CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: **Engineering**

AGENDA DATE: **July 1, 2008**

CONTACT PERSON/PHONE: **R. Alan Shubert, City Engineer (X4423)**

DISTRICT(S) AFFECTED: District 2

SUBJECT:

That the City Manager be authorized to sign a Professional Services Agreement between the **CITY OF EL PASO** and **OMNI CONSTRUCTION SERVICES, LLC**, a Texas Limited Liability Company, to perform consulting services for a project known as **"CARNEGIE AVE. STREET & DRAINAGE IMPROVEMENTS CONSTRUCTION PHASE"** for a contract amount of **ONE HUNDRED THIRTY-SIX THOUSAND FIVE HUNDRED SIXTY-EIGHT AND 44/100 DOLLARS, ($136,568.44),** and that the City Engineer be authorized to approve up to $50,000.00 in additional services, for a total contract amount not to exceed **ONE HUNDRED EIGHTY SIX THOUSAND FIVE HUNDRED SIXTY-EIGHT AND 44/1000 DOLLARS ($186,568.44).**

BACKGROUND / DISCUSSION:

The approval of this agreement for construction management services with OMNI, LLC will augment the internal resources of seven construction inspectors. The City's seven member inspection staff is currently managing 25 active projects and using OMNI, LLC will provide some workload relief. OMNI's service on this important project will guarantee full time coverage during the construction phase. Successful completion of the Carnegie Avenue Street & Drainage Improvements project will alleviate the chronic flooding in this area. The anticipated project duration is 216 workdays.

PRIOR COUNCIL ACTION:

Award of Carnegie Street & Drainage Improvements project to Southwest Growth on June 24, 2008.

AMOUNT AND SOURCE OF FUNDING:

Funding location: DeptID: 99331117, Account: 508026, Fund: 27263, Project: PSTM06ST010
Funding Source is 2006 Certificates of Obligation

BOARD / COMMISSION ACTION:

N/A

********** **REQUIRED AUTHORIZATION** **********

LEGAL: (if required)_____ **FINANCE:** (if required)_____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Engineering, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:**_____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Professional Services Agreement between the **CITY OF EL PASO** and **OMNI CONSTRUCTION SERVICES, LLC**, a Texas Limited Liability Company, to perform consulting services for a project known as "**CARNEGIE AVE. STREET & DRAINAGE IMPROVEMENTS CONSTRUCTION PHASE**" for a contract amount of **ONE HUNDRED THIRTY-SIX THOUSAND FIVE HUNDRED SIXTY-EIGHT AND 44/100 DOLLARS, ($136,568.44),** and that the City Engineer be authorized to approve up to $50,000.00 in additional services, for a total contract amount not to exceed **ONE HUNDRED EIGHTY SIX THOUSAND FIVE HUNDRED SIXTY-EIGHT AND 44/1000 DOLLARS ($186,568.44).**

ADOPTED this _____ day of _____, 2008.

THE CITY OF EL PASO:

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy-Momsen
City Clerk

APPROVED AS TO FORM:

_____
Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
R. Alan Shubert, P.E.
City Engineer

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this **_____ day of _____, 2008** by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the **"Owner"**, and **OMNI CONSTRUCTION SERVICES, LLC** a Texas Limited Liability Company, hereinafter referred to as the **"Consultant"**.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for a project known as **"CARNEGIE AVE. STREET & DRAINAGE IMPROVEMENTS CONSTRUCTION PHASE,"** hereinafter referred to as the **"Project"**, as further described in **Attachment "A"**; and

WHEREAS, the Consultant has been selected to perform such services as required by the Owner, and the Consultant was selected through the Owner's selection procedure, in accordance with all applicable state and local laws and ordinances;

NOW, THEREFORE, for the consideration set forth in this Agreement and its attachments, the Owner and Consultant agree as follows:

ARTICLE I.
ATTACHMENTS

1.1 The attachments listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

Attachment "A"	Scope of Services and Project Budget
Attachment "B"	Consultant's Fee Proposal and Hourly Rates
Attachment "C"	Consultant's Basic and Additional Services
Attachment "D"	Payment and Deliverable Schedules

ARTICLE II.
PROJECT

2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform professional services for the Project as professional consultant for the Project. The Project shall consist of the Consultant's completion of the Scope of Services as further described in **Attachment "A".** Such Scope of Services shall be completed in accordance with the identified phases described in **Attachment "D"**.

2.2 In completion of such phases, the Consultant shall comply with the City of El Paso Engineering Department Construction Document Guidelines in effect on the execution date of

this Agreement in the performance of the services requested under the Design Phase of this Agreement. Such Guidelines are available in the Engineering Department.

2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.

2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.

2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five working days time period.

ARTICLE III.
CONSULTANT FEES AND PROJECT BUDGET

3.1 PAYMENT TO CONSULTANT. The Owner shall pay to the Consultant an amount not to exceed **ONE HUNDRED THIRTY-SIX THOUSAND FIVE HUNDRED SIXTY-EIGHT AND 44/100 DOLLARS ($136,568.44)** for all basic services and reimbursables performed pursuant to this Agreement. The Consultant's fee proposal for the performance of all Basic Services and reimbursables is attached hereto as **Attachment "B"**. Payments to the Consultant shall be made pursuant to the schedule enumerated within **Attachment "D"**.

3.2 CONSULTANT'S SERVICES. The Basic Services to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C".** If authorized by the City Engineer, prior to the performance of such services, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed $50,000.00. Additional Services exceeding $50.000.00 must have prior approval by City Council through written amendment to this Agreement. Owner shall make payment for such Basic and Additional Services at the rates established by Consultant within **Attachment "B".**

3.3 CONSULTANT'S INVOICES. The Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in **Attachment "D"**. Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.

3.3.1 Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.

3.3.2 The Owner agrees to pay invoices for all services performed as soon as reasonably possible but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.

3.4 PROJECT CONSTRUCTION BUDGET. The Consultant acknowledges that the construction budget for this Project allocates **THREE MILLION THREE HUNDRED FIFTY-SEVEN THOUSAND ONE HUNDRED SIXTY-SEVEN AND 30/100 DOLLARS ($3,357,167.30)** for the award of a construction contract base bid, which is to include all features essential to the operation of the Project for its intended use as described in the Scope of Services and Project budget in **Attachment "A"**. The Consultant does hereby agree to design the Project such that the Consultant's final agreed cost opinions for the construction of the Project, including all features essential to its intended use, is within the above budgeted amount for the base bid. If the Consultant's cost opinions exceed the Project Budget at any time, the Consultant shall make recommendations to the Owner to adjust the Project's size or quality and the Owner shall cooperate with the Consultant to adjust the scope of the Project. If all responsible bids exceed the City approved Consultant's final cost opinions by more than **ten percent (10%)**, the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

3.5 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

ARTICLE IV.
PERIOD OF SERVICE AND TERMINATION

4.1 PERIOD OF SERVICE. The services called for by each phase shall begin upon the issuance of a Notice to Proceed from the City Engineer. The Consultant shall complete the requested services in accordance with the timelines and schedules outlined in **Attachments "C" and "D"**.

4.2 SUSPENSION. Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve (12) months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.

4.3 TERMINATION. This Agreement may be terminated as provided herein.

4.3.1 TERMINATION BY OWNER. It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.

4.3.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.

4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE. Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further,

the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

ARTICLE V.
INSURANCE AND INDEMNIFICATION

5.1 INSURANCE. The Consultant shall have **seven (7) calendar days** from date of award to obtain sufficient insurance as required herein. Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

5.1.1 WORKERS' COMPENSATION INSURANCE. The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

> "The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the Owner, its partners, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured."

5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE. The Consultant shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Consultant and the Consultant's employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant. The minimum limits of liability and coverages shall be as follows:

a) **COMMERCIAL GENERAL LIABILITY**

Personal Injury or Death
$500,000.00 for one person or occurrence
$1,000,000.00 for two or more persons or occurrences

Property Damage
$500,000.00 per occurrence

General Aggregate
$1,000,000.00

b) **AUTOMOBILE LIABILITY**

Combined Single Limit
$1,000,000.00 per accident

5.1.3 PROFESSIONAL LIABILITY INSURANCE. The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS ($1,000,000.00) on a claims made basis.

5.1.4 OWNER AS ADDITIONAL INSURED. The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.

5.1.5 PROOF OF INSURANCE. The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.

5.1.6 GENERAL INSURANCE PROVISIONS. All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate. Further, each certificate shall contain the following statement:

> "The insurance covered by this certificate will not be canceled, and there will be no change in coverage or deductibles, except after thirty (30) consecutive calendar days written notice of intent to cancel or change said insurance has been provided to the City of El Paso.

5.2 INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

To the extent allowed by state law, the Owner will be responsible for its own actions.

5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS. Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability,

in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed $250,000.00 per person or $500,000.00 per incident with property damage liability limited to $100,000.00 per incident.

ARTICLE VI.
FEDERAL PROVISIONS

6.1 **COMPLIANCE WITH APPLICABLE LAWS - FEDERAL FUNDING REQUIREMENTS** Consultant, at Consultant's sole expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Consultant with respect to the use of federal funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal funds.

Specifically, and not in limitation of the foregoing, Consultant agrees that to the extent required by any agreement between the Owner and any Federal agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project, **including but not limited to:**

--The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.

--The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.

--The Federal Aviation Administration through a Grant Agreement or Cooperative Agreement with the Owner.

Copies of grant assurances will be made available to Consultant. However, provided copies shall in no way be a limitation on the Consultant's obligation to comply with any Federal agency, the laws of the federal government of the United States of America and the rules and

regulations of any regulatory body or officer having jurisdiction over this Project.

6.1.1 CONTRACT ASSURANCE. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

6.2 TERMINATION FOR CANCELLATION OF GRANT. Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Consultant of the cancellation by certified mail-return receipt requested, whereupon the Consultant shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Consultant will be paid for professional services performed to such date, upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

ARTICLE VII.
GENERAL PROVISIONS

7.1 CONTRACT TIME. Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment "D"**. It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in **Attachment "D"**.

7.2 OPINION OF PROBABLE COST. As a design professional practicing in El Paso the Consultant is expected to be familiar with the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The cost opinions of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within **ten percent (10%)** of the bid for the base bid item expected from the lowest responsible bidder.

The Consultant's final cost opinions for the construction of the Project, shall take into account labor costs which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Consultant in compiling a final cost opinions for the Project.

If the Consultant's most recent cost opinion for any construction contract is in excess of the Project construction budget, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Consultant without further compensation.

As noted herein, if all responsible bids exceed the final cost opinion by more than **ten percent (10%)**, the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

7.3 CONSULTANT'S QUALITY OF WORK. The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project and in accordance with the time periods established in **Attachment "D"** and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner. Services provided by the Consultant under this Agreement shall be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar circumstances.

7.4 COPYRIGHT AND REPRODUCTION RIGHTS. Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

7.5 AUDITING RECORDS FOR THE SPECIFIC PROJECT. Consultant's records subject to audit shall include but not be limited to records which, in the Owner's discretion, have a bearing on matters of interest to the Owner in connection with the Consultant's work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit

evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Consultant's records have been generated from computerized data, Consultant agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The Owner or its designee shall be entitled, at its expense, to audit all of the Consultant's records related to this Project, and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times and places.

7.6 SUCCESSORS AND ASSIGNS. This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

7.7 VENUE. For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

7.8 GOVERNING LAW. The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

7.9 CAPTIONS. The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.

7.10 SEVERABILITY. Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

7.11 NOTICES. Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner: The City of El Paso
Attn: City Manager
2 Civic Center Plaza
El Paso, Texas 79901

With a Copy to: The City of El Paso
Attn: City Engineer
2 Civic Center Plaza
El Paso, Texas 79901

To the Consultant: OMNI Construction Services, LLC
Attn: Ed Drusina, P.E.
2505 E. Missouri Ave
El Paso, Texas 79903

Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

7.12 CONFLICTING PROVISIONS. Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.

7.13 ENTIRE AGREEMENT. This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

Joyce Wilson, City Manager

CONSULTANT:
OMNI Construction Services, LLC

By: Ed Drusina, P.E.
President

APPROVED AS TO FORM:

Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E.
City Engineer

ACKNOWLEDGEMENTS

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____, 2008, by **Joyce A. Wilson,** as **City Manager** of the **City of El Paso, Texas.**

_____
Notary Public, State of Texas

My commission expires:

_____

THE STATE OF TEXAS §
§
COUNTY OF El PASO §

This instrument was acknowledged before me on this 23 day of June, 2008, by **Ed Drusina, P.E.,** as **President** of **OMNI Construction Services, LLC.**

Eva Medrano
Notary Public, State of Texas

My commission expires:

Feb 2, 2012

EVA MEDRANO
NOTARY PUBLIC STATE OF TEXAS
COMMISSION EXPIRES:
02-02-2012

City of El Paso

Carnegie Ave. Street & Drainage Improvements

CONSTRUCTION PHASE SERVICES

SCOPE OF SERVICES

DEFINITIONS

CM – Construction Manager

PM – Construction Manager's Project Manager

RPR – Resident Project Representative

The Construction Manager (CM), OMNI Services shall provide the OWNER, the City of El Paso the following CONSTRUCTION MANAGEMENT Services for this project:

A. CONSTRUCTION MANAGEMENT SERVICES

A.1. The PM shall consult with and advise OWNER and act as OWNER's representative. All of the OWNER's instructions to CONTRACTOR will be issued through the Project Manager. The Construction Manager shall over see the PM's performance.

A.2. In connection with observations of the work of CONTRACTOR while it is in progress the following shall occur:

A.2.1. CM shall have a lead project manager PM making visits to the site at intervals appropriate to the various stages of construction as the CM deems necessary in order to review the progress of the work and to oversee the RPR. The CM shall provide the services of a RPR at the site to assist the PM and to provide more continuous observation of such work. Based on information obtained during such visits and on such observations, CM shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and PM shall keep OWNER informed of the progress of the work.

A.2.2. The RPR will be CM's agent or employee and under PM's supervision. The duties and responsibilities of the RPR are set forth in the following Section B of this Scope of Services.

A.2.3 The purpose of PM's visits to the site and those of the RPR are to observe the contractors performance during the construction phase. This will provide the OWNER a greater degree of confidence that the completed work of the CONTRACTOR will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by CONTRACTOR. On the other hand, PM shall not, during such visits or as a result of such observations of CONTRACTOR's work in progress, supervise, direct or have control over CONTRACTOR's work nor shall PM have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by CONTRACTOR, for safety precautions and programs incident to the work of CONTRACTOR or for any failure of CONTRACTOR to comply with laws, rules, regulations, ordinances, codes or orders applicable to CONTRACTOR furnishing and performing their work. Accordingly, PM can neither guarantee the performance of the construction contracts by CONTRACTOR nor assume responsibility for CONTRACTOR's failure to furnish and perform their work in accordance with the Contract Documents.

A.3. During such visits and on the basis of such observations, if authorized by OWNER, PM may disapprove of or reject CONTRACTOR's work while it is in progress if PM believes that such work will not produce a completed Project that conforms generally to the Contract Documents or

that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

A.4. PM shall request the "ENGINEER" to issue necessary interpretations and clarifications of the Contract Documents and in conjunction with the preparation of work directive changes and change orders as required.

A.5. PM shall forward to the ENGINEER for review and approval (or take other appropriate action in respect of) Shop Drawings, samples and other data which the CONTRACTOR is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or their action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

A.6. PM shall coordinate with the ENGINEER to determine the acceptability of substitute materials and equipment proposed by CONTRACTOR.

A.7. PM shall have authority, as OWNER's representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testings and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

A.8. PM shall coordinate with the ENGINEER on interpretations of the requirements of the Contract Documents. PM shall judge the acceptability of the work thereunder and make decisions on all claims of OWNER and CONTRACTOR relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. PM shall not be liable for the results of any such interpretations or decisions rendered in good faith.

A.9. Based on PM's on-site observations ENGINEERS' recommendation, and, on information provided by the RPR related to applications for payment and the accompanying data and schedules:

A.9.1. PM shall determine the amounts owed to the CONTRACTOR and recommend in writing payments to CONTRACTOR in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of PM's knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation). In the case of unit price work, PM's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

A.9.2 By recommending any payment PM will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examination have been made by PM to check the quality or quantity of CONTRACTOR's work as it is furnished and performed beyond the responsibilities specifically assigned to PM in this Agreement and the Contract Documents. PM's review of CONTRACTOR's work as it is furnished and performed beyond the responsibilities specifically assigned to PM in this Agreement and the Contract Documents. PM's review of CONTRACTOR's work for the purposes of recommending payments will not impose on PM responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or CONTRACTOR

compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on PM to make any examination to ascertain how or for what purposes and CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests on encumbrances, or that there may not be other matters at issue between OWNER and CONTRACTOR that might affect the amount that should be paid.

A.10. PM shall receive and forward to the ENGINEER operating and maintenance instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by CONTRACTOR in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals the results certified indicate compliance with, the Contract Documents); and shall upon receipt transmit them to OWNER with written comments.

A.11. PM shall accompany the RPR who will conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that PM may recommend, in writing, final payment to CONTRACTOR and may give written notice to OWNER and the CONTRACTOR that the work is acceptable (subject to any conditions therein expressed).

A.12. CM shall not be responsible for the acts or omissions of any CONTRACTOR, or of any subcontractor or supplier, or any of the CONTRACTOR's or subcontractor's or supplier's agents or employees or any other persons (except CM's own employees and agents) at the site or otherwise furnishing or performing any of the CONTRACTOR's work; however, nothing contained in Paragraphs A.2 thru A.12, inclusive, shall be construed to release CM from liability for failure to properly perform duties and responsibilities assumed by CM in the Contract Documents.

B. <u>RESIDENT PROJECT REPRESENTATIVE</u>

B.1. CM shall furnish a RPR to observe performance of the work of CONTRACTOR. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR, CM shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of CONTRACTOR; but, the furnishing of such services will not make CM responsible for or give CM control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

B.1.1 General

a. RPR is CM's agent at the site, will act as directed by and under the supervision of PM, and will confer with PM regarding RPR's actions. RPR's dealing in matters pertaining to the on-site work shall in general be with PM and CONTRACTOR keeping OWNER advised as necessary. RPR's dealing with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of CM.

B.1.2. Duties and Responsibilities of RPR

a. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with PM and ENGINEER concerning acceptability.
b. Conferences and Meetings: Attend and Conduct meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other

project-related meetings, and prepare and circulate copies of minutes thereof.

c. Liaison:
   - Serve as CM's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist PM in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
   - Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

d. Shop Drawings and Samples:
   - Record date of receipt of Shop Drawings and samples.
   - Receive samples which are furnished at the site by CONTRACTOR, and alert PM that ENGINEER is to be notified of availability of samples for examination.
   - Advise PM and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.

e. Review of Work, Rejection of Defective Work, Inspections and Tests:
   - Conduct on-site observations of the Work in progress to assist PM in determining if the Work is in general proceeding in accordance with the Contract Documents.
   - Report to PM whenever RPR believes that any Work is unsatisfactory, faulty or defective of does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise PM of Work that RPR believes should be corrected or rejected or should be uncovered for observations, or requires special testing, inspection or approval.
   - Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to PM appropriate details relative to the test procedures and startups.
   - Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to PM.

f. Interpretation of Contract Documents: Report to PM when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER through the PM.

g. Modifications: Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to PM who will transmit to ENGINEER. Transmit to CONTRACTOR decisions as issued by CM and/or ENGINEER.

h. Records:
   - Maintain orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretation of the Contract Documents, progress reports, and other Project related documents.
   - Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
   - Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of materials and equipment.

i. Reports:

- Furnish PM periodic reports as required of progress of the Work and of CONTRACTOR'S compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
- Consult with PM in advance of scheduled major tests, inspections or start of important phases of the Work.
- Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to PM Change Orders, Work Directive Changes, and Field Orders.
- Report immediately to PM and OWNER upon the occurrence of any accident.
- Attend and report on CONTRACTOR's safety training and compliance with the project's Safety Plan.

j. Payment Requests: Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

k. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and approval. Once approved by PM and and ENGINEER forward to OWNER prior to final payment for the Work.

l. Completion:
- Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
- Conduct final inspection in the company of ENGINEER, OWNER, PM, and CONTRACTOR and prepare a final list of items to be completed or corrected.
- Observe that all items on final list have been completed or corrected and make recommendations to PM concerning acceptance.

m. Coordination: Coordinate with all adjacent property owners to provide them with advanced knowledge of the project execution.

B.1.3. Limitations of Authority

a. Resident Project Representative:
- Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER and PM.
- Shall not exceed limitations of CM's authority as set forth in the Agreement or the Contract Documents.
- Shall not undertake any of the responsibilities of the CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
- Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures on construction unless such advise or directions are specifically required by the Contract Documents.
- Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
- Shall not accept Shop Drawing of sample submittals from anyone other than CONTRACTOR.
- Shall not authorize OWNER to occupy the Project in whole or in part.
- Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by OWNER.

OMNI CONSTRUCTION SERVICES, LLC

7505 E. Missouri Ave., Ste. 100
El Paso, Texas 79903
915.532.7091

May 23, 2008

City of El Paso
Engineering Department
2 Civic Center Plaza
El Paso, Texas 79901

Attention: **Sam Rodriguez, P.E.**

Reference: **Storm 2006 Infrastructure Projects –**
Carnegie Ave. Street and Drainage Improvements
Construction Phase Services

Dear Sam:

The following is our revised proposal for Construction Phase Services for the subject project. Our proposal consists of the attached Scope of Work, for construction management and resident project representative services, and the attached fee computation sheet.

The man hours have been adjusted so that we have a part time Resident Project Representative (RPR), over the ten-month construction schedule. Our Construction Project Manager (PM) will spend approximately one day per week on this project performing the duties described in the detailed estimate that is attached. Our intended PM and RPR are Mr. John W Riley (Bill) and Mr. Luis Sierra, EIT respectively. Mr. Riley's credentials include BSCE/MSCE degrees, and a wealth of experience in the construction of highways, bridges and roadways for the Texas Department of Transportation where he was employed from 1968 to his retirement in 2004. Mr. Sierra has been an RPR for Moreno Cardenas Inc. for the past 13 years and is a graduate civil engineer from UTEP. He has successfully served as an RPR for us handling many storm drainage, street improvement, and utility improvement projects over that period.

I will serve as the general overall manager of this project. I have headed many projects of similar scope over my 34 years of professional engineering experience. I believe the level of experience Messrs. Riley and Sierra offer will be of great benefit given the high level of complexity and importance of this project.

Our total fee for the services described in this letter and the attached Scope of Work will be $136,568.44. We will bill you for our actual labor and direct costs monthly. The costs are based on our 2008 current labor rates.

OMNI CONSTRUCTION SERVICES, LLC

We believe our proposal provides you with the information you need to evaluate our construction phase services however, if I can provide you with additional information or help answer any questions, please call me. I look forward to continuing with our services for this project.

Sincerely,

Edward Drusina, P.E.
President

Enclosures

LLOB408102SR.23May08.doc
RM/bc

OMNI Construction Services LLC
Fee Proposal for Construction Phase Services
City of El Paso - Carnegie Ave Street & Drainage
Construction Management Services Adjusted to City's Request
19-May-08

	CM		PM		RPR		Engr. Tech. III		Admin. Assistant		Total Hrs.
TASK	Hours	$164.50	Hours	$95.00	Hours	$65.22	Hours	$62.05	Hours	$53.58	
Project Management/Admin.	2	$309.00	4	$380.00		$0.00	0	$0.00	18	$964.44	24
Pre-Construction Conference	2	$309.00	4	$380.00	8	$521.76	0	$0.00	2	$107.16	16
Site Visits	8	$1,236.00	60	$5,700.00	0	$0.00	0	$0.00	9	$482.22	77
RPR Supervision	0	$0.00	44	$4,180.00	0	$0.00	0	$0.00	0	$0.00	44
Interpretations/Clarifications	0	$0.00	80	$7,600.00	0	$0.00	0	$0.00	18	$964.44	98
Inspections/Tests	0	$0.00	0	$0.00	0	$0.00	0	$0.00	9	$482.22	9
Problem Resolution	16	$2,472.00	90	$8,550.00	0	$0.00	0	$0.00	24	$1,285.92	130
Applications for Payment	0	$0.00	20	$1,900.00	0	$0.00	0	$0.00	9	$482.22	29
Completion Documents	0	$0.00	4	$380.00	0	$0.00	0	$0.00	4	$214.32	8
Witness Testing of Facilities	0	$0.00	0	$0.00	0	$0.00	0	$0.00	2	$107.16	2
Substantial Completion	4	$618.00	4	$380.00	0	$0.00	0	$0.00	4	$214.32	12
Final Completion	4	$618.00	16	$1,508.32	0	$0.00	0	$0.00	8	$428.64	28
Certificates of Completion	0	$0.00	8	$760.00	0	$0.00	0	$0.00	2	$107.16	10
Coordination with Prop Owners	0	$0.00	0	$0.00	0	$0.00	0	$0.00	40	$2,143.20	40
Project Meetings	8	$1,236.00	40	$3,800.00	0	$0.00	0	$0.00	60	$3,214.80	108
Part-Time RPR	0	$0.00	0	$0.00	1117	$72,850.74	0	$0.00	80	$4,286.40	1197
Utility Record Drawings	0	$0.00	0	$0.00		$0.00	0	$0.00	32	$1,714.56	32
Subtotals	44	$6,788.00	374	$35,518.32	1125	$73,372.50	0	$0.00	321	$15,464.62	1864

TOTAL LABOR	$131,173.44
TOTAL DIRECT COSTS	$ 5,395.00
TOTAL FEE	$136,568.44

NOTE:

DIRECT COSTS	UNIT	PRICE	QTY	TOTAL
Mileage	mile	$0.50	6000	$ 3,000.00
Copying	page	$0.10	8000	$ 800.00
Phone	month	$100.00	0	$ -
Mylars	each	$10.00	0	$ -
Photos	each	$0.50	600	$ 300.00
			TOTAL	$ 5,395.00

5-21-08

ATTACHMENT B
(3 of 3)

ATTACHMENT "C"
AGREEMENT FOR CONSULTING SERVICES

For the Project known as **"CARNEGIE AVE STREET & DRAINAGE IMPROVEMENTS CONSTRUCTION PHASE",** hereinafter referred to as the Project, the Consultant will provide the Basic and Additional Services as noted herein.

BASIC SERVICES OF THE CONSULTANT

GENERAL

1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated.

2. The Consultant shall comply with the City of El Paso Engineering Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the construction phase of this Agreement.

3. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.

4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a completed project within the allocated budget that meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

CONSTRUCTION PHASE

The Construction Phase, for each construction contract, shall commence with the award of the construction contract and shall terminate upon written approval of final payment by the Owner, except that this phase may be extended, if required, by agreement between the Consultant and the Owner. During the Construction Phase the Consultant shall:

1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.

2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

ATTACHMENT "C"
AGREEMENT FOR CONSULTING SERVICES

3. The construction manager shall inspect work performed by Contractors, Subcontractors, Vendors as required by construction documents and City of El Paso Engineering requirements and guidelines.

4. Monitor and manage the project construction contract, cost and schedule.

5. Schedule and lead the weekly progress meetings, properly documenting all issues and ensure all stakeholders are present to resolve them in order to keep the project moving forward. Assist in the coordination of the project with third parties.

6. Observe the progress and quality of the executed work to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents.

7. The Consultant shall provide the Owner with typed daily inspection reports to document all activity in accordance with industry standards. On the basis of these on-site observations, the Consultant shall guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall be required to make daily on-site inspections to check the quality or quantity of the work, and oversee the means, methods, techniques, sequences, or procedures, and the safety precautions incident thereto. The Consultant's efforts shall be directed toward providing assurance to the Owner that each completed construction contract meets the requirements of the construction contract documents. Any deviation from the construction documents shall be documented and promptly communicated to the contractor in writing to ensure the non-compliance is addressed accordingly.

8. Review and track all shop drawings, diagrams, illustrations, brochures, catalog data, schedules, samples, the results of tests, inspections, and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.

9. Issue the Owner's instructions to the construction contractor when required to do so, review and negotiate change orders to include independent review of opinion of probable construction cost for the Owner's approval.

10. Based on the Consultant's documentation, review the contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend such amount, to owner, in writing; such recommendation of payment to constitute a representation to the Owner, based on such documentation, observations and review, that the work has progressed to the point indicated and that, to the best of the

Consultant's knowledge, information and documentation, the quality of the work is in accordance with the construction contract documents, meets the required standards for any tests called for in the construction contract documents, and conforms to any qualifications stated in construction contractors's approval.

11. Conduct with the Owner and construction contractor substantial and final completion inspections. Document the inspections and all requirements resulting from the inspections. The **"punch list"** shall be furnished to the construction contractor and the Owner within **two City working days** after the inspections.

12. Issue a "Certificate of Substantial Completion" when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the substantial completion inspection.

13. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.

14. Furnish the Owner one set of all project documentation.

15. Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.

16. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.

17. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

18. The consultant may perform Additional Services in connection with the Project, which are not otherwise provided for in this Agreement. The owner shall pay for such Additional Services as indicated in the Agreement except where those services are required as a result of negligence or other fault on the part of the Consultant.

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

For the Project known as "**CARNEGIE AVE STREET & DRAINAGE IMPROVEMENTS CONSTRUCTION PHASE,**" hereinafter referred to as the Project, the Owner will compensate the Consultant an amount not to exceed **ONE HUNDRED THIRTY-SIX THOUSAND FIVE HUNDRED SIXTY-EIGHT AND 44/100 DOLLARS ($136,568.44)** for all Basic Services and reimbursables noted within the Agreement and its attachments.

PAYMENT SCHEDULE

The compensation for the work described in **Attachment of "A"** shall be made on a monthly basis for the time and materials performed the previous month. Each monthly invoice prepared by Consultant shall include the amount due for the previous month as well as the total contract amount paid to date, so as not to exceed the amount of the contract. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and accompanying Summary and Progress Report and the Owner's written approval.

DELIVERABLE SCHEDULE

CONSTRUCTION PHASE

The services called for in the Construction Phase of this Agreement shall be completed as follows:

Status Reports: In conjunction with the monthly invoice, Consultant shall submit **two (2) copies** of a Summary and Progress Report for each project assigned. Additional status reports may be requested at any time by the Owner for any project assigned.

Project Documentation: The consultant shall submit **two (2) copies** of approved submittals, all meeting minutes and any additional documents requested by the Owner within **two (2) days** of their receipt by Consultant or request by Owner.

Consultant shall submit **two (2) copies** of all documentation for which action is required by the Owner within **two (2) days** of its receipt by Consultant.

Final Project Closeout documentation: The Consultant shall collect, review and process all documentation required by the contract documents from the contractor and design consultant for each project and submit to Owner within **thirty (30) days** of Project Construction Substantial Completion.

Consultant Files: The Consultant shall package all its project files and deliver to the Owner all files and a final invoice within **seven (7) days** of Project Completion.