

**CITY OF SAN ANTONIO
PUBLIC WORKS DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

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

SUBJECT: Culebra Drainage Project #58F Phase II- (Zarzamora Creek)

DATE: December 15, 2005

SUMMARY AND RECOMMENDATIONS

This ordinance appropriates funds and amends a professional services agreement in the amount of \$93,630 payable to Macina, Bose, Copeland, and Associates, Inc., authorizes project contingency in the amount of \$9,363, and authorizes \$7,210 for Capital Administrative Costs, for a total ordinance amount of \$110,203 from Community Development Block Grant (CDBG) funds for professional engineering services in connection with the Culebra Drainage Project #58F Phase II - (Zarzamora Creek), an authorized 1999-2004 General Obligations Drainage Improvements Bond project, located in Council District 6.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The Culebra Drainage Project #58F Phase II- (Zarzamora Creek) provides for the design of improvements to Zarzamora Creek from the terminus of the Phase I improvements, located at Rubidoux Drive, and continues until Zarzamora Creek intersects Laven Street. The project is currently in the intermediate phase of design and is scheduled for construction in April 2006.

The Culebra Drainage Project #58F Phase IIA - (Zarzamora Creek) is the first portion of the second phase of the Culebra Drainage Project #58F Phase II - (Zarzamora Creek) that was designed in August 1988 and completed in April 2003. The Culebra Drainage Project #58F originally consisted of channel improvements to Zarzamora Creek from Commerce Street to Culebra Road as well as reconstruction of Acme Road from Commerce Street north to Zarzamora Creek and Tellez Street from Acme Street to Laven Street to a 30-foot width roadway. However, during the scoping of the project it was discovered that there existed an abandoned landfill within the project limits generally located within Zarzamora Creek just north of Commerce Street. Consequently, and due to a limitation in funds, the project was divided into two (2) phases. Phase I was completed in April 2003 and provided for the removal and disposal of the municipal solid waste within the abandoned landfill, improvements to Zarzamora Creek from Commerce Street to Rubidoux Drive, and reconstruction of Acme from Commerce Street north to Zarzamora Creek.

The continued utilization of Macina, Bose, Copeland, and Associates, Inc. to complete the design of Phase IIA is beneficial to the City, since this firm has already completed 90% of the design and is very familiar with the overall scope of the entire project.

This ordinance authorizes funding in the amount of \$93,630 payable to Macina, Bose, Copeland, and Associates, Inc. for additional professional engineering services which will include preparing field notes and documents for drainage right-of-way easements, locating heritage trees, and organizing final design and construction phase plans. These additional services are necessary in order to complete the design of Phase IIA. The Consultant's Proposals is included herein as Attachment 2.

The professional service agreement for the Culebra Drainage Project #58F Phase I was approved by City Council on August 4, 1988 through Ordinance No. 67649 and authorized \$257,006.75 for professional engineering services. Subsequent council action has increased the total amount approved for this project to \$629,190.50. This ordinance will increase the total agreement amount to \$722,820.50.

POLICY ANALYSIS

Approval of this ordinance will be a continuation of City Council policy to complete previously approved Community Development Block Grant (CDBG) and 1999 General Obligations Drainage Improvements Bond funded Capital Improvement Projects.

FISCAL IMPACT

This is a one-time capital improvement expenditure and is not included in the FY 06-11 Capital Improvement Program Budget. Funds in the amount of \$110,203 are available from Community Development Block Grant funds and are appropriated and payable as follows:

\$ 93,630.00	payable to Macina, Bose, Copeland and Associates, Inc for professional engineering services
\$ 9,363.00	for project contingency
\$ 7,210.00	for capital administrative costs

COORDINATION

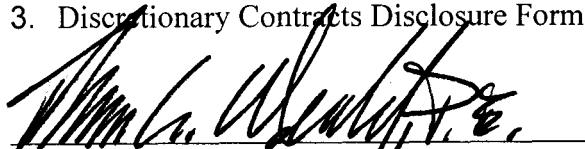
This request for ordinance has been coordinated with the Office of Management and Budget, the Finance Department, and the Housing and Community Development Department.

SUPPLEMENTARY COMMENTS

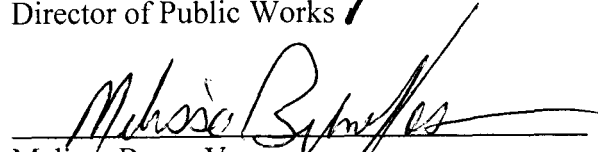
The Discretionary Contracts Disclosure Form required by the Ethics Ordinance is attached.

ATTACHMENTS

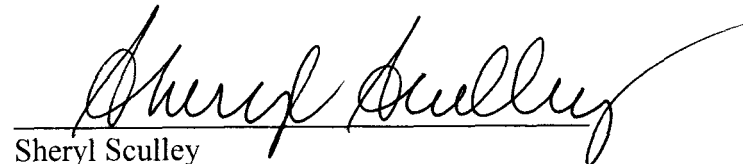
1. Project Map
2. Consultant's Proposal
3. Discretionary Contracts Disclosure Form



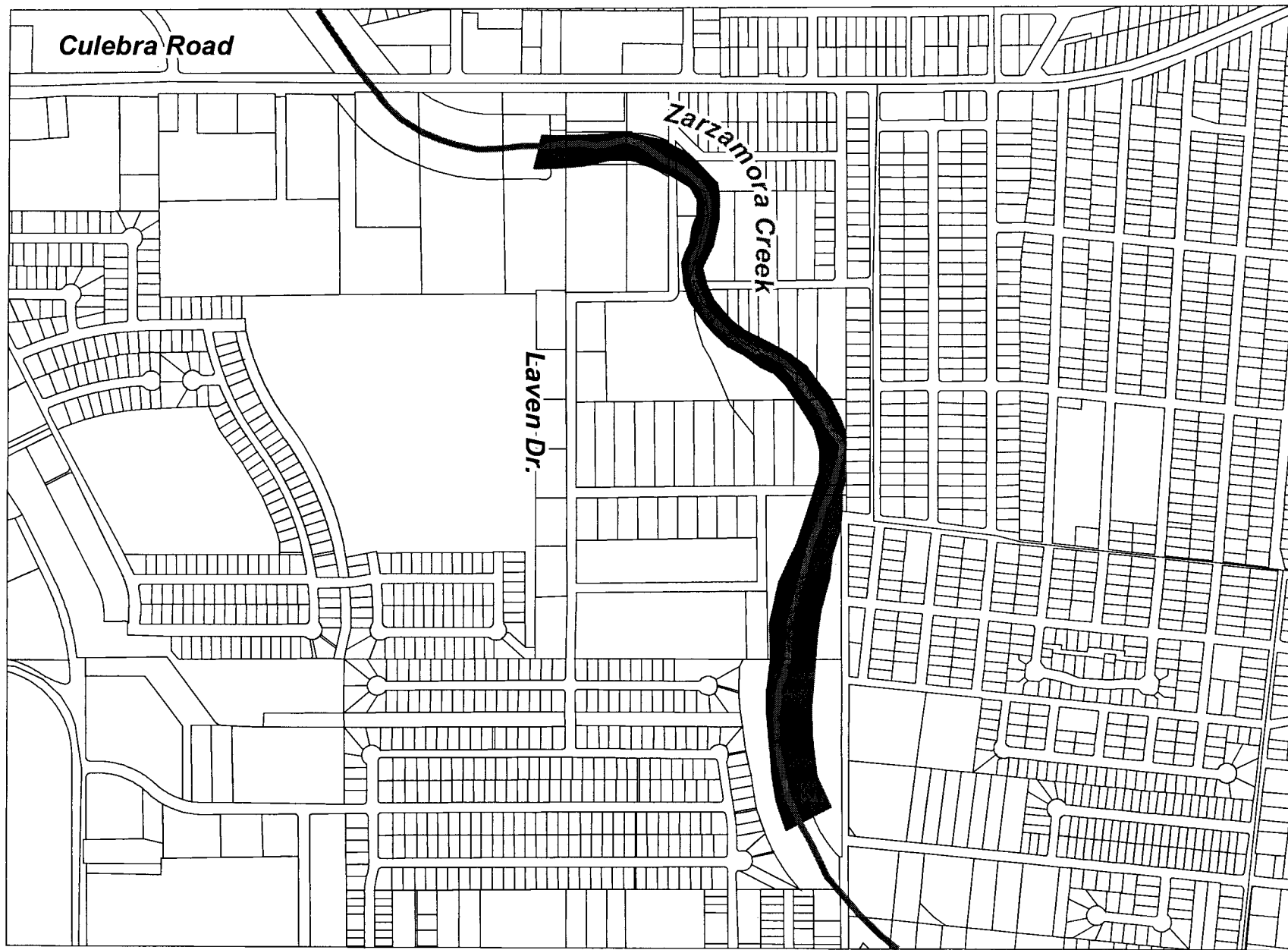
Thomas G. Wendorf, P.E.
Director of Public Works

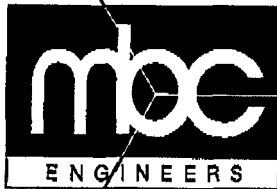


Melissa Byrne Vossmer
Assistant City Manager



Sheryl Sculley
City Manager



**MACINA • BOSE • COPELAND and ASSOCIATES, INC**
CONSULTING ENGINEERS AND LANDSURVEYORS1035 Central Parkway North, San Antonio, Texas 78232
(210) 545-1122 FAX (210) 545-9302
www.mbcengineers.com

October 3, 2005

Mr. Dean Bayer, P.E.
Project Manager
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

Re: Culebra 58F, Phase IIA

Dear Mr. Bayer,

As we discussed in our meeting on August 19, 2005, the remaining portion of this project will be split into two phases to be called Phase IIA and Phase IIB. Phase IIA will start where Phase I ended and will extend upstream to the ball fields. The construction cost of this phase will be about \$1,800,000.00. The scope of our services for this phase would be as follows:

- 1) Prepare field notes and legal description of property to be dedicated as drainage right-of-way and as remaining parcels.
- 2) Locate all heritage trees not previously located in the proposed channel area and adjacent fill areas.
- 3) Obtain a tree stand delineation of that portion of the Lifshutz property designated as a fill area. This would be subcontracted to Carter-Burgess, as well as the tree preservation plan requested by Mark Bird. The cost of this work will be forwarded when received from the consultant.
- 4) Prepare final design plans for the Phase IIA project, to include a grading plan of the adjacent fill area.

Our fee for this Phase IIA work will be \$60,600.00, which will include services for right-of-way parcels, location of heritage trees, revised hydraulic calculations, final design and construction phase work. A FEMA submittal will consist of a CLOMR and LOMR for each phase of the project. The study for Phase 2A will also include the Phase I construction. Our fee for this work will \$7,500.00 for the first submittal and \$5,200.00 for the second. FEMA review fees will be approximately \$7,800.00 for each submittal. If you have any questions or need anything else, please let me know.

Very Truly Yours,

MACINA • BOSE • COPELAND AND ASSOCIATES, INC.

SAMUEL B. BLEDSON, P.E.

18499-1070
SBB/mns

P:\1070\15021-Culebra 58F\18499-PH-02\Letters\Bayer 100305.doc

ROBERT A. COPELAND, P.E.

ROBERT A. LIESMAN, P.E.

SAMUEL B. BLEDSON, III, P.E.

DAVID L. ALLEN, P.E.

ROBERT A. COPELAND, JR., P.E.

evaluated the actual costs of retrieving, reproducing, and distributing archived data in seven categories. These categories are discussed in more detail below.

To develop the revised fee schedule for requests for particular NFIP map and insurance products, FEMA (1) evaluated the actual costs incurred at the MSC for producing, retrieving, and distributing those products; (2) analyzed historical sales, cost data, and product unit cost for unusual trends or anomalies; and (3) analyzed the effect of program changes,

new products, technology investments, and other factors on future sales and product costs. The products covered by this notice are discussed in detail below.

Periodic Evaluations of Fees. A primary component of the fees is the prevailing private-sector rates charged to FEMA for labor and materials. Because these rates and the actual review and processing costs may vary from year to year, FEMA will evaluate the fees periodically and publish

revised fee schedules, when needed, as notices in the *Federal Register*.

Fee Schedule for Requests for Conditional Letters of Map Amendment and Conditional and Final Letters of Map Revision Based on Fill

Based on a review of actual cost data for Fiscal Year 2000 and Fiscal Year 2001, FEMA established the following review and processing fees, which are to be submitted with all requests that are not otherwise exempted under 44 CFR 72.5:

Request for single-lot/single-structure CLOMA and CLOMR-F	\$500
Request for single-lot/single-structure LOMR-F	425
Request for single-lot/single-structure LOMR-F based on as-built information (CLOMR-F previously issued by FEMA)	325
Request for multiple-lot/multiple-structure CLOMA	700
Request for multiple-lot/multiple-structure CLOMR-F and LOMR-F	800
Request for multiple-lot/multiple-structure LOMR-F based on as-built information (CLOMR-F previously issued by FEMA)	700

Fee Schedule for Requests for Conditional Map Revisions

Based on a review of actual cost data for Fiscal Year 2000 and Fiscal Year

2001, FEMA established the following review and processing fees, which are to be submitted with all requests that are

not otherwise exempted under 44 CFR 72.5:

Request based on new hydrology, bridge, culvert, channel, or combination thereof	\$4,000
Request based on levee, berm, or other structural measure	4,500

Fee Schedule for Requests for Map Revisions

Based on a review of actual cost data for Fiscal Year 2000 and Fiscal Year

2001, FEMA established the following review and processing fees, which are to be submitted with all requests. Unless the request is otherwise exempted under 44 CFR 72.5, requesters must submit the

review and processing fees shown below with requests for LOMRs and PMRs dated September 1, 2002, or later, that are not based on structural measures on alluvial fans.

Request based on bridge, culvert, channel, or combination thereof	\$4,200
Request based on levee, berm, or other structural measure	6,000
Request based on as-built information submitted as followup to CLOMR	3,800

Fees for Conditional and Final Map Revisions Based on Structural Measures on Alluvial Fans

FEMA has maintained \$5,000 as the initial fee for requests for LOMRs and CLOMRs based on structural measures on alluvial fans. FEMA also will continue to recover the remainder of the review and processing costs by invoicing the requester before issuing a determination letter, consistent with current practice. The prevailing private-sector labor rate charged to FEMA (\$50 per hour) will continue to be used to calculate the total reimbursable fees.

Fee Schedule for Requests for Flood Insurance Study Backup Data

Non-exempt requesters of FIS technical and administrative support data must submit fees shown below with requests dated September 1, 2002, or later. These fees are based on the complete recovery costs to FEMA for retrieving, reproducing, and distributing the data, as well as maintaining the

library archives, and for collecting and depositing fees. FEMA maintains the current fee schedule, as indicated in the *Federal Register* notice published on May 3, 2000, at 65 FR 25726-25728.

All entities except the following will be charged for requests for FIS technical and administrative support data:

- Private architectural-engineering firms under contract to FEMA to perform or evaluate studies and restudies;
- Federal agencies involved in performing studies and restudies for FEMA (i.e., U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, and Tennessee Valley Authority);
- Communities that have supplied the Digital Line Graph base to FEMA and request the Digital Line Graph data (Category 6 below);
- Communities that request data during the statutory 90-day appeal period for an initial or revised FIS for that community;

• Mapped participating communities that request data at any time other than during the statutory 90-day appeal period, provided the data are requested for use by the community and not a third-party user; and

• State NFIP Coordinators, provided the data requested are for use by the State NFIP Coordinators and not a third-party user.

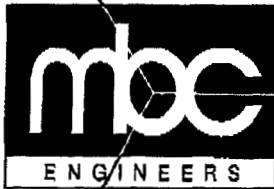
FEMA has established seven categories into which requests for FIS backup data are separated. These categories are:

Category 1—Paper copies, microfiche, or diskettes of hydrologic and hydraulic backup data for current or historical FISs;

Category 2—Paper or mylar copies of topographic mapping developed during FIS process;

Category 3—Paper copies or microfiche of survey notes developed during FIS process;

Category 4—Paper copies of individual Letters of Map Change (LOMCs);

**MACINA · BOSE · COPELAND and ASSOCIATES, INC**
CONSULTING ENGINEERS AND LAND SURVEYORS1035 Central Parkway North, San Antonio, Texas 78232
(210) 545-1122 FAX (210) 545-9302
www.mbcengineers.com

October 4, 2005

Mr. Dean Bayer, P.E.
Project Manager
City of San Antonio
P.O. Box 839966
San Antonio, TX 78283-3966
Fax: 210.207.7196

Re: Culebra 58F, Phase II

Dear Mr. Bayer

Submitted for your review is our revised proposal for an additional tree stand delineation and tree preservation plan for the project. The cost of this work will be as follows:

Proposal Amount	\$ 4,300.00
10% Surcharge	\$ <u>430.00</u>
Total Amount This Proposal	\$ 4,730.00

If you have any questions or need anything else, please let me know.

Very Truly Yours,

MACINA · BOSE · COPELAND AND ASSOCIATES, INC.

A handwritten signature in dark ink, appearing to read 'SBB', with a stylized flourish at the end.

SAMUEL B. BLEDSOE, P.E.

18499-1070
SBB/mns

Carter & Burgess

PROFESSIONAL SERVICES AGREEMENT

PROJECT

NAME: Zarzamora Tree Stand Delineation, West Bank **PROJECT NUMBER:** 320218.022

CLIENT: Macina Bose Copeland

ADDRESS: 1035 Central Parkway North, San Antonio, Texas 78232

hereby requests and authorizes Carter & Burgess, Inc. ("C&B") to perform the following Services:

SCOPE OF SERVICES: Prepare a tree stand delineation plan and tree preservation plan suitable for filing with Development Services Department of the City of San Antonio; Attend meeting with the City Arborist or representative regarding tree stand delineation.

COMPENSATION to be on a basis of:

a Lump Sum amount of \$ \$4,300. Client is responsible for providing all base files, aerial photography and tree survey data to Carter & Burgess.

This Lump Sum includes all charges for professional services, which will be provided by C&B and all outside sources and an estimate of expenses. Should actual expenses exceed the Lump Sum amount, C&B will submit a statement within thirty (30) days of completion of Services for such expenses. Additional Services authorized in writing or otherwise confirmed by Client will be billed in addition to the lump sum amount as provided in Paragraph 7 on the other side of this authorization.

The parties agree to the Provisions stated on the other side of this authorization.

Accepted for **CLIENT**

By: _____

Name: _____

Title: _____

Date: _____

Accepted for **CARTER & BURGESS, INC.**

By:  _____

Name: S. Brad Davis, PE

Title: Vice President

Date: August 31, 2005.

PROVISIONS

1. **AUTHORIZATION TO PROCEED.** Signing this Agreement shall be construed as authorization by CLIENT for C&B to proceed with the Services, unless otherwise provided for in this Agreement.

2. **LABOR COSTS.** In the event C&B's compensation is calculated by reference to C&B's Labor Costs, Labor Costs shall be the amount calculated by the number of hours actually worked by each of C&B's employees on CLIENT's Project, multiplied by an amount charged for each such employee's work, which is calculated by dividing each such employee's annualized, non-overtime compensation (whether salary or paid to such employee at an hourly rate, as the case may be) by 2,080 hours per year.

3. **DIRECT EXPENSES.** C&B's Direct Expenses shall be those costs incurred on or directly for the CLIENT's Project, including but not limited to necessary transportation costs including mileage at C&B's current rate when its automobiles are used, meals and lodging, laboratory tests and analyses, computer services, word processing services, telephone, printing and binding charges. Reimbursement for these expenses shall be on the basis of actual charges when furnished by commercial sources and on the basis of usual commercial charges when furnished by C&B.

4. **OUTSIDE SERVICES.** When technical or professional services are furnished by an outside source, when approved by CLIENT, an additional amount shall be added to the cost of these services for C&B's administrative costs.

5. **COST ESTIMATES.** Any cost estimates provided by C&B will be on a basis of experience and judgment. Since C&B has no control over market conditions or bidding procedures, C&B does not warrant that bids or ultimate construction costs will not vary from these cost estimates.

6. **PROFESSIONAL STANDARDS.** C&B shall be responsible, to the level of competency presently maintained by other practicing professionals in the same type of work in CLIENT's community, for the professional and technical soundness, accuracy, and adequacy of all design, drawings, specifications, and other work and materials furnished under this Agreement. C&B makes no warranty, expressed or implied.

7. **ADDITIONAL SERVICES.** Services in addition to those specified in Scope of Services will be provided by C&B if authorized in writing or otherwise confirmed by CLIENT. Additional services will be paid for by CLIENT as indicated in any Letter of Proposal, Task Authorization, or such other document as deemed appropriate by CLIENT and C&B. In the absence of an express agreement about compensation, C&B shall be entitled to an equitable adjustment to its compensation for performing such additional services.

8. **SALES TAX.** In addition to any other sums or amounts required to be paid by CLIENT to C&B pursuant to this Agreement, CLIENT must also pay to C&B the amount of any applicable sales, use, excise or other tax with respect thereto (other than any general income tax payable by C&B with respect thereto) as the same may be levied, imposed or assessed by any federal, state, county or municipal government entity or agency.

9. **LIMITATION OF LIABILITY.** C&B's liability to the CLIENT for any cause or combination of causes is in the aggregate, limited to an amount no greater than the fee earned under this Agreement.

10. **DISPUTE RESOLUTION.** All disputes arising out of this Agreement shall be mediated by the parties within a reasonable time after the first request for mediation, prior to either party filing a suit in a court of law, provided, however, that neither party shall be obligated to mediate prior to requesting injunctive relief.

11. **ASSIGNMENT TO RELATED ENTITY.** Notwithstanding anything in this Agreement to the contrary, in the event C&B is not qualified and licensed in the relevant jurisdiction to provide any Services required hereunder, C&B may, without the consent of any other party, assign all or any part of its obligation to provide such Services to an entity related to C&B which is qualified and licensed to provide such Services in the jurisdiction involved and which is contractually bound to C&B to provide such Services.

12. **PAYMENT TO C&B / INTEREST ON PAST-DUE AMOUNTS.** Monthly invoices will be issued by C&B for all Services performed under the terms of this Agreement. Invoices are due and payable net 15 days. CLIENT agrees to pay interest at the rate of 1½% per month on all past-due amounts, unless not permitted by law. Any interest charged or collected in excess of the highest legal rate will be applied to the principal amount owing to C&B, and if such interest exceeds the principal balance of CLIENT's indebtedness to C&B, will be returned to CLIENT. It is the intent of C&B and CLIENT to abide by all applicable laws regulating the maximum amount of interest that may be charged. CLIENT

shall also be responsible for all costs associated with collecting any past-due amounts. To the greatest extent allowed by applicable law, CLIENT and C&B agree that in the event CLIENT and C&B enter into any compromise or settlement calling for the payment of past due principal and accrued and unpaid interest on any past-due invoice, C&B may charge and CLIENT agrees to pay interest on such combined past due principal and accrued and unpaid interest amount (the "New Principal Balance") at the rate of 1½% per month or at the highest rate allowed by law, subject, as provided herein, to C&B's agreement to credit excess interest or return same to CLIENT after the New Principal Balance is paid. All payment obligations are performable in Tarrant County, Texas, and CLIENT agrees to submit to the jurisdiction of the courts of the State of Texas in Tarrant County, Texas for enforcement of all obligations created by this Agreement.

13. **C&B'S RIGHT TO SUSPEND SERVICES.** If CLIENT fails to pay any amount due C&B under this Agreement, C&B may, in addition to any other rights afforded under this Agreement or at law, suspend Services. Prior to suspending Services, C&B will provide CLIENT with written notice that C&B will suspend Services unless said failure to pay is cured within 7 days from CLIENT'S receipt of C&B's notice. If CLIENT does not cure the problem within such 7-day period, C&B may suspend Services under this Agreement. In the event of a suspension of Services, (a) C&B shall have no liability to the CLIENT for delay or damage caused the CLIENT because of such suspension of Services, (b) any periods for completion of work shall automatically be extended by the period of such suspension, and (c) before resuming Services, C&B shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Services. C&B's compensation for the remaining Services and the time schedules shall be equitably adjusted. If the Project is suspended for more than 30 consecutive days, (x) C&B shall be compensated for Services performed prior to notice of such suspension, (y) when the Project is resumed, C&B shall be compensated for expenses incurred as a result of the interruption and resumption of C&B's Services, and (z) C&B's compensation for the remaining Services and the time schedules shall be equitably adjusted. To the extent CLIENT'S failure to pay is related to a dispute between the parties, the dispute will be resolved in accordance with Article 10.

14. **TERMINATION FOR NON-PAYMENT OF FEES.** C&B may terminate this Agreement by giving written notice if any C&B invoice remains unpaid for more than 30 days. C&B's right to terminate this Agreement shall not be waived by C&B's continued performance during any period of investigation by C&B to determine the reasons for CLIENT'S nonpayment.

15. **TERMINATION.** Either CLIENT or C&B may terminate this Agreement with or without cause by giving 7 days' written notice to the other party. In such event CLIENT shall forthwith pay C&B in full for all work previously authorized and performed prior to effective date of termination. If no notice of termination is given, relationships and obligations created by this Agreement shall be terminated upon completion of all applicable requirements of this Agreement.

16. **LEGAL EXPENSES.** In the event legal action is brought by C&B to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, CLIENT shall pay C&B reasonable amounts for fees, costs and expenses as may be set by the court.

17. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall be held illegal, the enforceability of the remaining provisions contained herein shall not be impaired thereby.

18. **ELECTRONIC MEDIA.** (a) As a component of the services provided under this Agreement, C&B may deliver electronic copies of certain documents or data (the "Electronic Files") in addition to printed copies (the "Hard Copies") for the convenience of CLIENT. CLIENT and its consultants, contractors and subcontractors may only rely on the Hard Copies furnished by C&B to CLIENT. If there is any discrepancy between any Electronic File and the corresponding Hard Copy, the Hard Copy controls. (b) CLIENT acknowledges that Electronic Files can be altered or modified without C&B's authorization, can become corrupted and that errors can occur in the transmission of such Electronic Files. CLIENT agrees that it will institute procedures to preserve the integrity of the Electronic Files received from C&B until acceptance. CLIENT further agrees that it will review the Electronic Files immediately upon receipt and conduct acceptance tests within thirty (30) days, after which period CLIENT shall be deemed to have accepted the Electronic Files as received. C&B will undertake commercially reasonable efforts to correct any errors in the Electronic Files detected within the 30-day acceptance period. C&B shall not be responsible to maintain the Electronic Files after acceptance by CLIENT. (c) C&B does not warrant or represent that the Electronic Files will be compatible with or useable or readable by systems used by CLIENT or its consultants, contractors and subcontractors. C&B is not responsible for any problems in the interaction of the Electronic Files with other software used by CLIENT or its consultants, contractors and subcontractors.

City of San Antonio
Discretionary Contracts Disclosure

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

Not applicable.

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

☒ No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

☐ No subcontractor(s); or

List subcontractors: Givler Engineering, Inc.

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

☒ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

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. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made 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 Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

☒ No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
None.	None.	\$0.00	Not applicable.

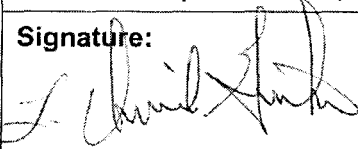
(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

☒ Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information 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, whichever occurs first.

Signature: 	Title: President Company or D/B/A: Givler Engineering, Inc.	Date: 11/28/05
--	---	--------------------------

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.