

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
PUBLIC WORKS DEPARTMENT**

TO: Mayor and City Council

FROM: Thomas G. Wendorf, P.E., Director of Public Works

THROUGH: Terry M. Brechtel, City Manager

COPIES: Melissa Byrne Vossmer; Andrew Martin; Rebecca P. Waldman; Peter Zanon; Milo D. Nitschke; and file

SUBJECT: Indefinite Delivery Construction Materials Testing Services Professional Services Agreements – Non-MPO Projects

DATE: June 24, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance amends and renews four professional services agreements, payable to Raba-Kistner Consultants, Inc., in the amount of \$77,613, Fugro South, Inc., in the amount of \$72,516, Drash Consulting Engineers, Inc., in the amount of \$76,445, and Professional Service Industries, Inc. in the amount of \$83,060, and authorizes \$30,965 for additional engineering contingency, for a total amount of \$340,599, payable from 1999-2004 General Obligation Street and Drainage Improvement Bond funds. These agreements will be used on an as-needed basis for various construction materials testing services associated with City Capital Improvement Projects for the previously authorized first renewal term of one year, with an option to extend each or any one of the agreements for an additional one (1) year period upon the approval of the Director of Public Works.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

These Agreements were authorized by City Council on November 14, 2002 through Ordinance Number 96703, and the Ordinance authorized the initial term of one year with an option to renew each of the agreements for an additional two (2) one-year periods. These agreements were fully executed early in 2003. This ordinance will serve to authorize the first renewal of the four Agreements for a one-year term, with an option to renew each or any one of the Agreements for an additional one-year term upon the approval of the Director of Public Works. This ordinance will also approve the amendment to Section 2 of the Agreements, "Period of Service" in order to appropriately define the one-year term of the contracts and clarify the on-call nature of these agreements.

As previously indicated to City Council, these agreements provide for the performance of construction materials testing services as required for ongoing Capital Improvement Projects

funded by 1999-2004 General Obligation Street and Drainage Improvement Bonds. Since execution of the agreements, the City was able to reclassify three (3) City Materials Technicians to Construction Inspectors and increase the City's capacity to monitor and inspect construction projects and provide for the quality performance of contractors working for the City and City force work.

These testing services may include geo-technical analysis and the certification or reports that brick, concrete, asphalt, welded wire fabric, and other materials typically utilized during project construction are in compliance or noncompliance with the project plans and specifications. The contracts' "not to exceed" amounts for these stand-by services were estimated based on the number of Capital Improvement projects and the types and amount of testing services that might be required during the execution of these projects.

This ordinance also appropriates additional funding in an amount not to exceed \$340,599 that includes \$30,965 in engineering contingency funds to be allocated as necessary among the four Agreements.

POLICY ANALYSIS

Approval of this ordinance will be consistent with City Council policy to address construction issues in an expeditious manner consistent with plans and specifications and to ensure timely project delivery.

FISCAL IMPACT

Funds for these consulting agreements are available from 1999-2004 General Obligation Street and Drainage Bond funds. As expenses, which to date have totaled \$213,229.75, are incurred for materials testing services during the one-year term of the agreements, the expenses will be transferred to the specific project as well as to the corresponding funding source from this Geotechnical and Construction Materials Testing Services Project. The Director of Finance is authorized to make the transfers necessary for the \$340,599 when the specific projects are identified. These Indefinite Delivery Professional Services Agreements are authorized payable as follows:

\$76,445	payable to Drash Consulting Engineers, Inc.
\$72,516	payable to Fugro South, Inc.
\$83,060	payable to Professional Services Industries, Inc.
\$77,613	payable to Raba-Kistner Consultants, Inc.
\$30,965	payable for contingency

COORDINATION


This request for ordinance has been coordinated with the Office of Management and Budget, Asset Management, the Finance Department, and the City Attorney's Office.

SUPPLEMENTARY COMMENTS

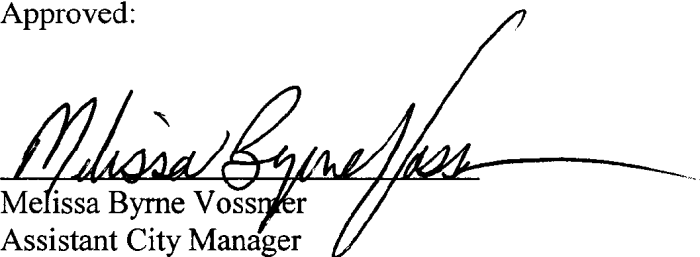
The Discretionary Contracts Disclosure Forms for each of the consulting firms is attached as required by the Ethics Ordinance.


ATTACHMENTS

1. Professional Services Agreement, Drash Consulting Engineers, Inc.
2. Professional Services Agreement, Fugro South, Inc.
3. Professional Services Agreement, Professional Services Industries, Inc.
4. Professional Services Agreement, Raba-Kistner Consultants, Inc.
5. Discretionary Contracts Disclosure Forms

for 
Thomas G. Wendorf, P.E.
Director of Public Works

Approved:


Melissa Byrne Vossmer
Assistant City Manager


Terry M. Brechtel
City Manager

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONSTRUCTION MATERIALS TESTING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as "**CITY**"), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. 96703, passed and approved on the 14th day of November, 2002, and as amended pursuant to Ordinance No. _____, passed and approved on the 24th day of June, 2004, and **Drash Consulting Engineers, Inc. by and through its President, Jill Drash**, (hereinafter referred to as "**CONSULTANT**"), both of which may be referred to herein collectively as the "**PARTIES**".

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, **CITY** and **CONSULTANT** do hereby agree as follows:

I. DEFINITIONS

As used in this AGREEMENT, the following terms shall have meanings as set out below:

1.1 "Director" means the director of **CITY**'s Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 "Project" means the capital improvement/construction development undertaking of **CITY** for which **CONSULTANT**'s design services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 "Ab Initio" means from the beginning; from the first act; from the inception. *See Black's Law Dictionary, 5th Ed., © 1983.*

1.4 "Respondeat Superior" means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black's Law Dictionary, 5th Ed., © 1983.*

II. PERIOD OF SERVICE

2.1 Consultant shall complete the work described in the Contract Documents, being Exhibits "A" and "B" incorporated below. The City guarantees neither a particular volume of work nor a minimum number of units of work. This is a stand-by or on-call agreement and specific requirements as to types, numbers, and locations of testing, conditions and procedures pertaining to the work will be established by the municipal project manager of the requesting City Department on a case by case basis for each job for each request.

2.2 The term of this Agreement shall commence on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and shall remain in force for the period of one year. As the enabling Ordinance provides, the City shall retain an option to renew this contract for one additional one (1) year period. The Director of Public Works shall have the authority to exercise such option at his discretion. In the event such option is exercised and any material provision of the agreement is modified, such amendment must be approved by the City Council.

2.3 The City may authorize additional calendar days or make adjustments to the Project Schedule and related deliverables, within the existing scope of this agreement, upon mutual agreement in writing, between the Director of the Department of Public Works, or his designee and Consultant, as to the reasonableness of said additional time or adjustment.

2.4 Both the City and the Consultant agree that additional services may be required for this project based upon the duration of construction activities, extended working hours by the Consultant, and additional testing required by the Owner and that this Contract may be amended to increase the scope of work to include said additional services upon mutual agreement, and written notification of approval and understanding, from the City and the Consultant as to the reasonableness of the scope of work, period of service, and fees for such additional services. Such increase in scope of work and associated payment shall be subject to the approval of the City Council as evidenced by the passage of a City ordinance.

III. SCOPE OF SERVICES

3.1 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **CONSULTANT** agrees to perform all work required by the Scope of Services set forth herein and in the attached documents.

3.1.1 ATTACHMENT "A" (Scope of Services)

3.1.2 ATTACHMENT "B" (Testing Reports)

3.1.3 ATTACHMENT "C" (Consultant's Fee Proposal)

3.1.4 ATTACHMENT "D": (Compensation)

3.2 **CONSULTANT**, shall at all times during the term of this AGREEMENT comply with national standards for testing laboratories for lab technicians in their employ and for all equipment used by the technicians in their employ. The laboratory performing testing shall be accredited by one of the following agencies: The American Association for Laboratory Accreditation (A2LA), The American Association of State Highway and Transportation Officials (AASHTO) Accreditation Program (AAP), Construction Materials Engineering Council (CMEC), The National Voluntary Laboratory Accreditation Program (NVLAP) and shall meet the requirements set forth in the American Society for Testing and Materials (ASTM) E329 for testing laboratories.

IV. COORDINATION WITH THE CITY

4.1 **CONSULTANT** shall hold periodic conferences with Director, so that the Project will have the full benefit of **CITY's** experience and knowledge of existing needs and be consistent with its current policies and standards. Conferences shall be scheduled as agreed to by Parties. **CITY** shall make available, for **CONSULTANT's** use, all existing data in its possession relative to this Project as may be requested by **CONSULTANT** at no cost to **CONSULTANT**.

4.2 Director shall act on behalf of **CITY** with respect to the work performed under this AGREEMENT. He shall have complete authority to transmit instructions, receive information, and interpret and define **CITY's** policies and decisions with respect to materials, equipment elements and systems pertinent to **CONSULTANT's** services.

4.3 **CITY** shall provide written notice to the **CONSULTANT** of any errors or omissions discovered in the **CONSULTANT's** services, or performance, or of any development that affects the scope or timing of **CONSULTANT's** services.

4.4 **CONSULTANT** shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by **CONSULTANT** for **CITY's** use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for completion of the Project. **CONSULTANT** shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, entitled "Compensation".

V. COMPENSATION

5.1 **CONSULTANT** shall be compensated in accordance with the provisions of Attachment "D" attached hereto and incorporated herein, provided; however, no compensation shall be provided to **CONSULTANT** unless and until **CONSULTANT** has complied in each instance with the provisions of Article III hereof.

5.1.1 ATTACHMENT "D" (Compensation)

VI. TERMINATION AND/OR SUSPENSION OF WORK

6.1 For purposes of this AGREEMENT, termination of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

6.2 Termination Without Cause.

6.2.1 This AGREEMENT may be terminated by either party upon written notice in accordance with Article VI. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

6.2.2 This AGREEMENT may be terminated by CITY prior to Director giving CONSULTANT written notice to proceed should the Director, at his sole discretion, determine that it is not in CITY's best interest to proceed with this AGREEMENT. Such notice shall be provided in accordance with Article VI, and shall be effective upon delivery by CITY in accordance with Article VI.

6.2.3 CITY shall equitably compensate CONSULTANT in accordance with the terms of this AGREEMENT for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by CITY. CONSULTANT shall not, however, be entitled to lost or anticipated profits should CITY choose to exercise its option to terminate.

6.3 **Termination For Cause.** Upon written notice, CITY may terminate this AGREEMENT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this AGREEMENT:

6.3.1 CONSULTANT makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this AGREEMENT, including, but not limited to, CONSULTANT's Interest Statement, or any covenant, obligation, term or condition contained in this AGREEMENT; or

6.3.2 CONSULTANT violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this AGREEMENT.

6.3.3 CONSULTANT attempts to assign this AGREEMENT contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or

6.3.4 CONSULTANT ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this AGREEMENT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of CONSULTANT's assets or properties; or

6.3.5 CONSULTANT fails to comply in any respect with the insurance requirements set forth in this AGREEMENT; or

6.3.6 CONSULTANT violates any rule, regulation or law by which CONSULTANT is bound or shall be bound while and in performing the services required under this AGREEMENT.

- 6.4 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.
- 6.5 **Effect of Termination.** Upon a decision to terminate by CITY, written notice of such shall be immediately provided to CONSULTANT specifying the effective date of termination, notice of which shall be given in accordance with Article VI.
- 6.5.1 Regardless of how this AGREEMENT is terminated, and subject to 6.5.2, CONSULTANT shall affect an orderly transfer to CITY or to such person(s) or firm(s) as the CITY may designate, at no additional cost to CITY, all completed or partially completed documents, papers, records, charts, and reports prepared pursuant to this AGREEMENT and any other materials or information produced as a result of or pertaining to the services rendered by CONSULTANT, or provided to CONSULTANT. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at CONSULTANT's sole cost and expense. Payment of compensation due or to become due to CONSULTANT is conditioned upon delivery of all such documents.
- 6.5.2 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this AGREEMENT, CONSULTANT shall submit to CITY its claims, in detail, for the monies owed by CITY for services performed under this AGREEMENT through the effective date of termination. Failure by CONSULTANT to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of CITY and constitute a Waiver by CONSULTANT of any and all right or claims to collect moneys that CONSULTANT may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.
- 6.5.3 Upon the effective date of expiration or termination of this AGREEMENT, CONSULTANT shall cease all operations of work being performed by CONSULTANT or any of its subcontractors pursuant to this AGREEMENT.
- 6.5.4 **Termination not sole remedy.** In no event shall CITY's action of terminating this AGREEMENT, whether for cause or otherwise, be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue CONSULTANT for any default hereunder or other action.

6.6 Right of **CITY** to Suspend Giving Rise to Right of **CONSULTANT** to Terminate.

6.6.1 **CITY** may suspend this AGREEMENT by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article VI, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **CONSULTANT's** receipt of said notice.

6.6.2 **CONSULTANT** may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. **CONSULTANT** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article VI, Notice, (citing this paragraph) to **CITY** after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by **CITY**.

6.7 Procedures for **CONSULTANT** to follow upon Receipt of Notice of Suspension.

6.7.1 Upon receipt of written notice of suspension, **CONSULTANT** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this agreement and cancel all existing orders and contracts.

6.7.2 **CONSULTANT** shall prepare a statement showing in detail the services performed under this AGREEMENT prior to the effective date of suspension.

6.7.3 All completed or partially completed plans and specifications prepared under this AGREEMENT prior to the effective date of suspension shall be prepared for possible delivery to **CITY** but shall be retained by **CONSULTANT** until such time as **CONSULTANT** may exercise the right to terminate.

6.7.4 In the event that **CONSULTANT** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT's** notice of termination, **CONSULTANT** shall submit the above referenced statement showing in detail the services performed under this agreement prior to the effective date of suspension. Nothing in this section 6.74 shall prevent **CONSULTANT** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.

- 6.7.5 Additionally, any documents prepared in association with this AGREEMENT shall be delivered to **CITY** by **CONSULTANT**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT's** notice of termination.
- 6.7.6 Upon the above conditions being met, **CITY** shall pay **CONSULTANT** that proportion of the prescribed fee which the services actually performed under this AGREEMENT bear to the total services called for under this AGREEMENT, less previous payments of the fee.
- 6.7.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **CONSULTANT** acknowledges this duty on the part of **CITY**. To this end, **CONSULTANT** understands that failure of **CONSULTANT** to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by **CONSULTANT** of any portion of the fee for which **CONSULTANT** did not supply such necessary statements and/or documents.

VII. INSURANCE REQUIREMENTS

7.1 Prior to the commencement of any work under this AGREEMENT, **CONSULTANT** shall furnish an original completed Certificate of Insurance to **CITY's** Public Works Department and **CITY's** Risk Management Division executed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to **CITY's** Public Works Department and **CITY's** Risk Management Office, and no officer or employee shall have authority to waive this requirement.

7.2 **CONSULTANT's** financial integrity is of interest to **CITY**, therefore, subject to **CONSULTANT's** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **CONSULTANT** shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at **CONSULTANT's** sole expense, insurance coverage written on an occurrence basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual liability	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims made form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

7.3 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by **CITY**. **CONSULTANT** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided in Article VII herein within 10 days of the requested change.

7.4 **CONSULTANT** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name **CITY** and its officers, employees, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with **CITY**, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

7.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by **CITY**, **CONSULTANT** shall notify **CITY** of such and shall give such notices not less than thirty (30) days prior to the change, if **CONSULTANT** knows of said change in advance, or ten (10) days notice after the change, if the **CONSULTANT** did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to **CITY** at the following addresses:

City of San Antonio	City of San Antonio
Public Works Department – Capital Programs	Risk Management
P.O. Box 839966	111 Soledad, Suite 1000
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

7.6 If **CONSULTANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by **CITY** is an alternative to other remedies **CITY** may have, and is not the exclusive remedy for failure of **CONSULTANT** to maintain said insurance or secure such endorsement. In addition to any other remedies **CITY** may have upon **CONSULTANT's** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **CONSULTANT** to stop work hereunder, and/or withhold any payment(s) which become due to **CONSULTANT** hereunder until **CONSULTANT** demonstrates compliance with the requirements hereof. A stop work order given to **CONSULTANT** by **CITY** in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VI, Section 6.7.

7.7 Nothing herein contained shall be construed as limiting in any way the extent to which **CONSULTANT** may be held responsible for payments of damages to persons or property resulting from **CONSULTANT's** or its subcontractors' performance of the work covered under this **AGREEMENT**.

7.8 It is agreed that **CONSULTANT's** insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under this **AGREEMENT**.

VIII. INDEMNIFICATION

8.1 **CONSULTANT**, whose work product is the subject of this **AGREEMENT** for engineering services, agrees to **INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS** against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES** while in the exercise of performance of the rights or duties under this **AGREEMENT**. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

8.2 **CONSULTANT** shall advise **CITY** in writing within 24 hours of any claim or demand against **CITY** or **CONSULTANT** known to **CONSULTANT** related to or arising out of **CONSULTANT's** activities under this **AGREEMENT**.

8.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

IX. ASSIGNMENT OF RIGHTS OR DUTIES

9.1 By entering into this AGREEMENT, **CITY** has approved the use of any subcontractors identified in **CONSULTANT's** Interest Statement. No further approval shall be needed for **CONSULTANT** to use such subcontractors as are identified in **CONSULTANT's** Interest Statement.

9.2 Except as otherwise required herein, **CONSULTANT** may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of **CITY**.

9.3 As a condition of consent, if same is given, **CONSULTANT** shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this AGREEMENT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by **CITY** in accordance with this Article.

9.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **CONSULTANT** assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, **CITY** may, at its option, terminate this AGREEMENT in accordance with Article VI, Termination, and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this AGREEMENT. The violation of this provision by **CONSULTANT** shall in no event release **CONSULTANT** from any obligation under the terms of this AGREEMENT, nor shall it relieve or release **CONSULTANT** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

9.5 **CONSULTANT** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this AGREEMENT, any such change of ownership interest or control of its business entity may be grounds for termination of this AGREEMENT in accordance with Article VI, Termination.

X. INDEPENDENT CONTRACTOR

10.1 **CONSULTANT** covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of **CITY**; that **CONSULTANT** shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **CONSULTANT**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **CONSULTANT**.

10.2 No Third Party Beneficiaries - For purposes of this AGREEMENT, including its intended operation and effect, the Parties specifically agree and CONTRACT that: (1) this AGREEMENT

only affects matters/disputes between the Parties to this AGREEMENT, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with **CITY** or **CONSULTANT** or both, or that such third parties may benefit incidentally by this AGREEMENT; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **CONSULTANT**.

XI. EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, **CONSULTANT** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

XII. SBEDA REQUIREMENTS

12.1 **CONSULTANT** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), handicapped and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by **CITY**. This policy and its implementation is known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

12.2 **CONSULTANT** agrees to implement the plan submitted in **CONSULTANT**'s response to **CITY**'s Request for Interest Statement under the SBEDA Program for Small, Minority and Women-owned Business Participation in this AGREEMENT, thereby meeting the percentages for participation of those groups as submitted therein. **CONSULTANT** agrees to be in full compliance with this article by meeting the percentages listed in **CONSULTANT**'s Interest Statement no later than 60 days from the date of execution of this AGREEMENT, and to remain in compliance throughout the term of this AGREEMENT. **CONSULTANT** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this AGREEMENT, as may be approved pursuant to this AGREEMENT, that will meet the percentages submitted in **CONSULTANT**'s Interest Statement. Changes in contract value by changes in work orders, AGREEMENT amendments, or use of contract alternatives, which result in an increase in the value of the AGREEMENT by 10% or greater require the **CONSULTANT** to increase its use of business enterprises described in this section, if such is necessary to maintain the same percentages as exist in **CONSULTANT**'s Interest Statement. However, the delegation of any duties hereunder by any means must be approved by **CITY** as stated herein.

12.3 **CONSULTANT** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/WBE's. **CONSULTANT** shall submit annual reports to **CITY**'s Department of Economic Development, identifying the above activity and other efforts at increasing SBE/MBE/WBE participation in the AGREEMENT. Further, such records shall be open to inspection by **CITY** or its authorized agent at all reasonable times. Should **CITY** find

that **CONSULTANT** is not in compliance with this article, **CITY** shall give notice of non-compliance to **CONSULTANT**. **CONSULTANT** shall have 30 calendar days to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this **AGREEMENT** and may subject **CONSULTANT** to any of the penalties listed in **CITY** of San Antonio Ordinance No. 77758, at **CITY**'s option. Further, such failure may be considered a default for which **CITY** may terminate this **AGREEMENT** in accordance with Article VIII, Termination.

12.4 **CONSULTANT** shall appoint a representative of its company to administer and coordinate its efforts to carry out these requirements.

12.5 In all events, **CONSULTANT** shall comply with the **CITY**'s Small, Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

12.6 It is **CITY**'s understanding, and this **AGREEMENT** is made in reliance thereon, that **CONSULTANT**, in the performance of services required hereunder, will use the subcontractor(s) listed in its response to **CITY**'s Request for Interest Statement.

12.7 Any work or services subcontracted by **CONSULTANT** shall be by written contract, and unless specific waiver is granted in writing by **CITY**, shall be subject by its terms to each and every provision of this **AGREEMENT**. Compliance by subcontractor with the provisions of said contract shall be the responsibility of **CONSULTANT**.

12.8 **CITY** shall in no event be obligated to any third party, including any subcontractor of **CONSULTANT**, for performance or services or payment of fees.

XIII. NOTICES

Unless otherwise expressly provided elsewhere in this **AGREEMENT**, any election, notice or communication required or permitted to be given under this **AGREEMENT** shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

CITY of San Antonio
Public Works Department - Engineering
Attn: Mr. Razi Hosseini, P.E.
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for CONSULTANT, to:

Drash Consulting Engineers, Inc.
6911 Blanco Road
San Antonio, Texas 78216
Attn: Jill Drash, President

XIV. INTEREST IN CITY CONTRACTS PROHIBITED

14.1 **CONSULTANT** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

14.2 **CONSULTANT** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **CONSULTANT** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY**'s Ethics Code.

XV. SOLICITATION

CONSULTANT warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for **CONSULTANT**, to solicit or secure this AGREEMENT, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONSULTANT**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. This representation constitutes a substantial part of the consideration for the making of this AGREEMENT.

XVI. CONTRACT CONSTRUCTION

All parties have participated fully in the review and revision of this AGREEMENT. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this AGREEMENT.

XVII. FAMILIARITY WITH LAW AND CONTRACT TERMS

CONSULTANT represents that, prior to signing this AGREEMENT, **CONSULTANT** has become thoroughly acquainted with all matters relating to the performance of this AGREEMENT, all applicable laws, and all of the terms and conditions of this AGREEMENT.

XVIII. APPLICABLE LAW

This AGREEMENT shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XIX. VENUE

The obligations of the parties to this AGREEMENT shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

XX. SEVERABILITY

In the event any one or more paragraphs or portions of this AGREEMENT are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this AGREEMENT, but such shall be confined to the specific section, sentences, clauses or portions of this AGREEMENT held invalid or unenforceable.

XXI. FORCE MAJEURE

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXII. SUCCESSORS

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this AGREEMENT, their assigns.

XXIII. NON-WAIVER OF PERFORMANCE

23.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

23.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIV. PARAGRAPH HEADINGS

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXV. LEGAL AUTHORITY

The signer of this AGREEMENT for CITY and CONSULTANT each represents, warrants, assures and guarantees that he has full legal authority to execute this AGREEMENT on behalf of CITY and CONSULTANT respectively, and to bind CITY and CONSULTANT to all of the terms, conditions, provisions and obligations herein contained.

XXVI. INCORPORATION OF ATTACHMENTS

26.1 CONSULTANT understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

ATTACHMENT "A" (Scope of Services)

ATTACHMENT "B" (Testing Reports)

ATTACHMENT "C" (CONSULTANT's Fee Proposal)

ATTACHMENT "D" (Compensation)

26.2 In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail. In the event of a conflict or inconsistency between Attachment "A" and Attachments "C", the terms of Attachment "A" shall control over the terms of Attachment "C".

XXVII. ENTIRE AGREEMENT

27.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXVI, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

27.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE _____ DAY OF _____, 2004.

CITY OF SAN ANTONIO

**CONSULTANT
DRASH CONSULTING
ENGINEERS, INC.**

CITY MANAGER



JILL DRASH, PRESIDENT

APPROVED AS TO FORM:

CITY ATTORNEY

CITY CLERK

DATE

ATTACHMENT "A"
(SCOPE OF SERVICES)

Summary of Testing Services Scope of Work

1. Moisture-Density Relationship - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
 - 1A. Moisture-Density Relationship (no additional trip required to sample) - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
2. Atterberg Limits (sampled and conducted in conjunction with Moisture-Density Relationship) - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
 - 2A. Atterberg Limits - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
 - 2B. Atterberg Limits - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
3. Sieve Analysis thru No. 200 - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
 - 3A. Sieve Analysis thru No. 200 - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
4. Field Density Tests (1-3 tests package) - This all inclusive price should include a fee for the field testing, technician time for testing, appropriate travel charges associated with the trip and reporting and management time for the service. Note: The fee for this should be the same whether 1, 2 or 3 tests are conducted.
5. Field Density Tests (for each test after the first 3 are conducted on the same call out) - This all inclusive price per test should include a fee for the field testing, technician time for testing and reporting and management time for the service.
6. Concrete Compressive Strength Testing (4 cylinders per set) - This all inclusive price should include a fee for the laboratory testing, technician time to sample the material, conducting of slump test, conducting of temperature test, appropriate travel charges associated with the trip and reporting and management time for the service. (The fee should allow for one hour of site time)

- 6A. Concrete Compressive Strength Testing (4 cylinders per set) this fee should be for additional sets of test cylinders cast after initial set has been cast. This all-inclusive price should include a fee for the laboratory testing, technician time to sample the material, conducting of slump test, conducting of temperature test, and reporting and management time for the service. (The fee should allow for one hour of site time for each additional set of cylinders)
- 6B. Standby time for technician concrete testing for time on the project site in excess of 1 hour per set of cylinders - This fee should be an hourly rate.
- 7. Pickup of concrete test specimens - This fee should be an all-inclusive price that should include the technician time for cylinder pickup and the appropriate charges associated with the trip.
- 8. Asphalt cores of in-place asphalt paving - This fee should include the coring charges, technician time, laboratory testing of the core for density and the appropriate charges associated with the trip and reporting and management time for the service.
- 9. L.A. Abrasion Test - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 9A. L.A. Abrasion Test - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
- 10. Mandrel Testing - Not required
- 11. Asphaltic Concrete Extraction, Gradation, Bitumen Content, Stability, Laboratory Density, and Rice Gravity - This all inclusive price should include a fee for the laboratory tests, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 11A. Asphaltic Concrete Extraction, Gradation, Bitumen Content, Stability, Laboratory Density, and Rice Gravity - This all inclusive price should include a fee for the laboratory tests, and reporting and management time for the service.
- 12. Welded Wire Fabric (Gauge Thickness) - This all inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 12A. Welded Wire Fabric (Gauge Thickness) - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
- 13. Brick Testing (Compressive Strength) - This all inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.

- 13A. Brick Testing (Compressive Strength) - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
14. Slurry Seal Testing (Field Measurement of slurry seal application) - This all inclusive price should include a fee for technician time at the project site, field testing, appropriate travel charges associated with the trip and reporting and management time for the service.
15. Fence Post and Rails (Weight and Coating Thickness) - This all inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 15A. Fence Post and Rails (Weight and Coating Thickness) - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
16. Inspection/Sampling at Precast Manufacturer - This all inclusive price should include a fee for a four hour inspection, including travel, technician time, appropriate travel charges associated with the trip and reporting and management time for the service.
17. Sample Charge (for sampling of materials not included in the above testing scope) - This all inclusive price should include a fee for technician time to sample the material and appropriate travel charges associated with the trip.

ATTACHMENT "B"

(TESTING REPORTS)

The following standard requirements shall govern all testing reports submitted under this agreement unless otherwise directed by the Project Manager of the requesting City department. Each report issued to the City shall provide as a minimum:

1. Report Date.
2. Time of service, Project Title and location of test(s).
3. Testing Lab Letterhead with Authorized Signature - Professional Engineer or appropriate licensed Professional required by law in charge or his delegated assistant.
4. Report Identification Number (Sequential Numbering), Description, Price Agreement Service Number(s) of items performed, Quantity Performed and Location.
5. Test Results.
6. Agreement Standards Controlling the Test(s).
7. Compliance or noncompliance with the specifications.
8. Any extenuating circumstances affecting the test(s) or result(s).
9. Observations to include service time chargeable to delays, rescheduling and overtime premiums.
10. If Manpower is involved, provide names, classification, and hours.
11. Numbers of trips with work performed on the project.
12. Name of person who orders the test(s).
13. Five copies of the report – three (3) to the City, one (1) to the contractor and one (1) to consultant (Engineer or Architect).
14. Identify any and all retest services.
15. Testing reports shall be promptly delivered to the City and within such time frames so as to avoid any delay in construction progress. Consultant acknowledges by accepting this AGREEMENT that any undue delays in providing test results to City shall result in a delay in construction progress.

ATTACHMENT "C"
(CONSULTANT'S FEE PROPOSAL)

Travel Time and Trip for this group of Services is based upon a trip within a radius of 20 to less than 40 miles from the office.

Construction Material Test		Unit	Price
1	Moisture-Density Relationship	Each	250.00
1A*	Moisture-Density Relationship (no additional trip required to sample)	Each	150.00
2*	Atterberg Limits Determination (in conjunction with Moisture-Density Relationship)	Each	50.00
2A	Atterberg Limits Determination (with sampling and travel charges)	Each	160.00
2B*	Atterberg Limits Determination	Each	50.00
3	Sieve Analysis (with sampling and travel charges)	Each	185.00
3A*	Sieve Analysis	Each	75.00
4	Field Density Tests (1-3 Per Set)	Set	150.00
5*	Field Density Tests (each additional on same call out)	Each	45.00
6	Concrete Compressive Strength Tests (4 Cylinder Set)	Set	160.00
6A*	Concrete Compressive Strength Tests (additional 4 Cylinder Set)	Set	120.00
6B*	Concrete Testing in excess of 1 hour per cylinder set	Hour	35.00
7*	Pick-up Concrete Test Specimens	Each	110.00
8	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set with travel charges)	Set	300.00
8A*	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set)	Set	100.00
9	L.A. Abrasion Test (with sampling and travel charges)	Each	360.00
9A*	L.A. Abrasion Test	Each	250.00
10*	Standby Time	Hour	35.00
11*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity (with sampling and travel charges)	Each	425.00
11A*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity	Each	325.00
12	Welded Wire Fabric - Gauge thickness (with sampling and travel charges)	Each	175.00
12A*	Welded Wire Fabric - Gauge thickness	Each	50.00
13	Brick Testing (with sampling and travel charges)	Each	150.00
13A*	Brick Testing	Each	25.00
14	Slurry Seal (field measurement of slurry seal application)	Each	275.00
15	Fence Post and Rails (weight and coating thickness with sampling and travel charges)	Each	200.00
15A*	Fence Post and Rails (weight and coating thickness)	Each	150.00
16	Inspection/Stamping Precast Manufacture	Each	300.00
17*	Sample Charge	Each	125.00

Travel Time and Trip for this group of Services is based upon a trip within a radius of 0 to less than 20 miles from the office.

Construction Material Test		Unit	Price
1	Moisture-Density Relationship	Each	240.00
1A*	Moisture-Density Relationship (no additional trip required to sample)	Each	150.00
2*	Atterberg Limits Determination (in conjunction with Moisture-Density Relationship)	Each	50.00
2A	Atterberg Limits Determination (with sampling and travel charges)	Each	140.00
2B*	Atterberg Limits Determination	Each	50.00
3	Sieve Analysis (with sampling and travel charges)	Each	165.00
3A*	Sieve Analysis	Each	75.00
4	Field Density Tests (1-3 Per Set)	Set	120.00
5*	Field Density Tests (each additional on same call out)	Each	45.00
6	Concrete Compressive Strength Tests (4 Cylinder Set)	Set	140.00
6A*	Concrete Compressive Strength Tests (additional 4 Cylinder Set)	Set	120.00
6B*	Concrete Testing in excess of 1 hour per cylinder set	Hour	35.00
7*	Pick-up Concrete Test Specimens	Each	90.00
8	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set with travel charges)	Set	275.00
8A*	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set)	Set	100.00
9	L.A. Abrasion Test (with sampling and travel charges)	Each	340.00
9A*	L.A. Abrasion Test	Each	250.00
10*	Standby Time	Hour	35.00
11*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity (with sampling and travel charges)	Each	400.00
11A*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity	Each	325.00
12	Welded Wire Fabric - Gauge thickness (with sampling and travel charges)	Each	150.00
12A*	Welded Wire Fabric - Gauge thickness	Each	50.00
13	Brick Testing (with sampling and travel charges)	Each	125.00
13A*	Brick Testing	Each	25.00
14	Slurry Seal (field measurement of slurry seal application)	Each	250.00
15	Fence Post and Rails (weight and coating thickness with sampling and travel charges)	Each	175.00
15A*	Fence Post and Rails (weight and coating thickness)	Each	125.00
16	Inspection/Stamping Precast Manufacture	Each	250.00
17*	Sample Charge	Each	100.00

ATTACHMENT "D"

(COMPENSATION)

On or after the last day of each month, CONSULTANT shall provide City a written invoice for the work performed by CONSULTANT, requested by City during that month and for which the testing services have been reviewed and approved by the City. The invoice amount shall be based on the unit price agreed as shown on Attachment "C" multiplied by the number of tests performed during said month. In no event shall the total number of all invoices during the term of this contract exceed \$76,445.

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONSTRUCTION MATERIALS TESTING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as "**CITY**"), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. 96703, passed and approved on the 14th day of November, 2002, and as amended pursuant to Ordinance No. _____, passed and approved on the 24th day of June, 2004, and Fugro Consultants, L.P. by and through its Construction Material Manager, Frank M. Jaster, P.E., (hereinafter referred to as "**CONSULTANT**"), both of which may be referred to herein collectively as the "**PARTIES**".

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, **CITY** and **CONSULTANT** do hereby agree as follows:

I. DEFINITIONS

As used in this AGREEMENT, the following terms shall have meanings as set out below:

1.1 "Director" means the director of **CITY**'s Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 "Project" means the capital improvement/construction development undertaking of **CITY** for which **CONSULTANT**'s design services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 "Ab Initio" means from the beginning; from the first act; from the inception. *See Black's Law Dictionary, 5th Ed., © 1983.*

1.4 "Respondeat Superior" means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black's Law Dictionary, 5th Ed., © 1983.*

II. PERIOD OF SERVICE

2.1 Consultant shall complete the work described in the Contract Documents, being Exhibits "A" and "B" incorporated below. The City guarantees neither a particular volume of work nor a minimum number of units of work. This is a stand-by or on-call agreement and specific requirements as to types, numbers, and locations of testing, conditions and procedures pertaining to the work will be established by the municipal project manager of the requesting City Department on a case by case basis for each job for each request.

2.2 The term of this Agreement shall commence on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and shall remain in force for the period of one year. As the enabling Ordinance provides, the City shall retain an option to renew this contract for one additional one (1) year period. The Director of Public Works shall have the authority to exercise such option at his discretion. In the event such option is exercised and any material provision of the agreement is modified, such amendment must be approved by the City Council.

2.3 The City may authorize additional calendar days or make adjustments to the Project Schedule and related deliverables, within the existing scope of this agreement, upon mutual agreement in writing, between the Director of the Department of Public Works, or his designee and Consultant, as to the reasonableness of said additional time or adjustment.

2.4 Both the City and the Consultant agree that additional services may be required for this project based upon the duration of construction activities, extended working hours by the Consultant, and additional testing required by the Owner and that this Contract may be amended to increase the scope of work to include said additional services upon mutual agreement, and written notification of approval and understanding, from the City and the Consultant as to the reasonableness of the scope of work, period of service, and fees for such additional services. Such increase in scope of work and associated payment shall be subject to the approval of the City Council as evidenced by the passage of a City ordinance.

III. SCOPE OF SERVICES

3.1 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **CONSULTANT** agrees to perform all work required by the Scope of Services set forth herein and in the attached documents.

3.1.1 ATTACHMENT "A" (Scope of Services)

3.1.2 ATTACHMENT "B" (Testing Reports)

3.1.3 ATTACHMENT "C" (Consultant's Fee Proposal)

3.1.4 ATTACHMENT "D: (Compensation)

3.2 **CONSULTANT**, shall at all times during the term of this AGREEMENT comply with national standards for testing laboratories for lab technicians in their employ and for all equipment used by the technicians in their employ. The laboratory performing testing shall be accredited by one of the following agencies: The American Association for Laboratory Accreditation (A2LA), The American Association of State Highway and Transportation Officials (AASHTO) Accreditation Program (AAP), Construction Materials Engineering Council (CMEC), The National Voluntary Laboratory Accreditation Program (NVLAP) and shall meet the requirements set forth in the American Society for Testing and Materials (ASTM) E329 for testing laboratories.

IV. COORDINATION WITH THE CITY

4.1 **CONSULTANT** shall hold periodic conferences with Director, so that the Project will have the full benefit of **CITY's** experience and knowledge of existing needs and be consistent with its current policies and standards. Conferences shall be scheduled as agreed to by Parties. **CITY** shall make available, for **CONSULTANT's** use, all existing data in its possession relative to this Project as may be requested by **CONSULTANT** at no cost to **CONSULTANT**.

4.2 Director shall act on behalf of **CITY** with respect to the work performed under this **AGREEMENT**. He shall have complete authority to transmit instructions, receive information, and interpret and define **CITY's** policies and decisions with respect to materials, equipment elements and systems pertinent to **CONSULTANT's** services.

4.3 **CITY** shall provide written notice to the **CONSULTANT** of any errors or omissions discovered in the **CONSULTANT's** services, or performance, or of any development that affects the scope or timing of **CONSULTANT's** services.

4.4 **CONSULTANT** shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by **CONSULTANT** for **CITY's** use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for completion of the Project. **CONSULTANT** shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, entitled "Compensation".

V. COMPENSATION

5.1 **CONSULTANT** shall be compensated in accordance with the provisions of Attachment "D" attached hereto and incorporated herein, provided; however, no compensation shall be provided to **CONSULTANT** unless and until **CONSULTANT** has complied in each instance with the provisions of Article III hereof.

5.1.1 ATTACHMENT "D" (Compensation)

VI. TERMINATION AND/OR SUSPENSION OF WORK

6.1 For purposes of this **AGREEMENT**, termination of this **AGREEMENT** shall mean termination by expiration of the **AGREEMENT** term or earlier termination pursuant to any of the provisions hereof.

6.2 Termination Without Cause.

6.2.1 This AGREEMENT may be terminated by either party upon written notice in accordance with Article VI. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

6.2.2 This AGREEMENT may be terminated by CITY prior to Director giving CONSULTANT written notice to proceed should the Director, at his sole discretion, determine that it is not in CITY's best interest to proceed with this AGREEMENT. Such notice shall be provided in accordance with Article VI, and shall be effective upon delivery by CITY in accordance with Article VI.

6.2.3 CITY shall equitably compensate CONSULTANT in accordance with the terms of this AGREEMENT for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by CITY. CONSULTANT shall not, however, be entitled to lost or anticipated profits should CITY choose to exercise its option to terminate.

6.3 Termination For Cause. Upon written notice, CITY may terminate this AGREEMENT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this AGREEMENT:

6.3.1 CONSULTANT makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this AGREEMENT, including, but not limited to, CONSULTANT's Interest Statement, or any covenant, obligation, term or condition contained in this AGREEMENT; or

6.3.2 CONSULTANT violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this AGREEMENT.

6.3.3 CONSULTANT attempts to assign this AGREEMENT contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or

- 6.3.4 **CONSULTANT** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this AGREEMENT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **CONSULTANT's** assets or properties; or
- 6.3.5 **CONSULTANT** fails to comply in any respect with the insurance requirements set forth in this AGREEMENT; or
- 6.3.6 **CONSULTANT** violates any rule, regulation or law by which **CONSULTANT** is bound or shall be bound while and in performing the services required under this AGREEMENT.
- 6.4 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.
- 6.5 **Effect of Termination.** Upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **CONSULTANT** specifying the effective date of termination, notice of which shall be given in accordance with Article VI.
- 6.5.1 Regardless of how this AGREEMENT is terminated, and subject to 6.5.2, **CONSULTANT** shall affect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all completed or partially completed documents, papers, records, charts, and reports prepared pursuant to this AGREEMENT and any other materials or information produced as a result of or pertaining to the services rendered by **CONSULTANT**, or provided to **CONSULTANT**. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at **CONSULTANT's** sole cost and expense. Payment of compensation due or to become due to **CONSULTANT** is conditioned upon delivery of all such documents.
- 6.5.2 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this AGREEMENT, **CONSULTANT** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this AGREEMENT through the effective date of termination. Failure by **CONSULTANT** to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of **CITY** and constitute a Waiver by **CONSULTANT** of any and all right or claims to collect moneys that **CONSULTANT** may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.

- 6.5.3 Upon the effective date of expiration or termination of this AGREEMENT, **CONSULTANT** shall cease all operations of work being performed by **CONSULTANT** or any of its subcontractors pursuant to this AGREEMENT.
- 6.5.4 **Termination not sole remedy.** In no event shall **CITY's** action of terminating this AGREEMENT, whether for cause or otherwise, be deemed an election of **CITY's** remedies, nor shall such termination limit, in any way, at law or at equity, **CITY's** right to seek damages from or otherwise pursue **CONSULTANT** for any default hereunder or other action.
- 6.6 Right of **CITY** to Suspend Giving Rise to Right of **CONSULTANT** to Terminate.
- 6.6.1 **CITY** may suspend this AGREEMENT by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article VI, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **CONSULTANT's** receipt of said notice.
- 6.6.2 **CONSULTANT** may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. **CONSULTANT** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article VI, Notice, (citing this paragraph) to **CITY** after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by **CITY**.
- 6.7 Procedures for **CONSULTANT** to follow upon Receipt of Notice of Suspension.
- 6.7.1 Upon receipt of written notice of suspension, **CONSULTANT** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this agreement and cancel all existing orders and contracts.
- 6.7.2 **CONSULTANT** shall prepare a statement showing in detail the services performed under this AGREEMENT prior to the effective date of suspension.
- 6.7.3 All completed or partially completed plans and specifications prepared under this AGREEMENT prior to the effective date of suspension shall be prepared for possible delivery to **CITY** but shall be retained by **CONSULTANT** until such time as **CONSULTANT** may exercise the right to terminate.

- 6.7.4 In the event that **CONSULTANT** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT**'s notice of termination, **CONSULTANT** shall submit the above referenced statement showing in detail the services performed under this agreement prior to the effective date of suspension. Nothing in this section 6.74 shall prevent **CONSULTANT** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.
- 6.7.5 Additionally, any documents prepared in association with this AGREEMENT shall be delivered to **CITY** by **CONSULTANT**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT**'s notice of termination.
- 6.7.6 Upon the above conditions being met, **CITY** shall pay **CONSULTANT** that proportion of the prescribed fee which the services actually performed under this AGREEMENT bear to the total services called for under this AGREEMENT, less previous payments of the fee.
- 6.7.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **CONSULTANT** acknowledges this duty on the part of **CITY**. To this end, **CONSULTANT** understands that failure of **CONSULTANT** to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by **CONSULTANT** of any portion of the fee for which **CONSULTANT** did not supply such necessary statements and/or documents.

VII. INSURANCE REQUIREMENTS

7.1 Prior to the commencement of any work under this AGREEMENT, **CONSULTANT** shall furnish an original completed Certificate of Insurance to **CITY**'s Public Works Department and **CITY**'s Risk Management Division executed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to **CITY**'s Public Works Department and **CITY**'s Risk Management Office, and no officer or employee shall have authority to waive this requirement.

7.2 CONSULTANT's financial integrity is of interest to CITY, therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

TYPE	MINIMUM AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual liability	Combined <u>Single Limit</u> for Bodily Injury and <u>Property Damage</u> of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims made form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

7.3 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY. CONSULTANT shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided in Article VII herein within 10 days of the requested change.

7.4 **CONSULTANT** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name **CITY** and its officers, employees, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with **CITY**, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

7.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by **CITY**, **CONSULTANT** shall notify **CITY** of such and shall give such notices not less than thirty (30) days prior to the change, if **CONSULTANT** knows of said change in advance, or ten (10) days notice after the change, if the **CONSULTANT** did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to **CITY** at the following addresses:

City of San Antonio	City of San Antonio
Public Works Department – Capital Programs	Risk Management
P.O. Box 839966	111 Soledad, Suite 1000
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

7.6 If **CONSULTANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by **CITY** is an alternative to other remedies **CITY** may have, and is not the exclusive remedy for failure of **CONSULTANT** to maintain said insurance or secure such endorsement. In addition to any other remedies **CITY** may have upon **CONSULTANT**'s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **CONSULTANT** to stop work hereunder, and/or withhold any payment(s) which become due to **CONSULTANT** hereunder until **CONSULTANT** demonstrates compliance with the requirements hereof. A stop work order given to **CONSULTANT** by **CITY** in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VI, Section 6.7.

7.7 Nothing herein contained shall be construed as limiting in any way the extent to which **CONSULTANT** may be held responsible for payments of damages to persons or property resulting from **CONSULTANT**'s or its subcontractors' performance of the work covered under this AGREEMENT.

7.8 It is agreed that **CONSULTANT**'s insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under this AGREEMENT.

VIII. INDEMNIFICATION

8.1 **CONSULTANT**, whose work product is the subject of this **AGREEMENT** for engineering services, agrees to **INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS** against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES** while in the exercise of performance of the rights or duties under this **AGREEMENT**. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

8.2 **CONSULTANT** shall advise **CITY** in writing within 24 hours of any claim or demand against **CITY** or **CONSULTANT** known to **CONSULTANT** related to or arising out of **CONSULTANT's** activities under this **AGREEMENT**.

8.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

IX. ASSIGNMENT OF RIGHTS OR DUTIES

9.1 By entering into this **AGREEMENT**, **CITY** has approved the use of any subcontractors identified in **CONSULTANT's** Interest Statement. No further approval shall be needed for **CONSULTANT** to use such subcontractors as are identified in **CONSULTANT's** Interest Statement.

9.2 Except as otherwise required herein, **CONSULTANT** may not sell, assign, pledge, transfer or convey any interest in this **AGREEMENT** nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of **CITY**.

9.3 As a condition of consent, if same is given, **CONSULTANT** shall remain liable for completion of the services outlined in this **AGREEMENT** in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this **AGREEMENT** to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by **CITY** in accordance with this Article.

9.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONSULTANT assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, CITY may, at its option, terminate this AGREEMENT in accordance with Article VI, Termination, and all rights, titles and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this AGREEMENT. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this AGREEMENT, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY, which CITY sustains as a result of such violation.

9.5 CONSULTANT agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to CITY under this AGREEMENT, any such change of ownership interest or control of its business entity may be grounds for termination of this AGREEMENT in accordance with Article VI, Termination.

X. INDEPENDENT CONTRACTOR

10.1 CONSULTANT covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of CITY; that CONSULTANT shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between CITY and CONSULTANT, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and CONSULTANT.

10.2 No Third Party Beneficiaries - For purposes of this AGREEMENT, including its intended operation and effect, the Parties specifically agree and CONTRACT that: (1) this AGREEMENT only affects matters/disputes between the Parties to this AGREEMENT, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or CONSULTANT or both, or that such third parties may benefit incidentally by this AGREEMENT; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or CONSULTANT.

XI. EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, CONSULTANT agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

XII. SBEDA REQUIREMENTS

12.1 **CONSULTANT** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), handicapped and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by **CITY**. This policy and its implementation is known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

12.2 **CONSULTANT** agrees to implement the plan submitted in **CONSULTANT**'s response to **CITY**'s Request for Interest Statement under the SBEDA Program for Small, Minority and Women-owned Business Participation in this AGREEMENT, thereby meeting the percentages for participation of those groups as submitted therein. **CONSULTANT** agrees to be in full compliance with this article by meeting the percentages listed in **CONSULTANT**'s Interest Statement no later than 60 days from the date of execution of this AGREEMENT, and to remain in compliance throughout the term of this AGREEMENT. **CONSULTANT** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this AGREEMENT, as may be approved pursuant to this AGREEMENT, that will meet the percentages submitted in **CONSULTANT**'s Interest Statement. Changes in contract value by changes in work orders, AGREEMENT amendments, or use of contract alternatives, which result in an increase in the value of the AGREEMENT by 10% or greater require the **CONSULTANT** to increase its use of business enterprises described in this section, if such is necessary to maintain the same percentages as exist in **CONSULTANT**'s Interest Statement. However, the delegation of any duties hereunder by any means must be approved by **CITY** as stated herein.

12.3 **CONSULTANT** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/WBE's. **CONSULTANT** shall submit annual reports to **CITY**'s Department of Economic Development, identifying the above activity and other efforts at increasing SBE/MBE/WBE participation in the AGREEMENT. Further, such records shall be open to inspection by **CITY** or its authorized agent at all reasonable times. Should **CITY** find that **CONSULTANT** is not in compliance with this article, **CITY** shall give notice of non-compliance to **CONSULTANT**. **CONSULTANT** shall have 30 calendar days to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this AGREEMENT and may subject **CONSULTANT** to any of the penalties listed in **CITY** of San Antonio Ordinance No. 77758, at **CITY**'s option. Further, such failure may be considered a default for which **CITY** may terminate this AGREEMENT in accordance with Article VIII, Termination.

12.4 **CONSULTANT** shall appoint a representative of its company to administer and coordinate its efforts to carry out these requirements.

12.5 In all events, **CONSULTANT** shall comply with the **CITY**'s Small, Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

12.6 It is CITY's understanding, and this AGREEMENT is made in reliance thereon, that CONSULTANT, in the performance of services required hereunder, will use the subcontractor(s) listed in its response to CITY's Request for Interest Statement.

12.7 Any work or services subcontracted by CONSULTANT shall be by written contract, and unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by subcontractor with the provisions of said contract shall be the responsibility of CONSULTANT.

12.8 CITY shall in no event be obligated to any third party, including any subcontractor of CONSULTANT, for performance or services or payment of fees.

XIII. NOTICES

Unless otherwise expressly provided elsewhere in this AGREEMENT, any election, notice or communication required or permitted to be given under this AGREEMENT shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

CITY of San Antonio
Public Works Department - Engineering
Attn: Mr. Razi Hosseini, P.E.
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for CONSULTANT, to:

Fugro Consultants, L.P.
11009 Osgood
San Antonio, Texas 78233
Attn: Frank M. Jaster, P.E.

XIV. INTEREST IN CITY CONTRACTS PROHIBITED

14.1 CONSULTANT acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

14.2 **CONSULTANT** warrants and certifies, and this **AGREEMENT** is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **CONSULTANT** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY's** Ethics Code.

XV. SOLICITATION

CONSULTANT warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for **CONSULTANT**, to solicit or secure this **AGREEMENT**, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONSULTANT**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this **AGREEMENT**. This representation constitutes a substantial part of the consideration for the making of this **AGREEMENT**.

XVI. CONTRACT CONSTRUCTION

All parties have participated fully in the review and revision of this **AGREEMENT**. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this **AGREEMENT**.

XVII. FAMILIARITY WITH LAW AND CONTRACT TERMS

CONSULTANT represents that, prior to signing this **AGREEMENT**, **CONSULTANT** has become thoroughly acquainted with all matters relating to the performance of this **AGREEMENT**, all applicable laws, and all of the terms and conditions of this **AGREEMENT**.

XVIII. APPLICABLE LAW

This **AGREEMENT** shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XIX. VENUE

The obligations of the parties to this **AGREEMENT** shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

XX. SEVERABILITY

In the event any one or more paragraphs or portions of this **AGREEMENT** are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this **AGREEMENT**, but such shall be confined to the specific section, sentences, clauses or portions of this **AGREEMENT** held invalid or unenforceable.

XXI. FORCE MAJEURE

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXII SUCCESSORS

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this AGREEMENT, their assigns.

XXIII. NON-WAIVER OF PERFORMANCE

23.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

23.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIV. PARAGRAPH HEADINGS

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXV. LEGAL AUTHORITY

The signer of this AGREEMENT for CITY and CONSULTANT each represents, warrants, assures and guarantees that he has full legal authority to execute this AGREEMENT on behalf of CITY and CONSULTANT respectively, and to bind CITY and CONSULTANT to all of the terms, conditions, provisions and obligations herein contained.

XXVI. INCORPORATION OF ATTACHMENTS

26.1 CONSULTANT understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

ATTACHMENT "A" (Scope of Services)

ATTACHMENT "B" (Testing Reports)

ATTACHMENT "C" (CONSULTANT's Fee Proposal)

ATTACHMENT "D" (Compensation)

26.2 In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail. In the event of a conflict or inconsistency between Attachment "A" and Attachments "C", the terms of Attachment "A" shall control over the terms of Attachment "C".

XXVII. ENTIRE AGREEMENT

27.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXVI, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

27.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE _____ DAY OF _____, _____.

CITY OF SAN ANTONIO

CONSULTANT

CITY MANAGER

FRANK M. JASTER, P.E.
CONSTRUCTION MATERIAL
TESTING MANAGER

APPROVED AS TO FORM:

CITY ATTORNEY

CITY CLERK

DATE

ATTACHMENT "A"
(SCOPE OF SERVICES)

Summary of Testing Services Scope of Work

1. Moisture-Density Relationship - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
 - 1A. Moisture-Density Relationship (no additional trip required to sample) - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
2. Atterberg Limits (sampled and conducted in conjunction with Moisture-Density Relationship) - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
 - 2A. Atterberg Limits - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
 - 2B. Atterberg Limits - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
3. Sieve Analysis thru No. 200 - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
 - 3A. Sieve Analysis thru No. 200 - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
4. Field Density Tests (1-3 tests package) - This all inclusive price should include a fee for the field testing, technician time for testing, appropriate travel charges associated with the trip and reporting and management time for the service. Note: The fee for this should be the same whether 1, 2 or 3 tests are conducted.
5. Field Density Tests (for each test after the first 3 are conducted on the same call out) - This all inclusive price per test should include a fee for the field testing, technician time for testing and reporting and management time for the service.
6. Concrete Compressive Strength Testing (4 cylinders per set) - This all inclusive price should include a fee for the laboratory testing, technician time to sample the material, conducting of slump test, conducting of temperature test, appropriate travel charges associated with the trip and reporting and management time for the service. (The fee should allow for one hour of site time)

- 6A. Concrete Compressive Strength Testing (4 cylinders per set) this fee should be for additional sets of test cylinders cast after initial set has been cast. This all-inclusive price should include a fee for the laboratory testing, technician time to sample the material, conducting of slump test, conducting of temperature test, and reporting and management time for the service. (The fee should allow for one hour of site time for each additional set of cylinders)
- 6B. Standby time for technician concrete testing for time on the project site in excess of 1 hour per set of cylinders - This fee should be an hourly rate.
- 7. Pickup of concrete test specimens - This fee should be an all-inclusive price that should include the technician time for cylinder pickup and the appropriate charges associated with the trip.
- 8. Asphalt cores of in-place asphalt paving - This fee should include the coring charges, technician time, laboratory testing of the core for density and the appropriate charges associated with the trip and reporting and management time for the service.
- 9. L.A. Abrasion Test - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 9A. L.A. Abrasion Test - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
- 10. Mandrel Testing - Not required
- 11. Asphaltic Concrete Extraction, Gradation, Bitumen Content, Stability, Laboratory Density, and Rice Gravity - This all inclusive price should include a fee for the laboratory tests, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 11A. Asphaltic Concrete Extraction, Gradation, Bitumen Content, Stability, Laboratory Density, and Rice Gravity - This all inclusive price should include a fee for the laboratory tests, and reporting and management time for the service.
- 12. Welded Wire Fabric (Gauge Thickness) - This all inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 12A. Welded Wire Fabric (Gauge Thickness) - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
- 13. Brick Testing (Compressive Strength) - This all inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.

- 13A. Brick Testing (Compressive Strength) - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
14. Slurry Seal Testing (Field Measurement of slurry seal application) - This all inclusive price should include a fee for technician time at the project site, field testing, appropriate travel charges associated with the trip and reporting and management time for the service.
15. Fence Post and Rails (Weight and Coating Thickness) - This all inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 15A. Fence Post and Rails (Weight and Coating Thickness) - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
16. Inspection/Sampling at Precast Manufacturer - This all inclusive price should include a fee for a four hour inspection, including travel, technician time, appropriate travel charges associated with the trip and reporting and management time for the service.
17. Sample Charge (for sampling of materials not included in the above testing scope) - This all inclusive price should include a fee for technician time to sample the material and appropriate travel charges associated with the trip.

ATTACHMENT "B"

(TESTING REPORTS)

The following standard requirements shall govern all testing reports submitted under this agreement unless otherwise directed by the Project Manager of the requesting City department. Each report issued to the City shall provide as a minimum:

1. Report Date.
2. Time of service, Project Title and location of test(s).
3. Testing Lab Letterhead with Authorized Signature - Professional Engineer or appropriate licensed Professional required by law in charge or his delegated assistant.
4. Report Identification Number (Sequential Numbering), Description, Price Agreement Service Number(s) of items performed, Quantity Performed and Location.
5. Test Results.
6. Agreement Standards Controlling the Test(s).
7. Compliance or noncompliance with the specifications.
8. Any extenuating circumstances affecting the test(s) or result(s).
9. Observations to include service time chargeable to delays, rescheduling and overtime premiums.
10. If Manpower is involved, provide names, classification, and hours.
11. Numbers of trips with work performed on the project.
12. Name of person who orders the test(s).
13. Five copies of the report – three (3) to the City, one (1) to the contractor and one (1) to consultant (Engineer or Architect).
14. Identify any and all retest services.
15. Testing reports shall be promptly delivered to the City and within such time frames so as to avoid any delay in construction progress. Consultant acknowledges by accepting this AGREEMENT that any undue delays in providing test results to City shall result in a delay in construction progress.

ATTACHMENT "C"
(CONSULTANT'S FEE PROPOSAL)

Fugro South, Inc.

Travel Time and Trip for this group of Services is based upon a trip within a radius of 0 to less than 20 miles from the office.

Construction Material Test		Unit	Price	Quantity	Subtotal
1	Moisture-Density Relationship	Each	\$229.00	58	\$13,282.00
1A*	Moisture-Density Relationship (no additional trip required to sample)	Each	\$165.00	0	\$0.00
2*	Atterberg Limits Determination (in conjunction with Moisture-Density Relationship)	Each	\$45.00	0	\$0.00
2A	Atterberg Limits Determination (with sampling and travel charges)	Each	\$109.00	2	\$218.00
2B*	Atterberg Limits Determination	Each	\$45.00	0	\$0.00
3	Sieve Analysis (with sampling and travel charges)	Each	\$109.00	1	\$109.00
3A*	Sieve Analysis	Each	\$45.00	0	\$0.00
4	Field Density Tests (1-3 Per Set)	Set	\$124.00	292	\$36,208.00
5*	Field Density Tests (each additional on same call out)	Each	\$20.00	0	\$0.00
6	Concrete Compressive Strength Tests (4 Cylinder Set)	Set	\$144.00	80	\$11,520.00
6A*	Concrete Compressive Strength Tests (additional 4 Cylinder Set)	Set	\$80.00	0	\$0.00
6B*	Concrete Testing in excess of 1 hour per cylinder set	Hour	\$32.00	0	\$0.00
7*	Pick-up Concrete Test Specimens	Each	\$16.00	0	\$0.00
8	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set with travel charges)	Set	\$124.00	9	\$1,116.00
8A*	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set)	Set	\$60.00	0	\$0.00
9	L.A. Abrasion Test (with sampling and travel charges)	Each	\$193.00	1	\$193.00
9A*	L.A. Abrasion Test	Each	\$129.00	0	\$0.00
10*	Standby Time	Hour	\$32.00	0	\$0.00
11*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity (with sampling and travel charges)	Each	\$338.00	0	\$0.00
11A*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity	Each	\$274.00	0	\$0.00
12	Welded Wire Fabric - Gauge thickness (with sampling and travel charges)	Each	\$119.00	2	\$238.00
12A*	Welded Wire Fabric - Gauge thickness	Each	\$55.00	0	\$0.00
13	Brick Testing (with sampling and travel charges)	Each	\$114.00	1	\$114.00
13A*	Brick Testing	Each	\$50.00	0	\$0.00
14	Slurry Seal (field measurement of slurry seal application)	Each	\$64.00	1	\$64.00
15	Fence Post and Rails (weight and coating thickness with sampling and travel charges)	Each	\$119.00	2	\$238.00
15A*	Fence Post and Rails (weight and coating thickness)	Each	\$55.00	0	\$0.00
16	Inspection/Stamping Precast Manufacture	Each	\$192.00	48	\$9,216.00
17*	Sample Charge	Each	\$96.00	0	\$0.00

Subtotal = \$72,516.00

10% Contingency = \$7,252.00

* The purpose of items with zero quantities are to establish unit prices if the need arises for these items.

Total = \$79,768.00

Fugro South, Inc., Materials Testing Prices for Non-MPO Projects (0-20 mile radius)

Fugro South, Inc.

Travel Time and Trip for this group of Services is based upon a trip within a radius of 20 to less than 40 miles from the office.

Construction Material Test		Unit	Price	Quantity	Subtotal
1	Moisture-Density Relationship	Each	\$261.00	58	\$15,138.00
1A*	Moisture-Density Relationship (no additional trip required to sample)	Each	\$165.00	0	\$0.00
2*	Atterberg Limits Determination (in conjunction with Moisture-Density Relationship)	Each	\$45.00	0	\$0.00
2A	Atterberg Limits Determination (with sampling and travel charges)	Each	\$141.00	2	\$282.00
2B*	Atterberg Limits Determination	Each	\$45.00	0	\$0.00
3	Sieve Analysis (with sampling and travel charges)	Each	\$141.00	1	\$141.00
3A*	Sieve Analysis	Each	\$45.00	0	\$0.00
4	Field Density Tests (1-3 Per Set)	Set	\$156.00	292	\$45,552.00
5*	Field Density Tests (each additional on same call out)	Each	\$20.00	0	\$0.00
6	Concrete Compressive Strength Tests (4 Cylinder Set)	Set	\$176.00	80	\$14,080.00
6A*	Concrete Compressive Strength Tests (additional 4 Cylinder Set)	Set	\$80.00	0	\$0.00
6B*	Concrete Testing in excess of 1 hour per cylinder set	Hour	\$32.00	0	\$0.00
7*	Pick-up Concrete Test Specimens	Each	\$24.00	0	\$0.00
8	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set with travel charges)	Set	\$124.00	9	\$1,116.00
8A*	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set)	Set	\$60.00	0	\$0.00
9	L.A. Abrasion Test (with sampling and travel charges)	Each	\$225.00	1	\$225.00
9A*	L.A. Abrasion Test	Each	\$129.00	0	\$0.00
10*	Standby Time	Hour	\$32.00	0	\$0.00
11*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity (with sampling and travel charges)	Each	\$370.00	0	\$0.00
11A*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity	Each	\$274.00	0	\$0.00
12	Welded Wire Fabric - Gauge thickness (with sampling and travel charges)	Each	\$151.00	2	\$302.00
12A*	Welded Wire Fabric - Gauge thickness	Each	\$55.00	0	\$0.00
13	Brick Testing (with sampling and travel charges)	Each	\$108.00	1	\$108.00
13A*	Brick Testing	Each	\$12.00	0	\$0.00
14	Slurry Seal (field measurement of slurry seal application)	Each	\$96.00	1	\$96.00
15	Fence Post and Rails (weight and coating thickness with sampling and travel charges)	Each	\$151.00	2	\$302.00
15A*	Fence Post and Rails (weight and coating thickness)	Each	\$55.00	0	\$0.00
16	Inspection/Stamping Precast Manufacture	Each	\$192.00	48	\$9,216.00
17*	Sample Charge	Each	\$128.00	0	\$0.00

Subtotal = \$86,558.00

10% Contingency = \$8,656.00

Total = \$95,214.00

* The purpose of items with zero quantities are to establish unit prices if the need arises for these items.

Fugro South, Inc., Materials Testing Prices for Non-MPO Projects (20-40 mile radius)

ATTACHMENT "D"

(COMPENSATION)

On or after the last day of each month, CONSULTANT shall provide City a written invoice for the work performed by CONSULTANT, requested by City during that month and for which the testing services have been reviewed and approved by the City. The invoice amount shall be based on the unit price agreed as shown on Attachment "C" multiplied by the number of tests performed during said month. In no event shall the total number of all invoices during the term of this contract exceed **\$72,516**.

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONSTRUCTION MATERIALS TESTING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as "**CITY**"), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. 96703, passed and approved on the 14th day of November, 2002, and as amended pursuant to Ordinance No. _____, passed and approved on the 24th day of June, 2004, and **Professional Service Industries, Inc.** by and through its Vice President, Ted Cleveland, C.P.G., (hereinafter referred to as "**CONSULTANT**"), both of which may be referred to herein collectively as the "**PARTIES**".

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, **CITY** and **CONSULTANT** do hereby agree as follows:

I. DEFINITIONS

As used in this AGREEMENT, the following terms shall have meanings as set out below:

1.1 "Director" means the director of **CITY**'s Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 "Project" means the capital improvement/construction development undertaking of **CITY** for which **CONSULTANT**'s design services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 "Ab Initio" means from the beginning; from the first act; from the inception. *See Black's Law Dictionary, 5th Ed., © 1983.*

1.4 "Respondeat Superior" means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black's Law Dictionary, 5th Ed., © 1983.*

II. PERIOD OF SERVICE

2.1 Consultant shall complete the work described in the Contract Documents, being Exhibits "A" and "B" incorporated below. The City guarantees neither a particular volume of work nor a minimum number of units of work. This is a stand-by or on-call agreement and specific requirements as to types, numbers, and locations of testing, conditions and procedures pertaining to the work will be established by the municipal project manager of the requesting City Department on a case by case basis for each job for each request.

2.2 The term of this Agreement shall commence on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and shall remain in force for the period of one year. As the enabling Ordinance provides, the City shall retain an option to renew this contract for one additional one (1) year period. The Director of Public Works shall have the authority to exercise such option at his discretion. In the event such option is exercised and any material provision of the agreement is modified, such amendment must be approved by the City Council.

2.3 The City may authorize additional calendar days or make adjustments to the Project Schedule and related deliverables, within the existing scope of this agreement, upon mutual agreement in writing, between the Director of the Department of Public Works, or his designee and Consultant, as to the reasonableness of said additional time or adjustment.

2.4 Both the City and the Consultant agree that additional services may be required for this project based upon the duration of construction activities, extended working hours by the Consultant, and additional testing required by the Owner and that this Contract may be amended to increase the scope of work to include said additional services upon mutual agreement, and written notification of approval and understanding, from the City and the Consultant as to the reasonableness of the scope of work, period of service, and fees for such additional services. Such increase in scope of work and associated payment shall be subject to the approval of the City Council as evidenced by the passage of a City ordinance.

III. SCOPE OF SERVICES

3.1 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **CONSULTANT** agrees to perform all work required by the Scope of Services set forth herein and in the attached documents.

3.1.1 ATTACHMENT "A" (Scope of Services)

3.1.2 ATTACHMENT "B" (Testing Reports)

3.1.3 ATTACHMENT "C" (Consultant's Fee Proposal)

3.1.4 ATTACHMENT "D": (Compensation)

3.2 **CONSULTANT**, shall at all times during the term of this AGREEMENT comply with national standards for testing laboratories for lab technicians in their employ and for all equipment used by the technicians in their employ. The laboratory performing testing shall be accredited by one of the following agencies: The American Association for Laboratory Accreditation (A2LA), The American Association of State Highway and Transportation Officials (AASHTO) Accreditation Program (AAP), Construction Materials Engineering Council (CMEC), The National Voluntary Laboratory Accreditation Program (NVLAP) and shall meet the requirements set forth in the American Society for Testing and Materials (ASTM) E329 for testing laboratories.

IV. COORDINATION WITH THE CITY

4.1 **CONSULTANT** shall hold periodic conferences with Director, so that the Project will have the full benefit of **CITY's** experience and knowledge of existing needs and be consistent with its current policies and standards. Conferences shall be scheduled as agreed to by Parties. **CITY** shall make available, for **CONSULTANT's** use, all existing data in its possession relative to this Project as may be requested by **CONSULTANT** at no cost to **CONSULTANT**.

4.2 Director shall act on behalf of **CITY** with respect to the work performed under this AGREEMENT. He shall have complete authority to transmit instructions, receive information, and interpret and define **CITY's** policies and decisions with respect to materials, equipment elements and systems pertinent to **CONSULTANT's** services.

4.3 **CITY** shall provide written notice to the **CONSULTANT** of any errors or omissions discovered in the **CONSULTANT's** services, or performance, or of any development that affects the scope or timing of **CONSULTANT's** services.

4.4 **CONSULTANT** shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by **CONSULTANT** for **CITY's** use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for completion of the Project. **CONSULTANT** shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, entitled "Compensation".

V. COMPENSATION

5.1 **CONSULTANT** shall be compensated in accordance with the provisions of Attachment "D" attached hereto and incorporated herein, provided; however, no compensation shall be provided to **CONSULTANT** unless and until **CONSULTANT** has complied in each instance with the provisions of Article III hereof.

5.1.1 ATTACHMENT "D" (Compensation)

VI. TERMINATION AND/OR SUSPENSION OF WORK

6.1 For purposes of this AGREEMENT, termination of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

6.2 Termination Without Cause.

6.2.1 This AGREEMENT may be terminated by either party upon written notice in accordance with Article VI. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

- 6.2.2 This AGREEMENT may be terminated by CITY prior to Director giving **CONSULTANT** written notice to proceed should the Director, at his sole discretion, determine that it is not in CITY's best interest to proceed with this AGREEMENT. Such notice shall be provided in accordance with Article VI, and shall be effective upon delivery by CITY in accordance with Article VI.
- 6.2.3 CITY shall equitably compensate **CONSULTANT** in accordance with the terms of this AGREEMENT for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by CITY. **CONSULTANT** shall not, however, be entitled to lost or anticipated profits should CITY choose to exercise its option to terminate.
- 6.3 **Termination For Cause.** Upon written notice, CITY may terminate this AGREEMENT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this AGREEMENT:
- 6.3.1 **CONSULTANT** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this AGREEMENT, including, but not limited to, **CONSULTANT's** Interest Statement, or any covenant, obligation, term or condition contained in this AGREEMENT; or
- 6.3.2 **CONSULTANT** violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this AGREEMENT.
- 6.3.3 **CONSULTANT** attempts to assign this AGREEMENT contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or
- 6.3.4 **CONSULTANT** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this AGREEMENT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **CONSULTANT's** assets or properties; or
- 6.3.5 **CONSULTANT** fails to comply in any respect with the insurance requirements set forth in this AGREEMENT; or
- 6.3.6 **CONSULTANT** violates any rule, regulation or law by which **CONSULTANT** is bound or shall be bound while and in performing the services required under this AGREEMENT.

- 6.4 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.
- 6.5 **Effect of Termination.** Upon a decision to terminate by CITY, written notice of such shall be immediately provided to CONSULTANT specifying the effective date of termination, notice of which shall be given in accordance with Article VI.
- 6.5.1 Regardless of how this AGREEMENT is terminated, and subject to 6.5.2, CONSULTANT shall affect an orderly transfer to CITY or to such person(s) or firm(s) as the CITY may designate, at no additional cost to CITY, all completed or partially completed documents, papers, records, charts, and reports prepared pursuant to this AGREEMENT and any other materials or information produced as a result of or pertaining to the services rendered by CONSULTANT, or provided to CONSULTANT. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at CONSULTANT's sole cost and expense. Payment of compensation due or to become due to CONSULTANT is conditioned upon delivery of all such documents.
- 6.5.2 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this AGREEMENT, CONSULTANT shall submit to CITY its claims, in detail, for the monies owed by CITY for services performed under this AGREEMENT through the effective date of termination. Failure by CONSULTANT to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of CITY and constitute a Waiver by CONSULTANT of any and all right or claims to collect moneys that CONSULTANT may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.
- 6.5.3 Upon the effective date of expiration or termination of this AGREEMENT, CONSULTANT shall cease all operations of work being performed by CONSULTANT or any of its subcontractors pursuant to this AGREEMENT.
- 6.5.4 **Termination not sole remedy.** In no event shall CITY's action of terminating this AGREEMENT, whether for cause or otherwise, be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue CONSULTANT for any default hereunder or other action.

6.6 Right of **CITY** to Suspend Giving Rise to Right of **CONSULTANT** to Terminate.

6.6.1 **CITY** may suspend this AGREEMENT by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article VI, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **CONSULTANT**'s receipt of said notice.

6.6.2 **CONSULTANT** may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. **CONSULTANT** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article VI, Notice, (citing this paragraph) to **CITY** after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by **CITY**.

6.7 Procedures for **CONSULTANT** to follow upon Receipt of Notice of Suspension.

6.7.1 Upon receipt of written notice of suspension, **CONSULTANT** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this agreement and cancel all existing orders and contracts.

6.7.2 **CONSULTANT** shall prepare a statement showing in detail the services performed under this AGREEMENT prior to the effective date of suspension.

6.7.3 All completed or partially completed plans and specifications prepared under this AGREEMENT prior to the effective date of suspension shall be prepared for possible delivery to **CITY** but shall be retained by **CONSULTANT** until such time as **CONSULTANT** may exercise the right to terminate.

6.7.4 In the event that **CONSULTANT** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT**'s notice of termination, **CONSULTANT** shall submit the above referenced statement showing in detail the services performed under this agreement prior to the effective date of suspension. Nothing in this section 6.74 shall prevent **CONSULTANT** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.

- 6.7.5 Additionally, any documents prepared in association with this AGREEMENT shall be delivered to **CITY** by **CONSULTANT**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT**'s notice of termination.
- 6.7.6 Upon the above conditions being met, **CITY** shall pay **CONSULTANT** that proportion of the prescribed fee which the services actually performed under this AGREEMENT bear to the total services called for under this AGREEMENT, less previous payments of the fee.
- 6.7.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **CONSULTANT** acknowledges this duty on the part of **CITY**. To this end, **CONSULTANT** understands that failure of **CONSULTANT** to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by **CONSULTANT** of any portion of the fee for which **CONSULTANT** did not supply such necessary statements and/or documents.

VII. INSURANCE REQUIREMENTS

7.1 Prior to the commencement of any work under this AGREEMENT, **CONSULTANT** shall furnish an original completed Certificate of Insurance to **CITY**'s Public Works Department and **CITY**'s Risk Management Division executed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to **CITY**'s Public Works Department and **CITY**'s Risk Management Office, and no officer or employee shall have authority to waive this requirement.

7.2 **CONSULTANT**'s financial integrity is of interest to **CITY**, therefore, subject to **CONSULTANT**'s right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **CONSULTANT** shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at **CONSULTANT**'s sole expense, insurance coverage written on an occurrence basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual liability	Combined <u>Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims made form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

7.3 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by **CITY**. **CONSULTANT** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided in Article VII herein within 10 days of the requested change.

7.4 **CONSULTANT** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name **CITY** and its officers, employees, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with **CITY**, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

7.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by CITY, CONSULTANT shall notify CITY of such and shall give such notices not less than thirty (30) days prior to the change, if CONSULTANT knows of said change in advance, or ten (10) days notice after the change, if the CONSULTANT did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to CITY at the following addresses:

City of San Antonio	City of San Antonio
Public Works Department – Capital Programs	Risk Management
P.O. Box 839966	111 Soledad, Suite 1000
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

7.6 If CONSULTANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have, and is not the exclusive remedy for failure of CONSULTANT to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONSULTANT to stop work hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof. A stop work order given to CONSULTANT by CITY in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VI, Section 6.7.

7.7 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractors' performance of the work covered under this AGREEMENT.

7.8 It is agreed that CONSULTANT's insurance shall be deemed primary with respect to any insurance or self insurance carried by CITY of San Antonio for liability arising out of operations under this AGREEMENT.

VIII. INDEMNIFICATION

8.1 CONSULTANT, whose work product is the subject of this AGREEMENT for engineering services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES,

DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

8.2 CONSULTANT shall advise CITY in writing within 24 hours of any claim or demand against CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

8.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

IX. ASSIGNMENT OF RIGHTS OR DUTIES

9.1 By entering into this AGREEMENT, CITY has approved the use of any subcontractors identified in CONSULTANT's Interest Statement. No further approval shall be needed for CONSULTANT to use such subcontractors as are identified in CONSULTANT's Interest Statement.

9.2 Except as otherwise required herein, CONSULTANT may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of CITY.

9.3 As a condition of consent, if same is given, CONSULTANT shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this AGREEMENT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by CITY in accordance with this Article.

9.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONSULTANT assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, CITY may, at its option, terminate this AGREEMENT in accordance with Article VI, Termination, and all rights, titles and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this AGREEMENT. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this AGREEMENT, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY, which CITY sustains as a result of such violation.

9.5 **CONSULTANT** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this **AGREEMENT**, any such change of ownership interest or control of its business entity may be grounds for termination of this **AGREEMENT** in accordance with Article VI, Termination.

X. INDEPENDENT CONTRACTOR

10.1 **CONSULTANT** covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of **CITY**; that **CONSULTANT** shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **CONSULTANT**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **CONSULTANT**.

10.2 No Third Party Beneficiaries - For purposes of this **AGREEMENT**, including its intended operation and effect, the Parties specifically agree and **CONTRACT** that: (1) this **AGREEMENT** only affects matters/disputes between the Parties to this **AGREEMENT**, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with **CITY** or **CONSULTANT** or both, or that such third parties may benefit incidentally by this **AGREEMENT**; and (2) the terms of this **AGREEMENT** are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **CONSULTANT**.

XI. EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, **CONSULTANT** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

XII. SBEDA REQUIREMENTS

12.1 **CONSULTANT** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), handicapped and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by **CITY**. This policy and its implementation is known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

12.2 **CONSULTANT** agrees to implement the plan submitted in **CONSULTANT**'s response to **CITY**'s Request for Interest Statement under the SBEDA Program for Small, Minority and Women-owned Business Participation in this AGREEMENT, thereby meeting the percentages for participation of those groups as submitted therein. **CONSULTANT** agrees to be in full compliance with this article by meeting the percentages listed in **CONSULTANT**'s Interest Statement no later than 60 days from the date of execution of this AGREEMENT, and to remain in compliance throughout the term of this AGREEMENT. **CONSULTANT** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this AGREEMENT, as may be approved pursuant to this AGREEMENT, that will meet the percentages submitted in **CONSULTANT**'s Interest Statement. Changes in contract value by changes in work orders, AGREEMENT amendments, or use of contract alternatives, which result in an increase in the value of the AGREEMENT by 10% or greater require the **CONSULTANT** to increase its use of business enterprises described in this section, if such is necessary to maintain the same percentages as exist in **CONSULTANT**'s Interest Statement. However, the delegation of any duties hereunder by any means must be approved by **CITY** as stated herein.

12.3 **CONSULTANT** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/WBE's. **CONSULTANT** shall submit annual reports to **CITY**'s Department of Economic Development, identifying the above activity and other efforts at increasing SBE/MBE/WBE participation in the AGREEMENT. Further, such records shall be open to inspection by **CITY** or its authorized agent at all reasonable times. Should **CITY** find that **CONSULTANT** is not in compliance with this article, **CITY** shall give notice of non-compliance to **CONSULTANT**. **CONSULTANT** shall have 30 calendar days to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this AGREEMENT and may subject **CONSULTANT** to any of the penalties listed in **CITY** of San Antonio Ordinance No. 77758, at **CITY**'s option. Further, such failure may be considered a default for which **CITY** may terminate this AGREEMENT in accordance with Article VIII, Termination.

12.4 **CONSULTANT** shall appoint a representative of its company to administer and coordinate its efforts to carry out these requirements.

12.5 In all events, **CONSULTANT** shall comply with the **CITY**'s Small, Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

12.6 It is **CITY**'s understanding, and this AGREEMENT is made in reliance thereon, that **CONSULTANT**, in the performance of services required hereunder, will use the subcontractor(s) listed in its response to **CITY**'s Request for Interest Statement.

12.7 Any work or services subcontracted by **CONSULTANT** shall be by written contract, and unless specific waiver is granted in writing by **CITY**, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by subcontractor with the provisions of said contract shall be the responsibility of **CONSULTANT**.

12.8 **CITY** shall in no event be obligated to any third party, including any subcontractor of **CONSULTANT**, for performance or services or payment of fees.

XIII. NOTICES

Unless otherwise expressly provided elsewhere in this AGREEMENT, any election, notice or communication required or permitted to be given under this AGREEMENT shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

CITY of San Antonio
Public Works Department - Engineering
Attn: Mr. Razi Hosseini, P.E.
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for CONSULTANT, to:

Professional Service Industries, Inc.
Three Burwood Lane
San Antonio, Texas 78216-7071
Attn: Ted Cleveland, C.P.G.

XIV. INTEREST IN CITY CONTRACTS PROHIBITED

14.1 **CONSULTANT** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

14.2 **CONSULTANT** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **CONSULTANT** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY's** Ethics Code.

XV. SOLICITATION

CONSULTANT warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for **CONSULTANT**, to solicit or secure this AGREEMENT, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONSULTANT**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. This representation constitutes a substantial part of the consideration for the making of this AGREEMENT.

XVI. CONTRACT CONSTRUCTION

All parties have participated fully in the review and revision of this AGREEMENT. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this AGREEMENT.

XVII. FAMILIARITY WITH LAW AND CONTRACT TERMS

CONSULTANT represents that, prior to signing this AGREEMENT, **CONSULTANT** has become thoroughly acquainted with all matters relating to the performance of this AGREEMENT, all applicable laws, and all of the terms and conditions of this AGREEMENT.

XVIII. APPLICABLE LAW

This AGREEMENT shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XIX. VENUE

The obligations of the parties to this AGREEMENT shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

XX. SEVERABILITY

In the event any one or more paragraphs or portions of this AGREEMENT are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this AGREEMENT, but such shall be confined to the specific section, sentences, clauses or portions of this AGREEMENT held invalid or unenforceable.

XXI. FORCE MAJEURE

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXII SUCCESSORS

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this AGREEMENT, their assigns.

XXIII. NON-WAIVER OF PERFORMANCE

23.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

23.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIV. PARAGRAPH HEADINGS

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXV. LEGAL AUTHORITY

The signer of this AGREEMENT for CITY and CONSULTANT each represents, warrants, assures and guarantees that he has full legal authority to execute this AGREEMENT on behalf of CITY and CONSULTANT respectively, and to bind CITY and CONSULTANT to all of the terms, conditions, provisions and obligations herein contained.

XXVI. INCORPORATION OF ATTACHMENTS

26.1 CONSULTANT understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

ATTACHMENT "A" (Scope of Services)

ATTACHMENT "B" (Testing Reports)

ATTACHMENT "C" (CONSULTANT's Fee Proposal)

ATTACHMENT "D" (Compensation)

26.2 In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail. In the event of a conflict or inconsistency between Attachment "A" and Attachments "C", the terms of Attachment "A" shall control over the terms of Attachment "C".

XXVII. ENTIRE AGREEMENT

27.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXVI, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

27.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE _____ DAY OF _____, _____.

CITY OF SAN ANTONIO

CITY MANAGER

**CONSULTANT
PROFESSIONAL SERVICES
INDUSTRIES, INC.**



TED CLEVELAND, C.P.G.
VICE-PRESIDENT

APPROVED AS TO FORM:

CITY ATTORNEY

CITY CLERK

DATE

ATTACHMENT "A"
(SCOPE OF SERVICES)

Summary of Testing Services Scope of Work

1. Moisture-Density Relationship - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
 - 1A. Moisture-Density Relationship (no additional trip required to sample) - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
2. Atterberg Limits (sampled and conducted in conjunction with Moisture-Density Relationship) - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
 - 2A. Atterberg Limits - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
 - 2B. Atterberg Limits - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
3. Sieve Analysis thru No. 200 - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
 - 3A. Sieve Analysis thru No. 200 - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
4. Field Density Tests (1-3 tests package) - This all inclusive price should include a fee for the field testing, technician time for testing, appropriate travel charges associated with the trip and reporting and management time for the service. Note: The fee for this should be the same whether 1, 2 or 3 tests are conducted.
5. Field Density Tests (for each test after the first 3 are conducted on the same call out) - This all inclusive price per test should include a fee for the field testing, technician time for testing and reporting and management time for the service.
6. Concrete Compressive Strength Testing (4 cylinders per set) - This all inclusive price should include a fee for the laboratory testing, technician time to sample the material, conducting of slump test, conducting of temperature test, appropriate travel charges associated with the trip and reporting and management time for the service. (The fee should allow for one hour of site time)

- 6A. Concrete Compressive Strength Testing (4 cylinders per set) this fee should be for additional sets of test cylinders cast after initial set has been cast. This all-inclusive price should include a fee for the laboratory testing, technician time to sample the material, conducting of slump test, conducting of temperature test, and reporting and management time for the service. (The fee should allow for one hour of site time for each additional set of cylinders)
- 6B. Standby time for technician concrete testing for time on the project site in excess of 1 hour per set of cylinders - This fee should be an hourly rate.
- 7. Pickup of concrete test specimens - This fee should be an all-inclusive price that should include the technician time for cylinder pickup and the appropriate charges associated with the trip.
- 8. Asphalt cores of in-place asphalt paving - This fee should include the coring charges, technician time, laboratory testing of the core for density and the appropriate charges associated with the trip and reporting and management time for the service.
- 9. L.A. Abrasion Test - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 9A. L.A. Abrasion Test - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
- 10. Mandrel Testing - Not required
- 11. Asphaltic Concrete Extraction, Gradation, Bitumen Content, Stability, Laboratory Density, and Rice Gravity - This all inclusive price should include a fee for the laboratory tests, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 11A. Asphaltic Concrete Extraction, Gradation, Bitumen Content, Stability, Laboratory Density, and Rice Gravity - This all inclusive price should include a fee for the laboratory tests, and reporting and management time for the service.
- 12. Welded Wire Fabric (Gauge Thickness) - This all inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 12A. Welded Wire Fabric (Gauge Thickness) - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
- 13. Brick Testing (Compressive Strength) - This all inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.

- 13A. Brick Testing (Compressive Strength) - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
14. Slurry Seal Testing (Field Measurement of slurry seal application) - This all inclusive price should include a fee for technician time at the project site, field testing, appropriate travel charges associated with the trip and reporting and management time for the service.
15. Fence Post and Rails (Weight and Coating Thickness) - This all inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 15A. Fence Post and Rails (Weight and Coating Thickness) - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
16. Inspection/Sampling at Precast Manufacturer - This all inclusive price should include a fee for a four hour inspection, including travel, technician time, appropriate travel charges associated with the trip and reporting and management time for the service.
17. Sample Charge (for sampling of materials not included in the above testing scope) - This all inclusive price should include a fee for technician time to sample the material and appropriate travel charges associated with the trip.

ATTACHMENT "B"

(TESTING REPORTS)

The following standard requirements shall govern all testing reports submitted under this agreement unless otherwise directed by the Project Manager of the requesting City department. Each report issued to the City shall provide as a minimum:

1. Report Date.
2. Time of service, Project Title and location of test(s).
3. Testing Lab Letterhead with Authorized Signature - Professional Engineer or appropriate licensed Professional required by law in charge or his delegated assistant.
4. Report Identification Number (Sequential Numbering), Description, Price Agreement Service Number(s) of items performed, Quantity Performed and Location.
5. Test Results.
6. Agreement Standards Controlling the Test(s).
7. Compliance or noncompliance with the specifications.
8. Any extenuating circumstances affecting the test(s) or result(s).
9. Observations to include service time chargeable to delays, rescheduling and overtime premiums.
10. If Manpower is involved, provide names, classification, and hours.
11. Numbers of trips with work performed on the project.
12. Name of person who orders the test(s).
13. Five copies of the report – three (3) to the City, one (1) to the contractor and one (1) to consultant (Engineer or Architect).
14. Identify any and all retest services.
15. Testing reports shall be promptly delivered to the City and within such time frames so as to avoid any delay in construction progress. Consultant acknowledges by accepting this AGREEMENT that any undue delays in providing test results to City shall result in a delay in construction progress.

ATTACHMENT "C"
(CONSULTANT'S FEE PROPOSAL)

Travel Time and Trip for this group of Services is based upon a trip within a radius of 0 to less than 20 miles from the office.

Construction Material Test		Unit	Price	Quantity	Subtotal
1	Moisture-Density Relationship	Each	\$255.00	58	\$14,790.00
1A*	Moisture-Density Relationship (no additional trip required to sample)	Each	\$165.00	0	\$0.00
2*	Atterberg Limits Determination (in conjunction with Moisture-Density Relationship)	Each	\$55.00	0	\$0.00
2A	Atterberg Limits Determination (with sampling and travel charges)	Each	\$155.00	2	\$310.00
2B*	Atterberg Limits Determination	Each	\$55.00	0	\$0.00
3	Sieve Analysis (with sampling and travel charges)	Each	\$155.00	1	\$155.00
3A*	Sieve Analysis	Each	\$55.00	0	\$0.00
4	Field Density Tests (1-3 Per Set)	Set	\$140.00	292	\$40,880.00
5*	Field Density Tests (each additional on same call out)	Each	\$20.00	0	\$0.00
6	Concrete Compressive Strength Tests (4 Cylinder Set)	Set	\$160.00	80	\$12,800.00
6A*	Concrete Compressive Strength Tests (additional 4 Cylinder Set)	Set	\$100.00	0	\$0.00
6B*	Concrete Testing in excess of 1 hour per cylinder set	Hour	\$35.00	0	\$0.00
7*	Pick-up Concrete Test Specimens	Each	\$85.00	0	\$0.00
8	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set with travel charges)	Set	\$300.00	9	\$2,700.00
8A*	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set)	Set	\$150.00	0	\$0.00
9	L.A. Abrasion Test (with sampling and travel charges)	Each	\$310.00	1	\$310.00
9A*	L.A. Abrasion Test	Each	\$190.00	0	\$0.00
10*	Standby Time	Hour	\$32.00	0	\$0.00
11*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity (with sampling and travel charges)	Each	\$450.00	0	\$0.00
11A*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity	Each	\$365.00	0	\$0.00
12	Welded Wire Fabric - Gauge thickness (with sampling and travel charges)	Each	\$170.00	2	\$340.00
12A*	Welded Wire Fabric - Gauge thickness	Each	\$65.00	0	\$0.00
13	Brick Testing (with sampling and travel charges)	Each	\$175.00	1	\$175.00
13A*	Brick Testing	Each	\$45.00	0	\$0.00
14	Slurry Seal (field measurement of slurry seal application)	Each	\$180.00	1	\$180.00
15	Fence Post and Rails (weight and coating thickness with sampling and travel charges)	Each	\$170.00	2	\$340.00
15A*	Fence Post and Rails (weight and coating thickness)	Each	\$50.00	0	\$0.00
16	Inspection/Stamping Precast Manufacture	Each	\$210.00	48	\$10,080.00
17*	Sample Charge	Each	\$120.00	0	\$0.00

Subtotal = \$83,060.00

* The purpose of items with zero quantities are to establish unit prices if the need arises for these items.

Professional Service Industries, Inc., Material Testing Services
for Non-MPO Projects (0-20 mile radius)

10% Contingency = \$8,306.00

Total = \$91,366.00

Travel Time and Trip for this group of Services is based upon a trip within a radius of 20 to less than 40 miles from the office.

Construction Material Test		Unit	Price	Quantity	Subtotal
1	Moisture-Density Relationship	Each	\$285.00	58	\$16,530.00
1A*	Moisture-Density Relationship (no additional trip required to sample)	Each	\$165.00	0	\$0.00
2*	Atterberg Limits Determination (in conjunction with Moisture-Density Relationship)	Each	\$55.00	0	\$0.00
2A	Atterberg Limits Determination (with sampling and travel charges)	Each	\$185.00	2	\$370.00
2B*	Atterberg Limits Determination	Each	\$55.00	0	\$0.00
3	Sieve Analysis (with sampling and travel charges)	Each	\$185.00	1	\$185.00
3A*	Sieve Analysis	Each	\$55.00	0	\$0.00
4	Field Density Tests (1-3 Per Set)	Set	\$170.00	292	\$49,640.00
5*	Field Density Tests (each additional on same call out)	Each	\$20.00	0	\$0.00
6	Concrete Compressive Strength Tests (4 Cylinder Set)	Set	\$185.00	80	\$14,800.00
6A*	Concrete Compressive Strength Tests (additional 4 Cylinder Set)	Set	\$100.00	0	\$0.00
6B*	Concrete Testing in excess of 1 hour per cylinder set	Hour	\$35.00	0	\$0.00
7*	Pick-up Concrete Test Specimens	Each	\$130.00	0	\$0.00
8	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set with travel charges)	Set	\$350.00	9	\$3,150.00
8A*	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set)	Set	\$150.00	0	\$0.00
9	L.A. Abrasion Test (with sampling and travel charges)	Each	\$330.00	1	\$330.00
9A*	L.A. Abrasion Test	Each	\$190.00	0	\$0.00
10*	Standby Time	Hour	\$32.00	0	\$0.00
11*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity (with sampling and travel charges)	Each	\$475.00	0	\$0.00
11A*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity	Each	\$365.00	0	\$0.00
12	Welded Wire Fabric - Gauge thickness (with sampling and travel charges)	Each	\$190.00	2	\$380.00
12A*	Welded Wire Fabric - Gauge thickness	Each	\$65.00	0	\$0.00
13	Brick Testing (with sampling and travel charges)	Each	\$225.00	1	\$225.00
13A*	Brick Testing	Each	\$45.00	0	\$0.00
14	Slurry Seal (field measurement of slurry seal application)	Each	\$200.00	1	\$200.00
15	Fence Post and Rails (weight and coating thickness with sampling and travel charges)	Each	\$190.00	2	\$380.00
15A*	Fence Post and Rails (weight and coating thickness)	Each	\$50.00	0	\$0.00
16	Inspection/Stamping Precast Manufacture	Each	\$215.00	48	\$10,320.00
17*	Sample Charge	Each	\$140.00	0	\$0.00

Subtotal = \$96,510.00

- * The purpose of items with zero quantities are to establish unit prices if the need arises for these items.

10% Contingency = \$9,651.00

Professional Service Industries, Inc., Materials Testing Service Prices
for Non-MPO Projects (20-40 mile radius)

Total = \$106,161.00

ATTACHMENT "D"

(COMPENSATION)

On or after the last day of each month, CONSULTANT shall provide City a written invoice for the work performed by CONSULTANT, requested by City during that month and for which the testing services have been reviewed and approved by the City. The invoice amount shall be based on the unit price agreed as shown on Attachment "C" multiplied by the number of tests performed during said month. In no event shall the total number of all invoices during the term of this contract exceed **\$83,060**.

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONSTRUCTION MATERIALS TESTING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY"), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. 96703, passed and approved on the 14th day of November, 2002, and as amended pursuant to Ordinance No. _____, passed and approved on the 24th day of June, 2004, and Raba-Kistner Consultants, Inc. by and through its Vice Chairman, Richard W. Kistner, P.E. (hereinafter referred to as "CONSULTANT"), both of which may be referred to herein collectively as the "PARTIES".

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, CITY and CONSULTANT do hereby agree as follows:

I. DEFINITIONS

As used in this AGREEMENT, the following terms shall have meanings as set out below:

1.1 "Director" means the director of CITY's Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 "Project" means the capital improvement/construction development undertaking of CITY for which CONSULTANT's design services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 "Ab Initio" means from the beginning; from the first act; from the inception. *See Black's Law Dictionary, 5th Ed., © 1983.*

1.4 "Respondeat Superior" means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black's Law Dictionary, 5th Ed., © 1983.*

II. PERIOD OF SERVICE

2.1 Consultant shall complete the work described in the Contract Documents, being Exhibits "A" and "B" incorporated below. The City guarantees neither a particular volume of work nor a minimum number of units of work. This is a stand-by or on-call agreement and specific requirements as to types, numbers, and locations of testing, conditions and procedures pertaining to the work will be established by the municipal project manager of the requesting City Department on a case by case basis for each job for each request.

2.2 The term of this Agreement shall commence on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and shall remain in force for the period of one year. As the enabling Ordinance provides, the City shall retain an option to renew this contract for one additional one (1) year period. The Director of Public Works shall have the authority to exercise such option at his discretion. In the event such option is exercised and any material provision of the agreement is modified, such amendment must be approved by the City Council.

2.3 The City may authorize additional calendar days or make adjustments to the Project Schedule and related deliverables, within the existing scope of this agreement, upon mutual agreement in writing, between the Director of the Department of Public Works, or his designee and Consultant, as to the reasonableness of said additional time or adjustment.

2.4 Both the City and the Consultant agree that additional services may be required for this project based upon the duration of construction activities, extended working hours by the Consultant, and additional testing required by the Owner and that this Contract may be amended to increase the scope of work to include said additional services upon mutual agreement, and written notification of approval and understanding, from the City and the Consultant as to the reasonableness of the scope of work, period of service, and fees for such additional services. Such increase in scope of work and associated payment shall be subject to the approval of the City Council as evidenced by the passage of a City ordinance.

III. SCOPE OF SERVICES

3.1 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. CONSULTANT agrees to perform all work required by the Scope of Services set forth herein and in the attached documents.

3.1.1 ATTACHMENT "A" (Scope of Services)

3.1.2 ATTACHMENT "B" (Testing Reports)

3.1.3 ATTACHMENT "C" (Consultant's Fee Proposal)

3.1.4 ATTACHMENT "D": (Compensation)

3.2 CONSULTANT, shall at all times during the term of this AGREEMENT comply with national standards for testing laboratories for lab technicians in their employ and for all equipment used by the technicians in their employ. The laboratory performing testing shall be accredited by one of the following agencies: The American Association for Laboratory Accreditation (A2LA), The American Association of State Highway and Transportation Officials (AASHTO) Accreditation Program (AAP), Construction Materials Engineering Council (CMEC), The National Voluntary Laboratory Accreditation Program (NVLAP) and shall meet the requirements set forth in the American Society for Testing and Materials (ASTM) E329 for testing laboratories.

IV. COORDINATION WITH THE CITY

4.1 **CONSULTANT** shall hold periodic conferences with Director, so that the Project will have the full benefit of **CITY's** experience and knowledge of existing needs and be consistent with its current policies and standards. Conferences shall be scheduled as agreed to by Parties. **CITY** shall make available, for **CONSULTANT's** use, all existing data in its possession relative to this Project as may be requested by **CONSULTANT** at no cost to **CONSULTANT**.

4.2 Director shall act on behalf of **CITY** with respect to the work performed under this AGREEMENT. He shall have complete authority to transmit instructions, receive information, and interpret and define **CITY's** policies and decisions with respect to materials, equipment elements and systems pertinent to **CONSULTANT's** services.

4.3 **CITY** shall provide written notice to the **CONSULTANT** of any errors or omissions discovered in the **CONSULTANT's** services, or performance, or of any development that affects the scope or timing of **CONSULTANT's** services.

4.4 **CONSULTANT** shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by **CONSULTANT** for **CITY's** use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for completion of the Project. **CONSULTANT** shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, entitled "Compensation".

V. COMPENSATION

5.1 **CONSULTANT** shall be compensated in accordance with the provisions of Attachment "D" attached hereto and incorporated herein, provided; however, no compensation shall be provided to **CONSULTANT** unless and until **CONSULTANT** has complied in each instance with the provisions of Article III hereof.

5.1.1 ATTACHMENT "D" (Compensation)

VI. TERMINATION AND/OR SUSPENSION OF WORK

6.1 For purposes of this AGREEMENT, termination of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

6.2 Termination Without Cause.

6.2.1 This AGREEMENT may be terminated by either party upon written notice in accordance with Article VI. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

6.2.2 This AGREEMENT may be terminated by CITY prior to Director giving CONSULTANT written notice to proceed should the Director, at his sole discretion, determine that it is not in CITY's best interest to proceed with this AGREEMENT. Such notice shall be provided in accordance with Article VI, and shall be effective upon delivery by CITY in accordance with Article VI.

6.2.3 CITY shall equitably compensate CONSULTANT in accordance with the terms of this AGREEMENT for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by CITY. CONSULTANT shall not, however, be entitled to lost or anticipated profits should CITY choose to exercise its option to terminate.

6.3 Termination For Cause. Upon written notice, CITY may terminate this AGREEMENT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this AGREEMENT:

6.3.1 CONSULTANT makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this AGREEMENT, including, but not limited to, CONSULTANT's Interest Statement, or any covenant, obligation, term or condition contained in this AGREEMENT; or

6.3.2 CONSULTANT violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this AGREEMENT.

6.3.3 CONSULTANT attempts to assign this AGREEMENT contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or

6.3.4 CONSULTANT ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this AGREEMENT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of CONSULTANT's assets or properties; or

6.3.5 **CONSULTANT** fails to comply in any respect with the insurance requirements set forth in this AGREEMENT; or

6.3.6 **CONSULTANT** violates any rule, regulation or law by which **CONSULTANT** is bound or shall be bound while and in performing the services required under this AGREEMENT.

6.4 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.

6.5 **Effect of Termination.** Upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **CONSULTANT** specifying the effective date of termination, notice of which shall be given in accordance with Article VI.

6.5.1 Regardless of how this AGREEMENT is terminated, and subject to 6.5.2, **CONSULTANT** shall affect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all completed or partially completed documents, papers, records, charts, and reports prepared pursuant to this AGREEMENT and any other materials or information produced as a result of or pertaining to the services rendered by **CONSULTANT**, or provided to **CONSULTANT**. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at **CONSULTANT**'s sole cost and expense. Payment of compensation due or to become due to **CONSULTANT** is conditioned upon delivery of all such documents.

6.5.2 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this AGREEMENT, **CONSULTANT** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this AGREEMENT through the effective date of termination. Failure by **CONSULTANT** to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of **CITY** and constitute a Waiver by **CONSULTANT** of any and all right or claims to collect moneys that **CONSULTANT** may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.

6.5.3 Upon the effective date of expiration or termination of this AGREEMENT, **CONSULTANT** shall cease all operations of work being performed by **CONSULTANT** or any of its subcontractors pursuant to this AGREEMENT.

- 6.5.4 **Termination not sole remedy.** In no event shall CITY's action of terminating this AGREEMENT, whether for cause or otherwise, be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue CONSULTANT for any default hereunder or other action.
- 6.6 **Right of CITY to Suspend Giving Rise to Right of CONSULTANT to Terminate.**
- 6.6.1 CITY may suspend this AGREEMENT by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article VI, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon CONSULTANT's receipt of said notice.
- 6.6.2 CONSULTANT may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. CONSULTANT may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article VI, Notice, (citing this paragraph) to CITY after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by CITY.
- 6.7 **Procedures for CONSULTANT to follow upon Receipt of Notice of Suspension.**
- 6.7.1 Upon receipt of written notice of suspension, CONSULTANT shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this agreement and cancel all existing orders and contracts.
- 6.7.2 CONSULTANT shall prepare a statement showing in detail the services performed under this AGREEMENT prior to the effective date of suspension.
- 6.7.3 All completed or partially completed plans and specifications prepared under this AGREEMENT prior to the effective date of suspension shall be prepared for possible delivery to CITY but shall be retained by CONSULTANT until such time as CONSULTANT may exercise the right to terminate.

- 6.7.4 In the event that **CONSULTANT** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT**'s notice of termination, **CONSULTANT** shall submit the above referenced statement showing in detail the services performed under this agreement prior to the effective date of suspension. Nothing in this section 6.74 shall prevent **CONSULTANT** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.
- 6.7.5 Additionally, any documents prepared in association with this **AGREEMENT** shall be delivered to **CITY** by **CONSULTANT**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT**'s notice of termination.
- 6.7.6 Upon the above conditions being met, **CITY** shall pay **CONSULTANT** that proportion of the prescribed fee which the services actually performed under this **AGREEMENT** bear to the total services called for under this **AGREEMENT**, less previous payments of the fee.
- 6.7.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **CONSULTANT** acknowledges this duty on the part of **CITY**. To this end, **CONSULTANT** understands that failure of **CONSULTANT** to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by **CONSULTANT** of any portion of the fee for which **CONSULTANT** did not supply such necessary statements and/or documents.

VII. INSURANCE REQUIREMENTS

7.1 Prior to the commencement of any work under this **AGREEMENT**, **CONSULTANT** shall furnish an original completed Certificate of Insurance to **CITY**'s Public Works Department and **CITY**'s Risk Management Division executed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or perform under this **AGREEMENT** until such certificate shall have been delivered to **CITY**'s Public Works Department and **CITY**'s Risk Management Office, and no officer or employee shall have authority to waive this requirement.

7.2 **CONSULTANT's** financial integrity is of interest to **CITY**, therefore, subject to **CONSULTANT's** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **CONSULTANT** shall obtain and maintain in full force and effect for the duration of this **AGREEMENT**, and any extension hereof, at **CONSULTANT's** sole expense, insurance coverage written on an occurrence basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual liability	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims made form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

7.3 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by **CITY**. **CONSULTANT** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided in Article VII herein within 10 days of the requested change.

7.4 **CONSULTANT** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name **CITY** and its officers, employees, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with **CITY**, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

7.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by **CITY**, **CONSULTANT** shall notify **CITY** of such and shall give such notices not less than thirty (30) days prior to the change, if **CONSULTANT** knows of said change in advance, or ten (10) days notice after the change, if the **CONSULTANT** did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to **CITY** at the following addresses:

City of San Antonio	City of San Antonio
Public Works Department – Capital Programs	Risk Management
P.O. Box 839966	111 Soledad, Suite 1000
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

7.6 If **CONSULTANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by **CITY** is an alternative to other remedies **CITY** may have, and is not the exclusive remedy for failure of **CONSULTANT** to maintain said insurance or secure such endorsement. In addition to any other remedies **CITY** may have upon **CONSULTANT**'s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **CONSULTANT** to stop work hereunder, and/or withhold any payment(s) which become due to **CONSULTANT** hereunder until **CONSULTANT** demonstrates compliance with the requirements hereof. A stop work order given to **CONSULTANT** by **CITY** in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VI, Section 6.7.

7.7 Nothing herein contained shall be construed as limiting in any way the extent to which **CONSULTANT** may be held responsible for payments of damages to persons or property resulting from **CONSULTANT**'s or its subcontractors' performance of the work covered under this AGREEMENT.

7.8 It is agreed that CONSULTANT's insurance shall be deemed primary with respect to any insurance or self insurance carried by CITY of San Antonio for liability arising out of operations under this AGREEMENT.

VIII. INDEMNIFICATION

8.1 CONSULTANT, whose work product is the subject of this AGREEMENT for engineering services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

8.2 CONSULTANT shall advise CITY in writing within 24 hours of any claim or demand against CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

8.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

IX. ASSIGNMENT OF RIGHTS OR DUTIES

9.1 By entering into this AGREEMENT, CITY has approved the use of any subcontractors identified in CONSULTANT's Interest Statement. No further approval shall be needed for CONSULTANT to use such subcontractors as are identified in CONSULTANT's Interest Statement.

9.2 Except as otherwise required herein, CONSULTANT may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of CITY.

9.3 As a condition of consent, if same is given, CONSULTANT shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this AGREEMENT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by CITY in accordance with this Article.

9.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONSULTANT assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, CITY may, at its option, terminate this AGREEMENT in accordance with Article VI, Termination, and all rights, titles and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this AGREEMENT. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this AGREEMENT, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY, which CITY sustains as a result of such violation.

9.5 CONSULTANT agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to CITY under this AGREEMENT, any such change of ownership interest or control of its business entity may be grounds for termination of this AGREEMENT in accordance with Article VI, Termination.

X. INDEPENDENT CONTRACTOR

10.1 CONSULTANT covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of CITY; that CONSULTANT shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between CITY and CONSULTANT, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and CONSULTANT.

10.2 No Third Party Beneficiaries - For purposes of this AGREEMENT, including its intended operation and effect, the Parties specifically agree and CONTRACT that: (1) this AGREEMENT only affects matters/disputes between the Parties to this AGREEMENT, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or CONSULTANT or both, or that such third parties may benefit incidentally by this AGREEMENT; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or CONSULTANT.

XI. EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, **CONSULTANT** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

XII. SBEDA REQUIREMENTS

12.1 **CONSULTANT** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), handicapped and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by **CITY**. This policy and its implementation is known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

12.2 **CONSULTANT** agrees to implement the plan submitted in **CONSULTANT**'s response to **CITY**'s Request for Interest Statement under the SBEDA Program for Small, Minority and Women-owned Business Participation in this AGREEMENT, thereby meeting the percentages for participation of those groups as submitted therein. **CONSULTANT** agrees to be in full compliance with this article by meeting the percentages listed in **CONSULTANT**'s Interest Statement no later than 60 days from the date of execution of this AGREEMENT, and to remain in compliance throughout the term of this AGREEMENT. **CONSULTANT** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this AGREEMENT, as may be approved pursuant to this AGREEMENT, that will meet the percentages submitted in **CONSULTANT**'s Interest Statement. Changes in contract value by changes in work orders, AGREEMENT amendments, or use of contract alternatives, which result in an increase in the value of the AGREEMENT by 10% or greater require the **CONSULTANT** to increase its use of business enterprises described in this section, if such is necessary to maintain the same percentages as exist in **CONSULTANT**'s Interest Statement. However, the delegation of any duties hereunder by any means must be approved by **CITY** as stated herein.

12.3 **CONSULTANT** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/WBE's. **CONSULTANT** shall submit annual reports to **CITY**'s Department of Economic Development, identifying the above activity and other efforts at increasing SBE/MBE/WBE participation in the AGREEMENT. Further, such records shall be open to inspection by **CITY** or its authorized agent at all reasonable times. Should **CITY** find that **CONSULTANT** is not in compliance with this article, **CITY** shall give notice of non-compliance to **CONSULTANT**. **CONSULTANT** shall have 30 calendar days to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this AGREEMENT and may subject **CONSULTANT** to any of the penalties listed in **CITY** of San Antonio Ordinance No. 77758, at **CITY**'s option. Further, such failure may be considered a

default for which CITY may terminate this AGREEMENT in accordance with Article VIII, Termination.

12.4 CONSULTANT shall appoint a representative of its company to administer and coordinate its efforts to carry out these requirements.

12.5 In all events, CONSULTANT shall comply with the CITY's Small, Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

12.6 It is CITY's understanding, and this AGREEMENT is made in reliance thereon, that CONSULTANT, in the performance of services required hereunder, will use the subcontractor(s) listed in its response to CITY's Request for Interest Statement.

12.7 Any work or services subcontracted by CONSULTANT shall be by written contract, and unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by subcontractor with the provisions of said contract shall be the responsibility of CONSULTANT.

12.8 CITY shall in no event be obligated to any third party, including any subcontractor of CONSULTANT, for performance or services or payment of fees.

XIII. NOTICES

Unless otherwise expressly provided elsewhere in this AGREEMENT, any election, notice or communication required or permitted to be given under this AGREEMENT shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

CITY of San Antonio
Public Works Department - Engineering
Attn: Mr. Razi Hosseini, P.E.
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for CONSULTANT, to:

Raba-Kistner Consultants, Inc.
12821 West Golden Lane
San Antonio, Texas 78249
Attn: Richard W. Kistner, P.E.

XIV. INTEREST IN CITY CONTRACTS PROHIBITED

14.1 **CONSULTANT** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

14.2 **CONSULTANT** warrants and certifies, and this **AGREEMENT** is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **CONSULTANT** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY**'s Ethics Code.

XV. SOLICITATION

CONSULTANT warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for **CONSULTANT**, to solicit or secure this **AGREEMENT**, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONSULTANT**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this **AGREEMENT**. This representation constitutes a substantial part of the consideration for the making of this **AGREEMENT**.

XVI. CONTRACT CONSTRUCTION

All parties have participated fully in the review and revision of this **AGREEMENT**. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this **AGREEMENT**.

XVII. FAMILIARITY WITH LAW AND CONTRACT TERMS

CONSULTANT represents that, prior to signing this **AGREEMENT**, **CONSULTANT** has become thoroughly acquainted with all matters relating to the performance of this **AGREEMENT**, all applicable laws, and all of the terms and conditions of this **AGREEMENT**.

XVIII. APPLICABLE LAW

This **AGREEMENT** shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XIX. VENUE

The obligations of the parties to this AGREEMENT shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

XX. SEVERABILITY

In the event any one or more paragraphs or portions of this AGREEMENT are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this AGREEMENT, but such shall be confined to the specific section, sentences, clauses or portions of this AGREEMENT held invalid or unenforceable.

XXI. FORCE MAJEURE

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXII. SUCCESSORS

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this AGREEMENT, their assigns.

XXIII. NON-WAIVER OF PERFORMANCE

23.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

23.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIV. PARAGRAPH HEADINGS

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXV. LEGAL AUTHORITY

The signer of this AGREEMENT for CITY and CONSULTANT each represents, warrants, assures and guarantees that he has full legal authority to execute this AGREEMENT on behalf of CITY and CONSULTANT respectively, and to bind CITY and CONSULTANT to all of the terms, conditions, provisions and obligations herein contained.

XXVI. INCORPORATION OF ATTACHMENTS

26.1 CONSULTANT understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

ATTACHMENT "A" (Scope of Services)

ATTACHMENT "B" (Testing Reports)

ATTACHMENT "C" (CONSULTANT's Fee Proposal)

ATTACHMENT "D" (Compensation)

26.2 In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail. In the event of a conflict or inconsistency between Attachment "A" and Attachments "C", the terms of Attachment "A" shall control over the terms of Attachment "C".

XXVII. ENTIRE AGREEMENT

27.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXVI, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

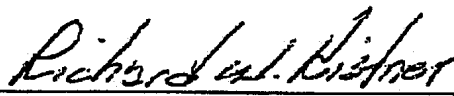
27.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE _____ DAY OF _____, _____.

CITY OF SAN ANTONIO

CONSULTANT
RABA-KISTNER
CONSULTANTS, INC.

CITY MANAGER



RICHARD W. KISTNER, P.E..
VICE-CHAIRMAN

APPROVED AS TO FORM:

CITY ATTORNEY

CITY CLERK

DATE

ATTACHMENT "A"
(SCOPE OF SERVICES)

Summary of Testing Services Scope of Work

1. Moisture-Density Relationship - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
 - 1A. Moisture-Density Relationship (no additional trip required to sample) - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
2. Atterberg Limits (sampled and conducted in conjunction with Moisture-Density Relationship) - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
 - 2A. Atterberg Limits - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
 - 2B. Atterberg Limits - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
3. Sieve Analysis thru No. 200 - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
 - 3A. Sieve Analysis thru No. 200 - This all-inclusive price should include a fee for the laboratory test, and reporting and management time for the service.
4. Field Density Tests (1-3 tests package) - This all inclusive price should include a fee for the field testing, technician time for testing, appropriate travel charges associated with the trip and reporting and management time for the service. Note: The fee for this should be the same whether 1, 2 or 3 tests are conducted.
5. Field Density Tests (for each test after the first 3 are conducted on the same call out) - This all inclusive price per test should include a fee for the field testing, technician time for testing and reporting and management time for the service.
6. Concrete Compressive Strength Testing (4 cylinders per set) - This all inclusive price should include a fee for the laboratory testing, technician time to sample the material, conducting of slump test, conducting of temperature test, appropriate travel charges associated with the trip and reporting and management time for the service. (The fee should allow for one hour of site time)

- 6A. Concrete Compressive Strength Testing (4 cylinders per set) this fee should be for additional sets of test cylinders cast after initial set has been cast. This all-inclusive price should include a fee for the laboratory testing, technician time to sample the material, conducting of slump test, conducting of temperature test, and reporting and management time for the service. (The fee should allow for one hour of site time for each additional set of cylinders)
- 6B. Standby time for technician concrete testing for time on the project site in excess of 1 hour per set of cylinders - This fee should be an hourly rate.
7. Pickup of concrete test specimens - This fee should be an all-inclusive price that should include the technician time for cylinder pickup and the appropriate charges associated with the trip.
8. Asphalt cores of in-place asphalt paving - This fee should include the coring charges, technician time, laboratory testing of the core for density and the appropriate charges associated with the trip and reporting and management time for the service.
9. L.A. Abrasion Test - This all-inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 9A. L.A. Abrasion Test - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
10. Mandrel Testing - Not required
11. Asphaltic Concrete Extraction, Gradation, Bitumen Content, Stability, Laboratory Density, and Rice Gravity - This all inclusive price should include a fee for the laboratory tests, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 11A. Asphaltic Concrete Extraction, Gradation, Bitumen Content, Stability, Laboratory Density, and Rice Gravity - This all inclusive price should include a fee for the laboratory tests, and reporting and management time for the service.
12. Welded Wire Fabric (Gauge Thickness) - This all inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 12A. Welded Wire Fabric (Gauge Thickness) - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
13. Brick Testing (Compressive Strength) - This all inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.

- 13A. Brick Testing (Compressive Strength) - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
14. Slurry Seal Testing (Field Measurement of slurry seal application) - This all inclusive price should include a fee for technician time at the project site, field testing, appropriate travel charges associated with the trip and reporting and management time for the service.
15. Fence Post and Rails (Weight and Coating Thickness) - This all inclusive price should include a fee for the laboratory test, technician time to sample the material, appropriate travel charges associated with the trip and reporting and management time for the service.
- 15A. Fence Post and Rails (Weight and Coating Thickness) - This all-inclusive price should include a fee for the laboratory test, reporting and management time for the service.
16. Inspection/Sampling at Precast Manufacturer - This all inclusive price should include a fee for a four hour inspection, including travel, technician time, appropriate travel charges associated with the trip and reporting and management time for the service.
17. Sample Charge (for sampling of materials not included in the above testing scope) - This all inclusive price should include a fee for technician time to sample the material and appropriate travel charges associated with the trip.

ATTACHMENT "B"
(TESTING REPORTS)

The following standard requirements shall govern all testing reports submitted under this agreement unless otherwise directed by the Project Manager of the requesting City department. Each report issued to the City shall provide as a minimum:

1. Report Date.
2. Time of service, Project Title and location of test(s).
3. Testing Lab Letterhead with Authorized Signature - Professional Engineer or appropriate licensed Professional required by law in charge or his delegated assistant.
4. Report Identification Number (Sequential Numbering), Description, Price Agreement Service Number(s) of items performed, Quantity Performed and Location.
5. Test Results.
6. Agreement Standards Controlling the Test(s).
7. Compliance or noncompliance with the specifications.
8. Any extenuating circumstances affecting the test(s) or result(s).
9. Observations to include service time chargeable to delays, rescheduling and overtime premiums.
10. If Manpower is involved, provide names, classification, and hours.
11. Numbers of trips with work performed on the project.
12. Name of person who orders the test(s).
13. Five copies of the report - three (3) to the City, one (1) to the contractor and one (1) to consultant (Engineer or Architect).
14. Identify any and all retest services.
15. Testing reports shall be promptly delivered to the City and within such time frames so as to avoid any delay in construction progress. Consultant acknowledges by accepting this AGREEMENT that any undue delays in providing test results to City shall result in a delay in construction progress.

ATTACHMENT "C"

(CONSULTANT'S FEE PROPOSAL)

Travel Time and Trip for this group of Services is based upon a trip within a radius of 0 to less than 20 miles from the office.

Construction Material Test		Unit	Price	Quantity	Subtotal
1	Moisture-Density Relationship	Each	\$238.00	58	\$13,804.00
1A*	Moisture-Density Relationship (no additional trip required to sample)	Each	\$171.00	0	\$0.00
2*	Atterberg Limits Determination (in conjunction with Moisture-Density Relationship)	Each	\$61.00	0	\$0.00
2A	Atterberg Limits Determination (with sampling and travel charges)	Each	\$136.50	2	\$273.00
2B*	Atterberg Limits Determination	Each	\$61.00	0	\$0.00
3	Sieve Analysis (with sampling and travel charges)	Each	\$139.50	1	\$139.50
3A*	Sieve Analysis	Each	\$64.00	0	\$0.00
4	Field Density Tests (1-3 Per Set)	Set	\$133.00	292	\$38,836.00
5*	Field Density Tests (each additional on same call out)	Each	\$28.00	0	\$0.00
6	Concrete Compressive Strength Tests (4 Cylinder Set)	Set	\$146.00	80	\$11,680.00
6A*	Concrete Compressive Strength Tests (additional 4 Cylinder Set)	Set	\$89.00	0	\$0.00
6B*	Concrete Testing in excess of 1 hour per cylinder set	Hour	\$37.00	0	\$0.00
7*	Pick-up Concrete Test Specimens	Each	\$75.50	0	\$0.00
8	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set with travel charges)	Set	\$310.00	9	\$2,790.00
8A*	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set)	Set	\$253.00	0	\$0.00
9	L.A. Abrasion Test (with sampling and travel charges)	Each	\$218.50	1	\$218.50
9A*	L.A. Abrasion Test	Each	\$143.00	0	\$0.00
10*	Standby Time	Hour	\$37.00	0	\$0.00
11*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity (with sampling and travel charges)	Each	\$435.50	0	\$0.00
11A*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity	Each	\$360.00	0	\$0.00
12	Welded Wire Fabric - Gauge thickness (with sampling and travel charges)	Each	\$150.50	2	\$301.00
12A*	Welded Wire Fabric - Gauge thickness	Each	\$75.00	0	\$0.00
13	Brick Testing (with sampling and travel charges)	Each	\$120.50	1	\$120.50
13A*	Brick Testing	Each	\$45.00	0	\$0.00
14	Slurry Seal (field measurement of slurry seal application)	Each	\$125.50	1	\$125.50
15	Fence Post and Rails (weight and coating thickness with sampling and travel charges)	Each	\$150.50	2	\$301.00
15A*	Fence Post and Rails (weight and coating thickness)	Each	\$75.00	0	\$0.00
16	Inspection/Stamping Precast Manufacture	Each	\$188.00	48	\$9,024.00
17*	Sample Charge	Each	\$94.00	0	\$0.00

Subtotal = \$77,613.00

* The purpose of items with zero quantities are to establish unit prices if the need arises for these items.

10% Contingency = \$7,762.00

Total = \$85,375.00

Travel Time and Trip for this group of Services is based upon a trip within a radius of 20 to less than 40 miles from the office.

Construction Material Test		Unit	Price	Quantity	Subtotal
1	Moisture-Density Relationship	Each	\$275.00	58	\$15,950.00
1A*	Moisture-Density Relationship (no additional trip required to sample)	Each	\$171.00	0	\$0.00
2*	Atterberg Limits Determination (in conjunction with Moisture-Density Relationship)	Each	\$61.00	0	\$0.00
2A	Atterberg Limits Determination (with sampling and travel charges)	Each	\$176.50	2	\$353.00
2B*	Atterberg Limits Determination	Each	\$61.00	0	\$0.00
3	Sieve Analysis (with sampling and travel charges)	Each	\$179.50	1	\$179.50
3A*	Sieve Analysis	Each	\$64.00	0	\$0.00
4	Field Density Tests (1-3 Per Set)	Set	\$169.00	292	\$49,348.00
5*	Field Density Tests (each additional on same call out)	Each	\$28.00	0	\$0.00
6	Concrete Compressive Strength Tests (4 Cylinder Set)	Set	\$186.00	80	\$14,880.00
6A*	Concrete Compressive Strength Tests (additional 4 Cylinder Set)	Set	\$89.00	0	\$0.00
6B*	Concrete Testing in excess of 1 hour per cylinder set	Hour	\$37.00	0	\$0.00
7*	Pick-up Concrete Test Specimens	Each	\$115.50	0	\$0.00
8	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set with travel charges)	Set	\$350.00	9	\$3,150.00
8A*	Asphalt Cores of In-Place Asphalt Paving (1-3 Per Set)	Set	\$253.00	0	\$0.00
9	L.A. Abrasion Test (with sampling and travel charges)	Each	\$258.50	1	\$258.50
9A*	L.A. Abrasion Test	Each	\$143.00	0	\$0.00
10*	Standby Time	Hour	\$37.00	0	\$0.00
11*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity (with sampling and travel charges)	Each	\$475.50	0	\$0.00
11A*	Asphalt Concrete Extraction, Gradation, Bitumen Content, Laboratory Density and Rice Gravity	Each	\$360.00	0	\$0.00
12	Welded Wire Fabric - Gauge thickness (with sampling and travel charges)	Each	\$190.50	2	\$381.00
12A*	Welded Wire Fabric - Gauge thickness	Each	\$75.00	0	\$0.00
13	Brick Testing (with sampling and travel charges)	Each	\$160.50	1	\$160.50
13A*	Brick Testing	Each	\$45.00	0	\$0.00
14	Slurry Seal (field measurement of slurry seal application)	Each	\$165.50	1	\$165.50
15	Fence Post and Rails (weight and coating thickness with sampling and travel charges)	Each	\$190.50	2	\$381.00
15A*	Fence Post and Rails (weight and coating thickness)	Each	\$75.00	0	\$0.00
16	Inspection/Stamping Precast Manufacture	Each	\$228.00	48	\$10,944.00
17*	Sample Charge	Each	\$134.00	0	\$0.00

Subtotal = \$96,151.00

* The purpose of items with zero quantities are to establish unit prices if the need arises for these items.

10% Contingency = \$9,616.00

Total = \$105,767.00

Raba-Kistner Consultants, Inc., Materials Testing Services for Non-MPO Projects (20-40 mile radius)

ATTACHMENT "D"

(COMPENSATION)

On or after the last day of each month, CONSULTANT shall provide City a written invoice for the work performed by CONSULTANT, requested by City during that month and for which the testing services have been reviewed and approved by the City. The invoice amount shall be based on the unit price agreed as shown on Attachment "C" multiplied by the number of tests performed during said month. In no event shall the total number of all invoices during the term of this contract exceed \$77,613.

**City of San Antonio
Discretionary Contracts Disclosure**

For use of this form, see City of San Antonio Ethics Code, Part D, Section 1 & 2

Attach additional sheets if space provided is not sufficient.

State Not Applicable for questions that do not apply.

*This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract.

- (1) The identity of any individual who would be a party to the discretionary contract;

Jill M. Drash
Chester J. Drash, Jr., P.E.

- (2) The identity of any business entity that would be a party to the discretionary contract and the name of:

- (A) Any individual or business entity that would be a subcontractor on the discretionary contract;

NA

- (B) Any individual or business entity that is known to be a *partner*, or a *parent* or *subsidiary business* entity, of any individual or business entity who would be a party to the discretionary contract;

NA

- (3) The identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

NA

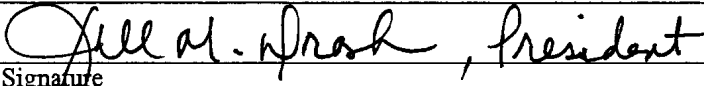
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
Bonnie Carter	\$70.00	July 2002
Carroll Schubert	\$70.00	July 2002
Bobby Perez	\$70.00	August 2002
Louis Rowe	\$250.00	January 2003
Carroll Schubert	\$250.00	April 2003
Carroll Schubert	\$500.00	April 2003
Toni Moorhouse	\$250.00	April 2003
Enrique Barrera	\$250.00	April 2003

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any know facts which, reasonably understood, raise a question as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

 Signature	June 11, 2004 Date
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¹For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

City of San Antonio

Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

N/A

(2) the identity of any business entity¹ that would be a party to the discretionary contract:

Fugro Consultants LP

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

N/A

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

N/A

¹ A **business entity** means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

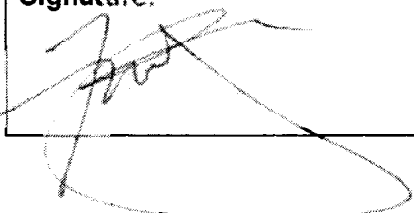
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
N/A		

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: <i>CME Manager</i> Company: <i>Fugro Consultants LP</i>	Date: <i>6/11/04</i>

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.