vendor received 80% or more of its annual gross revenues in federal awards.
2. Vendor revenues are greater than \$25 million annually,
3. The public does not have access to compensation of the executives through periodic reports filed under 13(a) or 14(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)), or Section 6104 of the Internal Revenue Code of 1986.