

June 16, 2021
(Revised June 30, 2021)

Mr. David Rabago, P.E., CFM
City Engineer/Director
Seguin Capital Projects & Engineering
205 N. River Street
Seguin, Texas 78155

Re: 8th Street Extension
Proposal for Engineering Services
Job Number: 12460-00

Dear Mr. Rabago:

We are pleased to present this proposal for providing engineering services in connection with the above referenced project. Our proposed scope of services and associated fees are as follows:

8th Street Extension

This project involves the extension of 8th Street from its existing dead end to the railroad Right-Of-Way (ROW), ending with a cul-de-sac. The existing sidewalk on the east side (adjacent to United Alloy) will be extended to the south, and no sidewalk will be added adjacent to the City of Seguin parcel. Drainage will be conveyed through roadside ditches (east or west side to be determined) and under 8th Street to tie to the existing downstream channel.

This project will follow the applicable guidelines described in the City of Seguin Design Standards and Unified Development Code and AASHTO. The attached Exhibit A shows the approximate scope of this project. The 8th Street Extension project includes the following:

- Pape-Dawson
 - Grant administration services
 - Engineering & surveying services
 - Bidding & construction phase services
- Raba-Kistner
 - Environmental services
 - Geotechnical engineering
 - Construction testing & inspection
- Cobb-Fendley
 - Subsurface Utility Engineering

This proposal includes survey services (including Metes and Bounds development), design services, and environmental permitting. The following is the detailed scope for the effort to develop plans, estimates, and specifications for the project:

SCOPE OF SERVICES

Administrative Services

- I. GRANT ADMINISTRATION COORDINATION (TASK 590) \$ 5,020**
- Pape-Dawson's role in grant administration will include coordination during the design, bidding, construction administration, and project closeout phases. Pape-Dawson will coordinate with and provide information to the City of Seguin and the City's separately contracted Grant Administration consultant (LCMS) so that the LCMS can prepare and submit documents in accordance with U.S. Economic Development Administration (EDA). Pape-Dawson will not be responsible for compiling, filling out, or submitting EDA documents and will not be responsible for direct coordination with EDA.

Engineering & Surveying Services

- II. PROJECT MANAGEMENT (TASK 501) \$ 16,420**
- Coordinate and manage the project for proposed improvements, including the following subtasks:
- Communication with the client;
 - Coordinate sub consultants' services;
 - QA/QC of Environmental/Geotechnical documents;
 - Attend monthly project meetings with design team;
 - Prepare meeting minutes;
 - Prepare and submit project invoices;
 - Stakeholder coordination;
 - Schedule coordination;
 - Project closeout.
- III. PERMITTING & ENVIRONMENTAL SERVICES (RABA-KISTNER) (TASK 390) \$ 7,639**
- As part of the project, other design consultant services are anticipated to accomplish the work needed. Raba-Kistner will provide Environmental Documentation, and their services will be secured and coordinated by Pape-Dawson:
- Phase I Environmental Site Assessment
 - Review of existing data and records, including EDA grant documentation
 - Site reconnaissance and property owner interviews
 - Development of findings and report preparation

- Waters of the U.S. Memorandum, Document Review, and USACE Coordination
 - Brief description of the project, methods/sampling procedures, and results as required by the USACE;
 - Figure depicting the location of the wetland sample data points;
 - Completed wetland data form;
 - Pertinent published data (e.g., historical USGS topographic maps, historical aerial photography, Federal Emergency Management Agency maps, National Wetland Inventory Maps, and USDA soil surveys) to support the findings.

IV. TDLR CERTIFICATION (TASK 407) \$ 2,250

- Submit plans for TDLR certification during the design phase and submit for final certification once construction is finished.
- One (1) Field inspection after pedestrian facilities are completed.

V. SURVEY (TASK 190) \$ 26,900

Resolve the existing 8th Street right-of-way lines along the east side of Lot 3A, Rio Nogales Unit 1 Subdivision, to create up to two (2) property descriptions that will be monumented in the field and include both a parcel plat and a metes and bounds description.

Complete a control, improvement, tree, topographic, and utility survey along an approximate 300-foot wide strip of land from the south terminus of the improved 8th Street to the existing north right-of-way line of the Southern Pacific railroad in Seguin, Guadalupe County, Texas.

- Approximately four stable control points will be set inter-visibly and constrained to the North American Datum of 1983, (NA 2011), epoch 2010.00, and the North American Vertical Datum of 1988, (GEOID 12A).
- Improvements shall be surveyed to include items such as paved areas, paint stripes, fences, driveways, drainage structures, mailboxes, and signs.
- Topography will be surveyed using a 50-ft maximum grid, including cross-sections of the existing channel at 50-ft intervals. Topography will be represented in a 2D MicroStation planimetric drawing as 1-foot contours and points visualized at a very small scale with elevation properties shown.
- Trees with a trunk equal to or larger than 6-inches at breast height will be surveyed and represented in the 2D MicroStation planimetric drawing.
- Utilities within the project area shall be located while completing SUE effort.
- Survey deliverables will include a 2D MicroStation planimetric drawing, a GEOPAK tin file, a PNEZD coordinate file, and a 24" x 36" control point sheet, signed and sealed by the project surveyor that describes the project datum and project control points with location sketches, coordinates, scale factor, and to-reach descriptions.

- All work will be performed under the direct supervision of a professional land surveyor registered in the State of Texas.
- Right-of-Entry is not a part of this survey scope.

VI. UTILITY COORDINATION (TASK 391) \$ 2,080

- Coordinate with utility agencies for the mitigation of utility conflicts provided by the utility agencies.
- Obtain necessary utility permits
- Prepare a utility conflict matrix and utility coordination reports at each submittal
- Attend a maximum of two (2) initial utility coordination meetings and coordinate utility requirements with City, utility purveyors, and design team.

VII. SUBSURFACE UTILITY ENGINEERING (COBB-FENDLEY) (TASK 392) \$ 6,529

Cobb-Fendley will provide Subsurface Utility Engineering (SUE) services to assist in determining the presence and location of utilities. Quality Level D and B investigations are included in this scope. Results of the investigation will be secured and coordinated by Pape-Dawson:

- Quality Level D- Existing Records
 - Utilities will be plotted from the review of available existing records
- Quality Level B- Designate: two-dimensional horizontal mapping. This information is obtained through the application and interpretation of appropriate non-destructive surface geophysical methods. Utility indications may be referenced to established survey control.
 - Obtain as-built information and perform record research
 - Designate (record and mark) the horizontal location of existing toneable utility using non-destructive techniques
 - Water and communication vaults can be investigated from above ground
 - Ground Penetrating Radar (GPR) may be used
 - Underground features will be marked on the surface using paint, flags, and the APWA color scheme
- Full traffic control is not anticipated to perform these services
- Work within the railroad ROW, or permitting for work in the railroad ROW, is not included
- No test holes are included in this scope
- No ROW or other permitting is expected

VIII. 8TH STREET ROADWAY PLANS (TASK 393) \$ 36,240

Pape-Dawson will design a roadway extension in accordance with City of Seguin Design Standards and Unified Development Code, and AASHTO. We will prepare construction plans for the proposed extension of 8th Street. The roadway extension is approximately 800' and will include a cul-de-sac/turnaround at its dead end. The project will also include the design of two driveways. Including the following approximate number of sheets:

- Title Sheet – 1 sheet
- Index of Sheets – 1
- Project Layout Sheets – 1
- Horizontal Control and Alignment Data Sheets – 1
- General Notes Sheets – 3
- Summary of Small Signs – 1
- Driveway Summaries/Details – 1
- Existing and Proposed Typical Sections – 1
- Roadway Plan & Profile Sheets (1" = 50 Scale) – 1-2
- Miscellaneous Roadway Details – 1
- Base Maps of Existing Utilities – 1
- Cross Section Sheets – 1
- Standard Details – 3
- Overall Phasing and Traffic Plan - 1
- Sequence of Work Narrative and Notes - 1
- Storm Water Pollution Prevention Plan Narrative – 1
- Storm Water Pollution Prevention Plan General Notes – 1
- Storm Water Pollution Prevention Plans – 1
- Standard Details – 3
- Submit review plans, estimates, and specifications for the 30% and Final Submittal per City of Seguin guidelines.
 - 30% Submittal will be limited to street and drainage alignment, standard street sections, drainage system sizing, and utility conflicts. Plans and profiles will not be provided.
- Coordinate design with RKCI.
- Coordinate ROW /Easement needs with the survey.
- Attend four (4) design review/utility coordination meetings with the City of Seguin.

IX. DRAINAGE DESIGN SERVICES (TAKS 394) \$ 19,200

Pape-Dawson will design a drainage system in accordance with the City of Seguin Design Standards and Unified Development Code. New culverts and drainage channel improvements will be required for the project. Prepare a drainage memo discussing drainage design and verifying no adverse impact downstream. Prepare construction plans for the proposed drainage improvements. This includes the following approximate number of sheets:

- Drainage Area Maps – 1-2 sheets
- Plan and Profile Sheets for Culverts – 1
- Drainage Channel Details – 1
- Hydraulic Data Sheets for Culverts/Channel – 1
- Miscellaneous Drainage Plan Sheets – 2
- Standard Details – 1

X. EASEMENT AND RIGHT-OF-WAY COORDINATION (TASK 395) \$ 2,120

Coordinate with the City, Economic Development Corporation, and survey to develop easements and right-of-way (row) dedication.

- Establish one (1) drainage easement and one (1) ROW parcel for truck turnaround
- Pape-Dawson will create a maximum of two (2) easement/ROW documents
- Route documents for signature and recordation

Geotechnical Services

XI. GEOTECHNICAL ENGINEERING SERVICES (RABA-KISTNER) (TASK 396) \$ 7,423

Raba-Kistner will provide Geotechnical Engineering Services, and their services will be secured and coordinated by Pape-Dawson:

- Field Sampling and Laboratory Testing
 - Determine locations for proposed geotechnical testing
 - Obtain permits and utility clearances for proposed test holes
 - Coordinate with City of Seguin for potential lane closures for drilling of test holes
 - Obtain test hole information
 - Complete geotechnical laboratory testing of test samples
- Pavement Design Report
 - Develop pavement designs
 - Prepare pavement design report
 - Submit a report to client/City for review and modify report per comments

- XII. CONSTRUCTION TESTING & INSPECTION (RABA-KISTNER) (TASK 490) Allowance: \$ 7,500**
Raba-Kistner will provide construction phase services by performing construction materials testing and related inspection. The exact scope cannot be defined until construction plans are prepared, and the contractor's project work plan is in place. This scope will be reconfirmed when the contractor has been selected, and a work plan is in place.

Bidding & Construction Phase Services

- XIII. BID PHASE SERVICES (TASK 401) \$ 9,980**
As the project completes the design process and moves into bidding, we offer the following scope of services:

- Prepare bid documents (plans, specifications, bid forms), proposal forms, and coordinate with Seguin for distribution to Contractors.
- Develop Addendum (maximum one (1) if needed). The allotted addendum does not include scope change introduced after final plans are prepared.
- Attend pre-bid conference and bid opening.
- Evaluate bids and provide recommendation for contractor selection.

- XIV. CONSTRUCTION PHASE SERVICES (TASK 402) \$ 26,360**
As the project completes the bidding process and moves into construction, we offer the following scope of services:

- Perform site visits to observe the following construction items (one (1) visit each): utility adjustments, placement of select fill, placement of rebar, concrete pour, channel excavation, box culvert, headwall, and concrete rip rap.
- Attend maximum one (1) additional site visit/meeting per month and one (1) virtual construction progress or conference call per month. Review meeting minutes provided by the contractor.
- Provide construction observation reports following site visits.
- Review contractor submittals and shop drawings for compliance with project construction documents. This accounts for one review, comments, and review of the second submittal for each specification division.
- Coordinate scope with subcontracted engineer performing testing and inspection services. The contractor will be responsible for scheduling inspections.
- Respond to requests for information and clarification of plans.
- Conduct a walk-through at the end of the project and provide a punch list of items for improvement as needed.
- Review site testing reports for compliance with project specifications.

- Review monthly contractor invoices and make recommendations for payment.

For the construction phase services budget indicated in this proposal, it is anticipated that construction will be ongoing over a 6-month period from the letting date. Should the schedule for construction exceed this time frame, additional fees may be requested to accomplish the above outlined scope of services during the remaining period of the project. Should the City request additional construction phase services, additional fees may be requested.

THIS PROPOSAL ASSUMES AND/OR EXCLUDES THE FOLLOWING:

- ◆ *Attendance at project design team meetings on a monthly basis during the scheduled duration of the project is included.*
- ◆ *Landscape and irrigation plans are not included.*
- ◆ *Vertical utility adjustments are included. Relocation of utilities is not expected, so design, plans, and construction phase services for the relocation of utilities are not included*
- ◆ *Structural engineering services are not included. Retaining wall design is not included.*
- ◆ *Utility design services for private utilities is not included but can be included as an additional service.*
- ◆ *Test holes are not included for Subsurface Utility Engineering.*
- ◆ *Platting is not included.*
- ◆ *Grant administration services will be provided by others. This proposal does not include compiling, filling out, or submitting EDA documentations, nor does it include coordination with EDA.*

XV. SUMMARY

ADMINISTRATIVE SERVICES

I.	Grant Administration Coordination	Task 590	\$5,020.00
	Subtotal for Administrative Services		\$5,020.00

ENGINEERING & SURVEYING SERVICES

II.	Project Management	Task 501	\$16,420.00
III.	Permitting & Environmental Services	Task 390	\$7,639.00
IV.	TDLR Certification	Task 407	\$2,250.00
V.	Survey	Task 190	\$26,900.00
VI.	Utility Coordination	Task 391	\$2,080.00
VII.	Subsurface Utility Engineering (SUE)	Task 392	\$6,529.00
VIII.	8th Street Roadway Plans	Task 393	\$36,240.00
IX.	Drainage Design Services	Task 394	\$19,200.00
X.	Easement and ROW Coordination	Task 395	\$2,120.00
	Subtotal for Engineering & Surveying		\$119,378.00

GEOTECHNICAL SERVICES

XI.	Geotechnical Engineering Services	Task 396	\$7,423.00
XII.	Construction Testing & Inspection	Task 490 Allowance	\$7,500.00
Subtotal for Geotechnical Services			\$14,923.00

BIDDING & CONSTRUCTION PHASE SERVICES

XIII.	Bid Phase Services	Task 401	\$9,980.00
XIV.	Construction Phase Services	Task 402	\$26,360.00
Subtotal for Bidding & Construction Phase Services			\$36,340.00

Total: **\$175,661.00**

XVI. COMPENSATION

Basis of Compensation

Pape-Dawson's compensation for the above services shown as hourly, allowance, or Time and Materials (T&M) will be a charge on an as needed basis for personnel services plus an hourly charge for specialized equipment. Pape-Dawson's compensation for the other above services will be a lump sum fee. A budget of **\$175,661** is the estimated cost of Pape-Dawson's current understanding of the services identified above. This budget figure included any Direct Expenses (defined below) or applicable sales tax on services. If this budget figure is exceeded, Pape-Dawson may request a modification of this Agreement.

Direct Expenses include reproduction, travel, express mail, special deliveries, and subcontractor expenses related to these services.

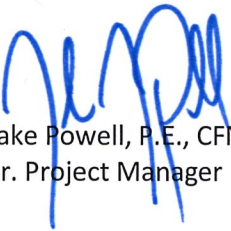
Agreement

The attached Terms and Conditions are incorporated into this Proposal by reference and become part of the agreement between the Client and Pape-Dawson by execution of this Proposal. If the terms of this Proposal are acceptable, please acknowledge such by signing below and returning the executed Proposal to us via e-mail or US Mail for our records. Receipt of the executed Proposal serves as authorization for us to proceed with the work.

The costs, fees, budget, and scope of work set out herein are valid for ninety (90) days from the date of this Proposal. If Pape-Dawson does not receive an executed Proposal from the Client within ninety (90) days from the date of this Proposal, the costs, fees, budget, and scope of work are subject to revision at Pape-Dawson's sole discretion. Pape-Dawson will provide a revised Proposal with the modified costs, budget, and scope of work should revisions be made.

We appreciate the opportunity to work with you on this project.

Sincerely,
Pape-Dawson Engineers, Inc.



Jake Powell, P.E., CFM
Sr. Project Manager


CITY OF SEGUIN

Signature: _____

Name: _____

Title: _____

Date: _____



James A. Lutz, P.E.
Sr. Vice President

CITY OF SEGUIN ACCOUNTS PAYABLE CONTACT INFO

Name: _____

Address: _____

Phone: _____

Email: _____

Attachments

- Pape-Dawson Terms & Conditions

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PAPE-DAWSON ENGINEERS, INC.
RE: SEGUIN ECONOMIC DEVELOPMENT CORPORATION (THE "PROJECT")
TERMS AND CONDITIONS

PAPE-DAWSON ENGINEERS, INC., a Texas corporation, 2000 NW Loop 410, San Antonio, Texas, 78213-2251, hereinafter referred to as "Engineer", has agreed to provide Professional Services to SEGUIN ECONOMIC DEVELOPMENT CORPORATION, hereinafter referred to as "Client," pursuant to the terms set out in a "Proposal - Scope of Services and Compensation" (the "Proposal") executed by Client and these Terms and Conditions.

ARTICLE 1: SERVICES

Engineer agrees to perform Professional Services (the "Services") in conformance with the descriptions, definitions, terms and conditions as set forth herein and on the Proposal and any Exhibits, rate sheets, and Additional Services Requests subsequently attached hereto or incorporated hereto by reference. This description of Services is intended to be general in nature and is neither a complete description of Engineer's Services nor a limitation on the Services that Engineer is to provide under this Agreement.

ARTICLE 2: PROPOSAL AND ADDITIONAL SERVICES REQUESTS

2.1 These Terms and Conditions, the Proposal and any Exhibits, rate sheets, and Additional Services Requests for this Project are hereby incorporated by reference and are collectively referred to herein as the "Agreement."

2.2 The Proposal, as amended or modified by any Additional Services Requests, shall identify the specific Scope of Services to be performed and the amount and type of compensation for the specific services.

2.3 Client shall authorize and Engineer shall commence work set out in the Proposal and any Additional Services Requests upon Client's execution of the Proposal.

ARTICLE 3: CHANGES

3.1 The Client may at any time, by written Additional Service Request, make changes within the general scope of the Proposal relating to services to be performed for this Project. If such changes cause an increase or decrease in the Engineer's cost of, or time required for, performance of any services, an equitable adjustment shall be made and reflected in a properly executed Amendment.

3.2 The Engineer is not obligated to begin work on a change of scope or deliver that work product until a properly executed Additional Services Request is signed by the Client.

3.3 This Agreement is based on laws and regulations in effect as of the date of execution of this Agreement by Client. Changes after this date to these laws and regulations may be the basis for modifications to Engineer's scope of Services, times of performance, or compensation. In the event that there are modifications and/or additions to legal or regulatory requirements relating to the Services to be performed under this Agreement after the date of execution of this Proposal, the scope of Services, times of performance, and compensation provided for in these Terms and Conditions, the Proposal, and any subsequent Additional Services Requests shall be reflected in an appropriate Additional Services Request.

3.4 Should any of the individual tasks or services set out in the Proposal not be initiated within twelve (12) months of the date of execution of the Proposal by Client, Engineer reserves the right to revise the costs, fees, and scope of work for any such tasks or services not yet initiated.

ARTICLE 4: THE TERM

4.1 **Term.** Engineer shall be retained by Client as of the date Client executes the Proposal, Engineer shall complete its Services within a reasonable time, and this Agreement shall remain in effect until the Services have been fully performed or until the Engineer's Services are terminated under provisions of the Agreement.

ARTICLE 5: DUTIES

5.1 **Access.** Client will provide Engineer with access to the Property or to any other site as required by Engineer for performance of the Services.

5.2 **Client-furnished Data.** Client shall provide all criteria and full information as to Client's requirements for the Project; designate a person to act with authority on Client's behalf in respect to all aspects of the Project, examine and respond promptly to Engineer's submissions, and give prompt written notice to Engineer whenever he observes or otherwise becomes aware of any defect in the work.

Client shall also do the following and pay all costs incident thereto: Furnish to Engineer core borings, probings and subsurface exploration, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment and similar data; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements, and any other information previously made available to the Client, which may be required by Engineer, all of which Engineer may rely upon in performing its services.

Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of constructor(s)' applications for payment, and any inspection services to determine if constructor(s) are performing the work legally.

5.3 **Other Information.** Engineer will rely upon commonly used sources of data, including database searches and agency contacts. Engineer does not warrant the accuracy of the information obtained from those sources and has not been requested to independently verify such information.

5.4 **Indemnity.** The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold the Client harmless for damages and losses arising from the negligent acts, errors or omissions of the Engineer in the performance of the professional services under this Agreement, to the extent that the Engineer is responsible for such damages and losses on a comparative basis of fault and responsibility between the Engineer and the Client. The Engineer is not obligated to indemnify the Client for the Client's own negligence.

Notwithstanding the foregoing, to the fullest extent permitted by law, engineer shall indemnify and hold the client harmless from and against all claims arising out of or resulting from bodily injury to, or sickness, disease or death of, any employee, agent or representative of engineer or any of its subcontractors.

To the fullest extent permitted by law, Client and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants or subconsultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

5.5 Ownership of Documents. All designs, drawings, specifications, documents, and other work products of the Engineer, whether in hard copy or in electronic form, are instruments of service for the Services, whether Services are completed or not. Reuse, change or alteration by the Client or by others acting through or on behalf of the Client of any such instruments or service without the written permission of the Engineer will be at the Client's sole risk. Client agrees to indemnify the Engineer, its officers, partners, employees, and subcontractors from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees, arising out of or related to such unauthorized reuse, change or alteration.

5.6 Reporting Obligations. Client has responsibility for complying with all legal reporting obligations. Nothing in the Agreement precludes Engineer from providing any notices or reports that it may be required by law to give to governmental entities.

5.7 Laboratory Services. In performing environmental services, Engineer may make use of an independent testing laboratory. Engineer will not, and Client shall not rely upon Engineer to, check the quality or accuracy of the testing laboratory's services.

5.8 Changed Conditions. The Client shall rely on the Engineer's judgment as to the continued adequacy of the Agreement in light of occurrences or discoveries that were not originally contemplated by or known to the Engineer. Should Engineer call for contract renegotiation, the Engineer shall identify the changed conditions necessitating renegotiation and the Engineer and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement.

5.9 Opinions of Cost. Should Engineer provide any cost opinions, it is understood that those opinions are based on the experience and judgment of Engineer and are merely opinions. Engineer does not warrant that actual costs will not vary from those opinions because, among other things, Engineer has no control over market conditions.

5.10 Construction Observation. If construction phase services are included in the basic services, the Engineer shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. The Client has not retained the Engineer to make detailed inspections or to provide exhaustive or continuous project review and observation services. The Engineer does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the project. Engineer shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s).

5.11 Subconsultants. Engineer may employ such Subconsultants as Engineer deems necessary to assist in the performance or furnishing of the Services, subject to reasonable, timely, and substantive objections by Client.

ARTICLE 6: COMPENSATION OF SERVICES

6.1 Compensation of Services. Engineer's compensation for services shall be set forth in the Proposal and any subsequent Additional Services Requests.

Compensation. Client agrees to pay Engineer for Professional Services in accordance with the descriptions, definitions, terms and conditions as set forth herein and in the Proposal and any Additional Services Requests, or Amendments subsequently attached hereto or incorporated herein by reference. Expenses directly related to these services, including reproduction, travel, long distance telephone bill, express mail, special deliveries and subcontractor expenses shall include a 10% markup on cost.

Engineer reserves the right to adjust the hourly billing rates set out in the Proposal, Additional Service Requests, and/or Amendments thereto on an annual basis. Engineer shall notify Client of any hourly billing rate adjustments when they go into effect.

Payments. Engineer will invoice Client monthly in accordance with the terms and conditions of this Agreement, the Proposal, and any subsequent Additional Services Requests for Services and reimbursables. Client agrees to promptly pay Engineer at his office at 2000 NW Loop 410, San Antonio, Texas 78213-2251, the full amount of each such invoice upon receipt. In no event shall Engineer's failure to bill monthly constitute default under the terms and conditions of this Agreement.

6.2 Sales and Use Tax. Effective July 1, 1990, a State, City and MTA Sales Tax must be collected on Surveying Fees for the establishment of Real Property Boundaries and determining the location of structures or improvements in relation to the boundaries. Charges for prints and reproductions are also subject to a Sales Tax. Client agrees to pay Engineer the applicable Sales Tax on services and said tax is not considered a part of Engineer's compensation for services. In the event subsequent taxes are levied by Federal, State or Local authorities, relating to the services in writing and such modifications as are required shall be made a part of this Agreement.

6.3 Right to Stop Performance. If Client does not pay any amount due to Engineer within thirty (30) days after the invoice date, Engineer may, upon three (3) additional days' verbal or written notice to Client, stop performance of the Services until payment of the amount owed has been received.

6.4 Interest. Payments due and unpaid to Engineer under the Agreement shall bear interest at the rate of twelve percent (12%) per annum, or lesser if required by law, calculated from the date of the invoice, if the payment is not made within thirty (30) days of the date of the invoice.

6.5 Attorney's Fees. In the event Engineers' invoices for services are given to an attorney for collection, or if suit is brought for collection, or if they are collected through probate, bankruptcy, or other judicial proceeding, then Client shall pay Engineer all costs of collection, including the maximum attorney's fees allowed by Law and court costs, in addition to other amounts due.

ARTICLE 7: TERMINATION OF SERVICES

7.1 Termination. This Agreement may be terminated without cause at any time prior to completion of Engineer's services, either by Client or by Engineer, upon written notice to the other at the address of record. Upon receipt of written notice from Client to discontinue

work, the Engineer shall discontinue work under this Agreement immediately. In the event Client terminates the Agreement based on Client's reasonable opinion the Engineer has failed or refused to prosecute the work efficiently, promptly or with diligence, the Engineer shall have ten (10) days, from the receipt of written notification by Client, to cure such failure to perform in accordance with the terms of this Agreement.

7.2 Compensation in Event of Termination. On termination, by either Client or Engineer, Client shall pay Engineer with respect to all contracted services rendered and expenses incurred before termination an amount fixed by applying the Engineer's Standard Hourly Rates, in force at the time of termination, to all services performed to date, in addition to termination settlement costs the Engineer reasonably incurs relating to commitments which had become firm before the termination.

ARTICLE 8: RELATIONSHIP OF PARTIES

8.1 Independent Contractor: It is understood that the relationship of Engineer to Client shall be that of an independent contractor. Neither Engineer nor employees of Engineer shall be deemed to be employees of Client.

ARTICLE 9. LIMITATION OF LIABILITY

9.1 Limitation of Liability. To the fullest extent permitted by law, the total liability of Engineer and its subconsultants and subcontractors to Client for any and all injuries, claims, losses, expenses, or damages whatsoever from any cause or causes, including, but not limited to, strict liability, breach of contract, breach of warranty, negligence, or errors or omissions (collectively "Claims") shall not exceed the Engineer's total fee. In no event will Engineer, its subconsultants or subcontractors be liable for punitive, special, incidental, or consequential damages.

9.2 No Certification. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain. The Client also agrees not to make resolution of any dispute with Engineer or payments of any amount due to Engineer in any way contingent upon Engineer's signing any such certification.

9.3 Execution of Documents. The Engineer shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the sole judgment of the Engineer, increase the Engineer's risk or the availability or cost of its professional or general liability insurance.

9.4 No Supervision of Contractors. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

9.5 Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Subconsultants) at the Project site or otherwise furnishing or performing any work for the Project.

ARTICLE 10: MISCELLANEOUS

10.1 Entire Agreement. The Agreement (including any exhibits) contains the entire agreement between Engineer and Client, and no oral statements or prior written matter shall be of any force or effect. The Agreement may be modified only by a written document executed by both parties.

10.2 Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.3 Venue. Venue of any action under the Agreement shall be exclusively in Bexar County, Texas.

10.4 Severability. If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision, there shall be added automatically as a part of the Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

10.5 Construction of Agreement. The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement or any amendments or exhibits.

10.6 Successor and Assigns: Third Party Beneficiary. The Agreement shall be binding upon Engineer, Client and their respective legal representatives, successors and permitted assigns. Neither Engineer nor Client may assign the Agreement nor any right or obligation under it without the prior written consent of the other party. Nothing in the Agreement restricts Engineer's ability to hire subcontractors in connection with the Services. The Services and any report prepared under this Agreement are for the sole benefit and sole use of Client and are not for the use of any other person. Only Client may rely upon the Agreement and the Services, unless Engineer gives Client prior and specific written approval.

10.7 Dispute Resolution. Any claim, dispute or other matter in question arising out of or related to the Agreement of the Services provided thereunder shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation. Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other Party to this Agreement and with the American Arbitration Association. No arbitration arising out of or relating to the Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement. The foregoing agreement to arbitration shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

10.8 **Mediation:** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or other legal proceedings.

Each party agrees to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their respective subcontractors, suppliers, and subconsultants, thereby providing for mediation as the initial method for dispute resolution between the parties to all those agreements.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.9 **No Warranty.** Engineer makes no warranty, either expressed or implied, as to Engineer's findings, recommendations, plans, specifications, or professional advice. Engineer has endeavored to perform its services in accordance with generally accepted standards of practice by recognized professional firms in performing services of a similar nature in the same locality, under similar circumstances. Client recognizes that neither Engineer nor any of Engineer's subconsultants or subcontractors owes any fiduciary responsibility to Client.

10.10 **Survival of Provisions.** Termination of the Services for any reason whatsoever shall not affect (a) any right or obligation of any party that is accrued or vested prior to such termination, and any provision of the Agreement relating to any such right or obligation shall be deemed to survive the termination of the Services or (b) any continuing obligation, liability or responsibility of Engineer and of Client which would otherwise Survive termination of the Services.

10.11 Complaints regarding surveying may be filed with the Texas Board of Professional Land Surveying, Building A, Suite 156, 12100 Park 35 Circle, Austin, TX 78753.