Development and Infrastructure Services

Storm 2006 Progress Overview

As of November 7, 2006

Engineering Department

Storm 2006 Infrastructure Repair/Reconstruction Progress Update

Design

- To date, 68 projects have been identified that require consultant design services.
- Pre-Qualified Consultants have been interviewed for 66 of those projects.
- Contracts signed with 10 consultant firms for work on 31 projects as follows:
    - **URS Inc.** for work on the Master Drainage Study for a total amount not to exceed $1,800,000
    - **Frank X. Spencer** for work on: Highlands Sediment Basin, North South Freeway Channel, median improvements on Fred Wilson, Mesa Hills and Montana and Inspection/Assessment of City Conduits Sector 3 for a total amount not to exceed $1,000,000
    - **Huitt-Zollars** for work on: Montoya Drain, McKelligon Canyon Road, Mesa Drain and Inspection/Assessment of City Ponds Sector 2 for a total amount not to exceed $1,250,000
    - **Moreno Cardenas Inc.** for work on: Glory Road, Shadow Mountain/Silver Springs, Channel No. 2 and Dallas Outfall for a total amount not to exceed $3,500,000
    - **Nomar Engineering Inc.** to assist with hydrologic studies and provide additional engineering services in conjunction with the Master Drainage Study for a total amount not to exceed $250,000
    - **Parkhill, Smith & Cooper, Inc.** for work on: Lindberg, Redd, Mulberry and Warriors Street & Drainage Improvements, Government Hills Outfall/Durazno Neighborhood Improvements, Clint Landfill Slope/Erosion Repairs, Pump Station Assessment and Repairs for a total amount not to exceed $2,250,000
    - **Quantum Engineering Consultants Inc.** for work on: Ojo de Agua Channel, Crossroads Pond, Pershing Dam Upper & Lower basins and Inspection/Assessment of City Conduits Sector 4 for a total amount not to exceed $1,000,000
    - **Camp Dresser & McKee Inc.** for work on: Pressure Manholes, Clardy Fox Pump Station and the Modesto Channel River outfall for a total amount not to exceed $500,000
    - **Conde, Inc.** for work on: Wallenberg & Mesa Hills, James Watt @ Lee Trevino, Mamie & Elmwood, Robinson, Gravity Flow Outlets to the Rio Grande and Inspection/Assessment of City Ponds Sector 1 for a total amount not to exceed $1,600,000
    - **Dorado Engineering, Inc.** for work on the Northgate Diversion Channel for a total amount not to exceed $250,000

Construction

- The Call for Contractors was issued on October 14, 2006.
- In accordance with the policy approved by City Council on October 3, 2006, construction firms are being solicited to provide information so they can be slotted into one of three tiers.
- Contractor submittals were received on October 25, 2006 and submitted to the Engineering Department for evaluation and assignment of Tier designation.
- 36 construction firms submitted their qualification information and were designated into tiers as shown on next page.

CITY OF EL PASO BID TABULATION

STORM 2006 CALL FOR CONTRACTOR QUALIFICATIONS

CITY DEPARTMENT: ENGINEERING

Opening Date: October 25, 2006		2007-CCQ-001

Company Name	Tier	City, State
Allied Paving Company	1	El Paso, Texas
Asphalt Pavers Inc.	1	El Paso, Texas
BRH-Garver Construction, L.P.	1	Houston, Texas
Byrd Brothers Inc.	1	Charleston, Mississippi
C.F. Jordan, L.P.	1	El Paso, Texas
Dan Williams Company	1	El Paso, Texas
Danny Sander Construction, Inc.	1	El Paso, Texas
J.A.R. Concrete, Inc.	1	El Paso, Texas
NCT, Inc.	1	El Paso, Texas
SamCorp General Contractors	1	El Paso, Texas
Silverton Construction Company, Inc.	1	El Paso, Texas
SmithCo Construction, Inc.	1	Caballo, New Mexico
AUI Inc.	2	Albuquerque, New Mexico
Bain Construction	2	Horizon City, Texas
Dantex Construction Co.	2	El Paso, Texas
EPCON Inc.	2	El Paso, Texas
Horizone Construction Ltd.	2	Canutillo, Texas
Karlsruher, Inc. dba CSA Engineers & Constructors	2	El Paso, Texas
Quest Contracting, Inc.	2	El Paso, Texas
Saab Development Corporation	2	El Paso, Texas
Southwest Growth Corporation	2	El Paso, Texas
Spartan Construction Services Inc.	2	El Paso, Texas
Venegas Engineering Management and Construction L.P.	2	El Paso, Texas
Accent Landscaping & Sprinklers, Inc.	3	El Paso, Texas
Allen Concrete, Inc.	3	El Paso, Texas
Border Demolition and Environmental, Inc.	3	El Paso, Texas
C & C Road Construction, Inc.	3	El Paso, Texas
City Fence and Pipe Company	3	El Paso, Texas
CK Construction Inc.	3	El Paso, Texas
Construction Layout Associates	3	El Paso, Texas
F. T. James Construction Inc.	3	El Paso, Texas
Fencemart & Ironworks L.L.C.	3	El Paso, Texas
Jay Gardner Co., dba Rio Services	3	Anthony, New Mexico
Mesa Electrical Contractors Inc.	3	Canutillo, Texas
Mesa Fence Co., Inc.	3	El Paso, Texas
Portosan Co., Inc., dba M&M Fence Co.	3	El Paso, Texas
CEMEX Construction Materials, L.P.	N/A	El Paso, Texas

Street Department

Storm 2006 Actions to Date

- **Disaster Response** - July 27 and ongoing - street clean up, water pumping, road repairs; channel cleaning and clearing, inlet cleaning, culvert cleaning, debris removal, pothole patching, vegetation removal, weed spraying, concrete replacement, back filling basins, channels and ponds, fence repair, etc.

    - FEMA **Category A** (July 27 to Aug. 24) sheets submitted to Environmental Services; 32 sheets with reimbursement estimates of $352,678.40.
    - FEMA **Category B** (July 27 to Aug. 24) sheets submitted to Comptrollers; 271 sheets with reimbursement estimates of $722,199.13.

  A significant portion of emergency response work was ongoing after the August 24th FEMA close out date. Crews continued pumping water through the end of September and other ongoing emergency response work continues.

  *During the initial disaster response period, the Texas Department of Transportation, through the State Emergency Management Office, executed $3,000,000 of force account contracts for the clean up, removal of debris, and functional repairs to the City's road and drainage network.

- **Site Assessments - Public Assistance** – The discovery period was 60 days from the date of the Declaration to assess and make claim on damaged infrastructure. The disaster was declared on August 15th, and Street Department personnel began conducting site assessments with FEMA immediately around this period to address categories C & D. On-site assessments continued at least three days per week throughout October 22nd, two assessment teams visited approximately 200 sites during this period which produced 102 project worksheets associated with categories C (road systems) and D (water control systems).

    - Projects are broken into two primary categories, projects less than $57,500 and projects greater than $57,500 (as established by FEMA); of the 77 projects less than $57,500, 28 will be addressed with Street Department resources, to date 13 of these have been completed. The remaining will need to be addressed by the procurement mechanisms established and managed by the Engineering Department. All projects estimated to be greater than $57,500 are required to follow the A & E process.
    - The FEMA exit meeting was held on October 27th to inform the City of El Paso of pertinent information concerning the management of the project worksheets to ensure documentation and records management processes are maintained for reimbursement.

- **Street Department infrastructure repairs/restoration** – Repairing/restoring damaged streets and other drainage structures citywide utilizing department resources is ongoing. Department resources have been re-directed to accomplish this with department personnel and equipment, contracts (impacting the contract capacities and budgets for paving, concrete, fuel, and construction materials).

- This is inclusive of projects identified in FEMA project worksheets (small projects) as well as other projects not eligible for FEMA classification citywide.
- Ongoing work is inclusive of permanent repairs and temporary measures to keep streets and drainage systems operational.
- This includes items not budgeted for such as contracts with herbicide spraying companies and the rental of equipment, such as water trucks and pumps.
- The department has established a mechanism to document and account for all project worksheets in accordance with FEMA guidelines.
- The Department has coordinated with Financial Services and OMB to establish a method to account for and allocate through journal entry all departmental costs incurred to complete FEMA small projects to separate Peoplesoft projects for FEMA reimbursements and for future audit purposes.

- **Storm Impacted Infrastructure list** – Street Department staff compiled a comprehensive prioritized listing of critical street and drainage infrastructure sites that were damaged/impacted or affected by the storm incidents that were submitted to Engineering department for scoping and cost estimating.

- **Corps of Engineers** – Street Department personnel conducted site assessments with the U.S. Army Corps of Engineers (COE) to review the integrity and functionality of the Corp of Engineers constructed drainage projects. To date the COE have determined that the storm water system operated and functioned as designed during the Storms of Aug. 2006.

- **Storm Drainage System Cleaning Contract Specifications –** Street Department personnel prepared a scope of work for the restoration and clean up of agricultural drains. This contract is in the procurement process awaiting the finalization of the call to contractors.

- **Additional Staffing Resources** – The Department assisted the Upper Rio Grande Workforce Development Board in securing a grant from the Department of Labor for emergency clean up of storm damage and residual effects. Department is in the process of selecting personnel funded from the grant for a six month period to assist in city wide clean up efforts that will focus on clearing and grubbing of vegetation and debris.

- **FHWA Reimbursement** – The Street Department has initiated the process of seeking reimbursement through the Federal Highway Administration Emergency Response program for qualified roads. The department has requested seventeen potential projects with an estimated reconstruction value of $12.8 million. This program is separate from FEMA and is in the initial qualification review stage. The local TxDOT office is the point of contract for this process.

CITY CLERK DEPT.
06 NOV -2 PM 12:01

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this _____ **day of** _____**, 2006** 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 **Quantum Engineering Consultants, Inc.**, a Texas Corporation, hereinafter referred to as the **"Consultant"**.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for a project known as **"ON-CALL DRAINAGE SERVICES,"** 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
Attachment "E"	Insurance Certificates

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 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"**. Payment to Consultant shall not exceed **ONE MILLION AND 00/100 DOLLARS ($1,000,000.00).**

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 prior written amendment to this Agreement, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"**. 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.

> **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 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, or any work order, 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, or a change order to any work order, 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"**. Because of the uncertainties inherent in the services, schedules are estimated and subject to revision unless otherwise specifically described here in.

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 Owner from the Consultant 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 Owner from the Consultant 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 not commence work under this Agreement until the Consultant has obtained sufficient insurance as required herein, 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 or materially altered, except after **thirty (30) consecutive calendar days** written notice of intent to cancel or materially alter 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, agents, 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 apply, and the bodies and officers shall include but not be 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.

6.1.2 DBE GOOD FAITH EFFORTS. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

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 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.

7.3 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.

7.4 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.

Documents include, but are not limited to, the Consultant's personnel job descriptions, instructions, plans, drawings, reports, receipts, vouchers, and memoranda pertaining to the services. The Owner shall not have the right to audit or copy proprietary information

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.

7.5 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.

7.6 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.

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

7.8 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.

7.9 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.

7.10 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:	Quantum Engineering Consultants, Inc. 414 Executive Center Blvd., Ste. 105 El Paso, Texas 79902

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.

7.14 EXECUTORY AUTHORITY WARRANTED. All signatories to this contract warrant their authority to execute this document.

7.15 CLIENT RESPONSIBILITY. Owner shall: (1) provide the Consultant, in writing, all information relating to Owner's requirements for the project; (2) identify to the Consultant, from reasonably available information, the location of subsurface structures, such as pipes, tanks, cables and utilities as best as can be reasonably determined by the City; (3) notify the Consultant of any potential hazardous substances or other health and safety hazard or condition known to the Consultant existing on or near the project site as best as can be reasonably determined by the City; (4) give the Consultant prompt written notice of any suspected deficiency in the services; and (5) with reasonable promptness, provide required approvals and decisions. In the event that the Consultant is requested by the Owner or is required by subpoena to produce documents or give testimony in any action or proceeding to which the Owner is a party and the Consultant is not a party, the Owner shall pay the Consultant for any time and expenses required in connection therewith, including reasonable attorney's fees.

7.16 RIGHT OF ENTRY. Owner grants to the Consultant, and, if the project site is not owned by the Owner, warrants that permission has been granted for, a right of entry from time to time by the Consultant, its employees, agents and subcontractors, upon the project site for the purpose of providing the services. The Owner recognizes that the use of investigative equipment and practices may unavoidably alter the existing site conditions and affect the environment in the area being studied, despite the use of reasonable care.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

Joyce Wilson, City Manager

CONSULTANT:

Robert A. Gonzales
President

(Signatures continue on following page)

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Rick Conner, P.E.
City Engineer

ATTACHMENT "A"
SCOPE OF SERVICES AND PROJECT BUDGET

The Consultant shall perform professional services relevant to the project known as **"ON-CALL DRAINAGE SERVICES,"** herein referred to as the "Project", in accordance with the terms and conditions set forth herein. The scope of services, the time schedule, and the charges are to be set forth in a written work order in accordance with this agreement. If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

SCOPE OF SERVICES

The Consultant shall provide traditional engineering services for the City of El Paso's Engineering Department on an as-needed basis. The City's Engineering Department shall provide authorizations to the Consultant for providing engineering services for the Project. Each authorization shall be in writing and shall include a Basic Fee, Scope of Services, and Schedule of Deliverables to be provided by the Consultant.

The Owner's Project Manager shall provide the Consultant a description of the desired services and schedule for each specific project. The Consultant shall submit a detailed proposal for the scope and cost of services delineating the man-hours required by the Consultant or its sub-consultants. The Consultant shall receive written work authorization from the Owner before proceeding with the specific project. The work authorization may consist of tasks within the basic services as described in Attachment "C".

Attachment "B"

CITY OF EL PASO ENGINEERING DEPARTMENT
QUANTUM ENGINEERING CONSULTANTS, INC.

Principal	Proj. Mgr.	Senior Eng.	Junior Eng.	Sr. CADD	CADD	Sec./Clerk
$120.00	$95.00	$75.00	$65.00	$58.00	$48.00	$38.00

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

For the Project known as "**ON-CALL DRAINAGE SERVICES,**" hereinafter referred to as the Project, The Consultant will provide the Basic and Additional Services as noted herein upon receipt of written direction from the City's Engineering Department.

BASIC SERVICES

1. Provide engineering services as needed by the Engineering Department. These services include, but are not limited to, Geographic Information System (GIS) data acquisition, Field Survey and Reconnaissance, structure assessments, storm evaluation, hydrologic analyses, hydraulic capacity analyses, system performance assessments, and reporting. Possible third-party services consisting of geotechnical investigations and testing and electrical and mechanical engineering studies and analysis may also be required. The City's Engineering Department will issue a work authorization to the Consultant for each Project, which will sometimes require a very quick response by the Consultant to meet urgent and possible emergency situations.
2. The Consultant shall coordinate his work with the staff of the City's Engineering Department or with other sub-consultants as needed.

3. All engineering services shall be in accordance with generally accepted professional engineering practices.

4. The Consultant shall provide engineering services for projects in connection with but not limited to the following:
    a. Storm Assessment
    b. Flooding Documentation
    c. System Performance Assessment
    d. Drainage Analysis
    e. Drainage Master Planning
    f. GIS Database Development
    g. Capital Improvement Alternative Development and Assessment

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

PAYMENT SCHEDULE

Payment for all work authorized by the City's Engineering Department shall be made on a monthly basis. 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. The Owner shall notify the Consultant of any disputed amount within fifteen (15) days from date of the invoice, give reasons for the objection, and promptly pay the undisputed amount.
The maximum amount that will be allowed under this contract (the cap) is $1,000,000.00. Only that work ordered, approved, and accepted will be paid for the City.

Where charges are "not to exceed" a specified sum, the Consultant shall notify the Owner before such sum is exceeded and shall not continue to provide the services beyond such sum unless the Owner authorizes an increase in the sum. If a "not to exceed" sum is broken down into budgets for specific tasks, the task budget may be exceeded without the Owner authorization as long as the total sum is not exceeded. Changes in conditions, including, without limitation, changes in laws or regulations occurring after the budget is established or other circumstances beyond the Consultant's control shall be a basis for equitable adjustments in the budget and schedule.

DELIVERABLE SCHEDULE

The deliverable schedule will be set forth with each work authorization by the City's Engineering Department. The original term of this contract is eighteen months, but can be extended by mutual written approval by both parties.

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this _____ **day of** _____**, 2006** 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 **Parkhill, Smith & Cooper, Inc**., a Texas Corporation, hereinafter referred to as the **"Consultant"**.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for a project known as **"ON-CALL DRAINAGE SERVICES**," 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
Attachment "E"	Insurance Certificates

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.

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CITY CLERK DEPT

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 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"**. Payment to Consultant shall not exceed **TWO MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($2,250,000.00).**

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 prior written amendment to this Agreement, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"**. 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.

> **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 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, or any work order, 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, or a change order to any work order, 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"**. Because of the uncertainties inherent in the services, schedules are estimated and subject to revision unless otherwise specifically described here in.

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 Owner from the Consultant 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 Owner from the Consultant 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 not commence work under this Agreement until the Consultant has obtained sufficient insurance as required herein, 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 or materially altered, except after **thirty (30) consecutive calendar days** written notice of intent to cancel or materially alter 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, agents, 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 apply, and the bodies and officers shall include but not be 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.

6.1.2 DBE GOOD FAITH EFFORTS. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

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 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.

7.3 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.

7.4 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.

Documents include, but are not limited to, the Consultant's personnel job descriptions, instructions, plans, drawings, reports, receipts, vouchers, and memoranda pertaining to the services. The Owner shall not have the right to audit or copy proprietary information

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.

7.5 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.

7.6 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.

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

7.8 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.

7.9 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.

7.10 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:	Parkhill, Smith & Cooper, Inc. 810 E. Yandell El Paso, Texas 79902

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.

7.14 EXECUTORY AUTHORITY WARRANTED. All signatories to this contract warrant their authority to execute this document.

7.15 CLIENT RESPONSIBILITY. Owner shall: (1) provide the Consultant, in writing, all information relating to Owner's requirements for the project; (2) identify to the Consultant, from reasonably available information, the location of subsurface structures, such as pipes, tanks, cables and utilities as best as can be reasonably determined by the City; (3) notify the Consultant of any potential hazardous substances or other health and safety hazard or condition known to the Consultant existing on or near the project site as best as can be reasonably determined by the City; (4) give the Consultant prompt written notice of any suspected deficiency in the services; and (5) with reasonable promptness, provide required approvals and decisions. In the event that the Consultant is requested by the Owner or is required by subpoena to produce documents or give testimony in any action or proceeding to which the Owner is a party and the Consultant is not a party, the Owner shall pay the Consultant for any time and expenses required in connection therewith, including reasonable attorney's fees.

7.16 RIGHT OF ENTRY. Owner grants to the Consultant, and, if the project site is not owned by the Owner, warrants that permission has been granted for, a right of entry from time to time by the Consultant, its employees, agents and subcontractors, upon the project site for the purpose of providing the services. The Owner recognizes that the use of investigative equipment and practices may unavoidably alter the existing site conditions and affect the environment in the area being studied, despite the use of reasonable care.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

Joyce A. Wilson

Joyce Wilson, City Manager

CONSULTANT:

Terry G. Bilderback

Terry G. Bilderback
Vice-President

(Signatures continue on following page)

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Rick Conner, P.E.
City Engineer

ATTACHMENT "A"
SCOPE OF SERVICES AND PROJECT BUDGET

The Consultant shall perform professional services relevant to the project known as **"ON-CALL DRAINAGE SERVICES",** herein referred to as the "Project", in accordance with the terms and conditions set forth herein. The scope of services, the time schedule, and the charges are to be set forth in a written work order in accordance with this agreement. If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

SCOPE OF SERVICES

The Consultant shall provide traditional engineering services for the City of El Paso's Engineering Department on an as-needed basis. The City's Engineering Department shall provide authorizations to the Consultant for providing engineering services for the Project. Each authorization shall be in writing and shall include a Basic Fee, Scope of Services, and Schedule of Deliverables to be provided by the Consultant.

The Owner's Project Manager shall provide the Consultant a description of the desired services and schedule for each specific project. The Consultant shall submit a detailed proposal for the scope and cost of services delineating the man-hours required by the Consultant or its sub-consultants. The Consultant shall receive written work authorization from the Owner before proceeding with the specific project. The work authorization may consist of tasks within the basic services as described in Attachment "C".

Attachment "B"

Parkhill Smith & Copper
City of El Paso
Storm Water Pump Station Assessment Project

FEES

Engineering fees for this project will be based on an hourly rate-time and materials basis with a Not-to-Exceed limit. The hourly rates applicable for the Engineer are as follows:

Firm Principal	$153
Project Manager	$130
Senior Engineer	$130
Project Engineer	$115
Design Engineer	$99
Architect	$99
EIT	$84
CADD Operator	$66
Clerical	$60
RPR	$75

The Not-to-Exceed values for this project are based on conducting site visits, pump station assessments, design/ bid phase services for the improvements and construction phase services for fifteen (15) storm water pump stations. The Not-to-Exceed values for the various portions of the services are as follows:

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

For the Project known as **"ON-CALL DRAINAGE SERVICES,"** hereinafter referred to as the Project, The Consultant will provide the Basic and Additional Services as noted herein upon receipt of written direction from the City's Development Services Department.

BASIC SERVICES

1. Provide engineering services as needed by the Development Services Department. These services include, but are not limited to, Geographic Information System (GIS) data acquisition, Field Survey and Reconnaissance, structure assessments, storm evaluation, hydrologic analyses, hydraulic capacity analyses, system performance assessments, and reporting. Possible third-party services consisting of geotechnical investigations and testing and electrical and mechanical engineering studies and analysis may also be required. The City's Engineering Departmentwill issue a work authorization to the Consultant for each Project, which will sometimes require a very quick response by the Consultant to meet urgent and possible emergency situations.

2. The Consultant shall coordinate his work with the staff of the City's Engineering Departmentor with other sub-consultants as needed.

3. All engineering services shall be in accordance with generally accepted professional engineering practices.

4. The Consultant shall provide engineering services for projects in connection with but not limited to the following:
    a. Storm Assessment
    b. Flooding Documentation
    c. System Performance Assessment
    d. Drainage Analysis
    e. Drainage Master Planning
    f. GIS Database Development
    g. Capital Improvement Alternative Development and Assessment

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

PAYMENT SCHEDULE

Payment for all work authorized by the City's Engineering Department shall be made on a monthly basis. 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. The Owner shall notify the Consultant of any disputed amount within fifteen (15) days from date of the invoice, give reasons for the objection, and promptly pay the undisputed amount.

The maximum amount that will be allowed under this contract (the cap) is $2,250,000.00. Only that work ordered, approved, and accepted will be paid for the City.

Where charges are "not to exceed" a specified sum, the Consultant shall notify the Owner before such sum is exceeded and shall not continue to provide the services beyond such sum unless the Owner authorizes an increase in the sum. If a "not to exceed" sum is broken down into budgets for specific tasks, the task budget may be exceeded without the Owner authorization as long as the total sum is not exceeded. Changes in conditions, including, without limitation, changes in laws or regulations occurring after the budget is established or other circumstances beyond the Consultant's control shall be a basis for equitable adjustments in the budget and schedule.

DELIVERABLE SCHEDULE

The deliverable schedule will be set forth with each work authorization by the City's Development Services Department. The original term of this contract is eighteen months, but can be extended by mutual written approval by both parties.

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this **_____ day of _____, 2006** 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 **Moreno Cardenas, Inc.**, a Texas Corporation, hereinafter referred to as the **"Consultant"**.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for a project known as **"ON-CALL DRAINAGE SERVICES,"** 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
Attachment "E"	Insurance Certificates

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 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"**. Payment to Consultant shall not exceed **THREE MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($3,500,000.00).**

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 prior written amendment to this Agreement, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"**. 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.

> **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 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, or any work order, 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, or a change order to any work order, 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"**. Because of the uncertainties inherent in the services, schedules are estimated and subject to revision unless otherwise specifically described here in.

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 Owner from the Consultant 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 Owner from the Consultant 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 not commence work under this Agreement until the Consultant has obtained sufficient insurance as required herein, 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 or materially altered, except after **thirty (30) consecutive calendar days** written notice of intent to cancel or materially alter 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, agents, 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 apply, and the bodies and officers shall include but not be 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.

6.1.2 DBE GOOD FAITH EFFORTS. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. The offeror shall make good faith efforts, as defined in Appendix

A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

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 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.

7.3 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.

7.4 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.

Documents include, but are not limited to, the Consultant's personnel job descriptions, instructions, plans, drawings, reports, receipts, vouchers, and memoranda pertaining to the services. The Owner shall not have the right to audit or copy proprietary information

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.

7.5 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.

7.6 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.

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

7.8 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.

7.9 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.

7.10 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:	Moreno Cardenas Inc. 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.

7.14 EXECUTORY AUTHORITY WARRANTED. All signatories to this contract warrant their authority to execute this document.

7.15 CLIENT RESPONSIBILITY. Owner shall: (1) provide the Consultant, in writing, all information relating to Owner's requirements for the project; (2) identify to the Consultant, from reasonably available information, the location of subsurface structures, such as pipes, tanks, cables and utilities as best as can be reasonably determined by the City; (3) notify the Consultant of any potential hazardous substances or other health and safety hazard or condition known to the Consultant existing on or near the project site as best as can be reasonably determined by the City; (4) give the Consultant prompt written notice of any suspected deficiency in the services; and (5) with reasonable promptness, provide required approvals and decisions. In the event that the Consultant is requested by the Owner or is required by subpoena to produce documents or give testimony in any action or proceeding to which the Owner is a party and the Consultant is not a party, the Owner shall pay the Consultant for any time and expenses required in connection therewith, including reasonable attorney's fees.

7.16 RIGHT OF ENTRY. Owner grants to the Consultant, and, if the project site is not owned by the Owner, warrants that permission has been granted for, a right of entry from time to time by the Consultant, its employees, agents and subcontractors, upon the project site for the purpose of providing the services. The Owner recognizes that the use of investigative equipment and practices may unavoidably alter the existing site conditions and affect the environment in the area being studied, despite the use of reasonable care.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

Joyce A. Wilson

Joyce Wilson, City Manager

CONSULTANT:

Robert Moreno, P.E.
Vice-President

(Signatures continue on following page)

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Rick Conner, P.E.
City Engineer

ATTACHMENT "A"
SCOPE OF SERVICES AND PROJECT BUDGET

The Consultant shall perform professional services relevant to the project known as **"ON-CALL DRAINAGE SERVICES",** herein referred to as the "Project", in accordance with the terms and conditions set forth herein. The scope of services, the time schedule, and the charges are to be set forth in a written work order in accordance with this agreement. If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

SCOPE OF SERVICES

The Consultant shall provide traditional engineering services for the City of El Paso's Engineering Department on an as-needed basis. The City's Engineering Department shall provide authorizations to the Consultant for providing engineering services for the Project. Each authorization shall be in writing and shall include a Basic Fee, Scope of Services, and Schedule of Deliverables to be provided by the Consultant.

The Owner's Project Manager shall provide the Consultant a description of the desired services and schedule for each specific project. The Consultant shall submit a detailed proposal for the scope and cost of services delineating the man-hours required by the Consultant or its sub-consultants. The Consultant shall receive written work authorization from the Owner before proceeding with the specific project. The work authorization may consist of tasks within the basic services as described in Attachment "C".

ATTACHMENT "B"

Moreno Cardenas Inc.
consulting engineers

Attachment "B"

HOURLY BILLING RATES AND REIMBURSABLE COSTS

Re: City of El Paso Storm 2006 Infrastructure Projects

Classification	Hourly Rates
Principal Engineer	$154.50
Senior Project Manager	$154.50
Engineer V	$94.27
Engineer IV	$80.34
Engineer III	$63.44
Engineer I/II	$51.50
Designer	$72.38
Engineering Technician III	$47.10
Engineering Technician II	$36.05
Engineering Technician I	$31.93
Sr. Resident Project Representative	$85.00
Resident Project Representative	$65.33
Expert Witness Preparation and Testimony	$250.00
Administrative Manager	$51.20
Administrative Assistant	$47.10
Typist	$30.90
Runner/Clerk	$25.75

Reimbursable Costs

Mileage:	$0.40/mile
Sub-consultants:	Cost x 1.05
All Direct Project Costs:	Cost x 1.10

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

For the Project known as "**ON-CALL DRAINAGE SERVICES,**" hereinafter referred to as the Project, The Consultant will provide the Basic and Additional Services as noted herein upon receipt of written direction from the City's Engineering Department.

BASIC SERVICES

1. Provide engineering services as needed by the Engineering Department. These services include, but are not limited to, Geographic Information System (GIS) data acquisition, Field Survey and Reconnaissance, structure assessments, storm evaluation, hydrologic analyses, hydraulic capacity analyses, system performance assessments, and reporting. Possible third-party services consisting of geotechnical investigations and testing and electrical and mechanical engineering studies and analysis may also be required. The City's Engineering Department will issue a work authorization to the Consultant for each Project, which will sometimes require a very quick response by the Consultant to meet urgent and possible emergency situations.

2. The Consultant shall coordinate his work with the staff of the City's Engineering Department or with other sub-consultants as needed.

3. All engineering services shall be in accordance with generally accepted professional engineering practices.

4. The Consultant shall provide engineering services for projects in connection with but not limited to the following:
    a. Storm Assessment
    b. Flooding Documentation
    c. System Performance Assessment
    d. Drainage Analysis
    e. Drainage Master Planning
    f. GIS Database Development
    g. Capital Improvement Alternative Development and Assessment

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

PAYMENT SCHEDULE

Payment for all work authorized by the City's Engineering Department shall be made on a monthly basis. 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. The Owner shall notify the Consultant of any disputed amount within fifteen (15) days from date of the invoice, give reasons for the objection, and promptly pay the undisputed amount.

The maximum amount that will be allowed under this contract (the cap) is $3,500,000.00. Only that work ordered, approved, and accepted will be paid for the City.

Where charges are "not to exceed" a specified sum, the Consultant shall notify the Owner before such sum is exceeded and shall not continue to provide the services beyond such sum unless the Owner authorizes an increase in the sum. If a "not to exceed" sum is broken down into budgets for specific tasks, the task budget may be exceeded without the Owner authorization as long as the total sum is not exceeded. Changes in conditions, including, without limitation, changes in laws or regulations occurring after the budget is established or other circumstances beyond the Consultant's control shall be a basis for equitable adjustments in the budget and schedule.

DELIVERABLE SCHEDULE

The deliverable schedule will be set forth with each work authorization by the City's Engineering Department. The original term of this contract is eighteen months, but can be extended by mutual written approval by both parties.

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this _____ **day of** _____**, 2006** 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 **Huitt-Zollars**, a Texas Corporation, hereinafter referred to as the **"Consultant"**.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for a project known as **"ON-CALL DRAINAGE SERVICES**," 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
Attachment "E"	Insurance Certificates

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 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"**. Payment to Consultant shall not exceed **ONE MILLION TWO HUNDRED FIFTY THOUSAND and 00/100 DOLLARS ($1,250,000.00).**

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 prior written amendment to this Agreement, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"**. 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.

> **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 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, or any work order, 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, or a change order to any work order, 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"**. Because of the uncertainties inherent in the services, schedules are estimated and subject to revision unless otherwise specifically described here in.

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 Owner from the Consultant 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 Owner from the Consultant 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 not commence work under this Agreement until the Consultant has obtained sufficient insurance as required herein, 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 or materially altered, except after **thirty (30) consecutive calendar days** written notice of intent to cancel or materially alter 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, agents, 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 apply, and the bodies and officers shall include but not be 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.

6.1.2 DBE GOOD FAITH EFFORTS. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. The offeror shall make good faith efforts, as defined in Appendix

A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

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 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.

7.3 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.

7.4 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.

Documents include, but are not limited to, the Consultant's personnel job descriptions, instructions, plans, drawings, reports, receipts, vouchers, and memoranda pertaining to the services. The Owner shall not have the right to audit or copy proprietary information

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.

7.5 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.

7.6 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.

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

7.8 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.

7.9 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.

7.10 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:	Huitt-Zollars 5822 Cromo Drive, Ste. 210 El Paso, Texas 79912

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.

7.14 EXECUTORY AUTHORITY WARRANTED. All signatories to this contract warrant their authority to execute this document.

7.15 CLIENT RESPONSIBILITY. Owner shall: (1) provide the Consultant, in writing, all information relating to Owner's requirements for the project; (2) identify to the Consultant, from reasonably available information, the location of subsurface structures, such as pipes, tanks, cables and utilities as best as can be reasonably determined by the City; (3) notify the Consultant of any potential hazardous substances or other health and safety hazard or condition known to the Consultant existing on or near the project site as best as can be reasonably determined by the City; (4) give the Consultant prompt written notice of any suspected deficiency in the services; and (5) with reasonable promptness, provide required approvals and decisions. In the event that the Consultant is requested by the Owner or is required by subpoena to produce documents or give testimony in any action or proceeding to which the Owner is a party and the Consultant is not a party, the Owner shall pay the Consultant for any time and expenses required in connection therewith, including reasonable attorney's fees.

7.16 RIGHT OF ENTRY. Owner grants to the Consultant, and, if the project site is not owned by the Owner, warrants that permission has been granted for, a right of entry from time to time by the Consultant, its employees, agents and subcontractors, upon the project site for the purpose of providing the services. The Owner recognizes that the use of investigative equipment and practices may unavoidably alter the existing site conditions and affect the environment in the area being studied, despite the use of reasonable care.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

Joyce Wilson, City Manager

CONSULTANT:

for Jose L. Rodarte
Vice-President

(Signatures continue on following page)

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Rick Conner, P.E.
City Engineer

ATTACHMENT "A"
SCOPE OF SERVICES AND PROJECT BUDGET

The Consultant shall perform professional services relevant to the project known as **"ON-CALL DRAINAGE SERVICES,"** herein referred to as the "Project", in accordance with the terms and conditions set forth herein. The scope of services, the time schedule, and the charges are to be set forth in a written work order in accordance with this agreement. If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

SCOPE OF SERVICES

The Consultant shall provide traditional engineering services for the City of El Paso's Engineering Department on an as-needed basis. The City's Engineering Department shall provide authorizations to the Consultant for providing engineering services for the Project. Each authorization shall be in writing and shall include a Basic Fee, Scope of Services, and Schedule of Deliverables to be provided by the Consultant.

The Owner's Project Manager shall provide the Consultant a description of the desired services and schedule for each specific project. The Consultant shall submit a detailed proposal for the scope and cost of services delineating the man-hours required by the Consultant or its sub-consultants. The Consultant shall receive written work authorization from the Owner before proceeding with the specific project. The work authorization may consist of tasks within the basic services as described in Attachment "C".

ATTACHMENT "B"

Attachment "B"

HUITT-ZOLLARS

EL PASO

2006

Hourly Rate Sheet

Time Sheet Staff Type	Engineering / Surveying	
PIC	Principal-In-Charge	$160.00
SPM	Sr. Project Manager	$140.00
PM	Project Manager	$130.00
SCE	Sr. Civil Engineer	$120.00
CE	Civil Engineer	$100.00
EI	Engineer Intern	$85.00
D	Designer	$85.00
CT	CADD Technician	$65.00
	Construction	
CM	Construction Manager	$110.00
RPR	Resident Project Representative	$85.00
	Administrative	
PRO	Project Support	$55.00

TimeSheet Staff Type	Survey	
SM	Survey Manager	$120.00
PS	Project Surveyor	$100.00
SI	Surveyor Intern	$80.00
ST	Survey Technician	$70.00
	Survey Crews	
SC1	1-Person Survey Crew	$60.00
SC2	2-Person Survey Crew	$110.00
SC3	3-Person Survey Crew	$130.00
GC1	1-Person Survey Crew - GPS	$100.00
GC2	2-Person Survey Crew - GPS	$170.00
GC3	3-Person Survey Crew - GPS	$190.00
	Reimbursabel Expenses	
	Consultants	Cost + 10%
	Other Direct Costs	Cost + 10%
	Mileage	$0.36/mile

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

For the Project known as **"ON-CALL DRAINAGE SERVICES,"** hereinafter referred to as the Project, The Consultant will provide the Basic and Additional Services as noted herein upon receipt of written direction from the City's Engineering Department.

BASIC SERVICES

1. Provide engineering services as needed by the Engineering Department. These services include, but are not limited to, Geographic Information System (GIS) data acquisition, Field Survey and Reconnaissance, structure assessments, storm evaluation, hydrologic analyses, hydraulic capacity analyses, system performance assessments, and reporting. Possible third-party services consisting of geotechnical investigations and testing and electrical and mechanical engineering studies and analysis may also be required. The City's Engineering Department will issue a work authorization to the Consultant for each Project, which will sometimes require a very quick response by the Consultant to meet urgent and possible emergency situations.

2. The Consultant shall coordinate his work with the staff of the City's Engineering Department or with other sub-consultants as needed.

3. All engineering services shall be in accordance with generally accepted professional engineering practices.

4. The Consultant shall provide engineering services for projects in connection with but not limited to the following:
    a. Storm Assessment
    b. Flooding Documentation
    c. System Performance Assessment
    d. Drainage Analysis
    e. Drainage Master Planning
    f. GIS Database Development
    g. Capital Improvement Alternative Development and Assessment

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

PAYMENT SCHEDULE

Payment for all work authorized by the City's Engineering Department shall be made on a monthly basis. 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. The Owner shall notify the Consultant of any disputed amount within fifteen (15) days from date of the invoice, give reasons for the objection, and promptly pay the undisputed amount.

The maximum amount that will be allowed under this contract (the cap) is $1,250,000.00. Only that work ordered, approved, and accepted will be paid for the City.

Where charges are "not to exceed" a specified sum, the Consultant shall notify the Owner before such sum is exceeded and shall not continue to provide the services beyond such sum unless the Owner authorizes an increase in the sum. If a "not to exceed" sum is broken down into budgets for specific tasks, the task budget may be exceeded without the Owner authorization as long as the total sum is not exceeded. Changes in conditions, including, without limitation, changes in laws or regulations occurring after the budget is established or other circumstances beyond the Consultant's control shall be a basis for equitable adjustments in the budget and schedule.

DELIVERABLE SCHEDULE

The deliverable schedule will be set forth with each work authorization by the City's Engineering Department. The original term of this contract is eighteen months, but can be extended by mutual written approval by both parties.

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this _____ **day of** _____**, 2006** 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 **Frank X. Spencer & Associates, Inc.**, a Texas Corporation, hereinafter referred to as the **"Consultant"**.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for a project known as **"ON-CALL DRAINAGE SERVICES**," 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
Attachment "E"	Insurance Certificates

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 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".** Payment to Consultant shall not exceed **ONE MILLION AND 00/100 DOLLARS ($1,000,000.00).**

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 prior written amendment to this Agreement, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"**. 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.

> **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 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, or any work order, 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, or a change order to any work order, 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"**. Because of the uncertainties inherent in the services, schedules are estimated and subject to revision unless otherwise specifically described here in.

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 Owner from the Consultant 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 Owner from the Consultant 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 not commence work under this Agreement until the Consultant has obtained sufficient insurance as required herein, 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 or materially altered, except after **thirty (30) consecutive calendar days** written notice of intent to cancel or materially alter 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, agents, 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 apply, and the bodies and officers shall include but not be 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.

6.1.2 DBE GOOD FAITH EFFORTS. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

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 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.

7.3 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.

7.4 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.

Documents include, but are not limited to, the Consultant's personnel job descriptions, instructions, plans, drawings, reports, receipts, vouchers, and memoranda pertaining to the services. The Owner shall not have the right to audit or copy proprietary information

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.

7.5 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.

7.6 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.

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

7.8 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.

7.9 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.

7.10 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:	Frank X. Spencer & Associates, Inc. 1130 Montana Ave. El Paso, Texas 79902

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.

7.14 EXECUTORY AUTHORITY WARRANTED. All signatories to this contract warrant their authority to execute this document.

7.15 CLIENT RESPONSIBILITY. Owner shall: (1) provide the Consultant, in writing, all information relating to Owner's requirements for the project; (2) identify to the Consultant, from reasonably available information, the location of subsurface structures, such as pipes, tanks, cables and utilities as best as can be reasonably determined by the City; (3) notify the Consultant of any potential hazardous substances or other health and safety hazard or condition known to the Consultant existing on or near the project site as best as can be reasonably determined by the City; (4) give the Consultant prompt written notice of any suspected deficiency in the services; and (5) with reasonable promptness, provide required approvals and decisions. In the event that the Consultant is requested by the Owner or is required by subpoena to produce documents or give testimony in any action or proceeding to which the Owner is a party and the Consultant is not a party, the Owner shall pay the Consultant for any time and expenses required in connection therewith, including reasonable attorney's fees.

7.16 RIGHT OF ENTRY. Owner grants to the Consultant, and, if the project site is not owned by the Owner, warrants that permission has been granted for, a right of entry from time to time by the Consultant, its employees, agents and subcontractors, upon the project site for the purpose of providing the services. The Owner recognizes that the use of investigative equipment and practices may unavoidably alter the existing site conditions and affect the environment in the area being studied, despite the use of reasonable care.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

Joyce A. Wilson

Joyce Wilson, City Manager

CONSULTANT:

Victor H. Enciso
Principal

(Signatures continue on following page)

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Rick Conner, P.E.
City Engineer

ATTACHMENT "A"
SCOPE OF SERVICES AND PROJECT BUDGET

The Consultant shall perform professional services relevant to the project known as **"ON-CALL DRAINAGE SERVICES,"** herein referred to as the "Project", in accordance with the terms and conditions set forth herein. The scope of services, the time schedule, and the charges are to be set forth in a written work order in accordance with this agreement. If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

SCOPE OF SERVICES

The Consultant shall provide traditional engineering services for the City of El Paso's Engineering Department on an as-needed basis. The City's Engineering Department shall provide authorizations to the Consultant for providing engineering services for the Project. Each authorization shall be in writing and shall include a Basic Fee, Scope of Services, and Schedule of Deliverables to be provided by the Consultant.

The Owner's Project Manager shall provide the Consultant a description of the desired services and schedule for each specific project. The Consultant shall submit a detailed proposal for the scope and cost of services delineating the man-hours required by the Consultant or its sub-consultants. The Consultant shall receive written work authorization from the Owner before proceeding with the specific project. The work authorization may consist of tasks within the basic services as described in Attachment "C".

ATTACHMENT "B"

Attachment "B"

Frank X. Spencer & Assoc., Inc.
1130 Montana – El Paso, TX 79902

RATE SCHEDULE FOR ENGINEERING SERVICES

PROFESSIONAL ENGINEER (PRINCIPAL)	$ 142.00 PER HOUR
PROFESSIONAL ENGINEER I	$ 110.00 PER HOUR
PROFESSIONAL ENGINEER II	$ 84.00 PER HOUR
PROFESSIONAL ENGINEER III	$ 79.00 PER HOUR
ENGINEER IN TRAINING I	$ 71.00 PER HOUR
ENGINEER IN TRAINING II	$ 65.00 PER HOUR
ENGINEER IN TRAINING III	$ 56.00 PER HOUR
*CONSTRUCTION OBSERVATION	$ 63.00 PER HOUR
**CAD OPERATOR I	$ 52.00 PER HOUR
CAD OPERATOR II	$ 42.00 PER HOUR
CAD OPERATOR III	$ 35.00 PER HOUR
CLERICAL	$ 32.00 PER HOUR
WORD PROCESSOR WITH OPERATOR	$ 37.00 PER HOUR
DEPOSITION/COURT APPEARANCES	$1,575.00 A DAY/PLUSEXPENSES
BLUELINE PRINTS	$ 0.63 PER SQ FT
XEROX COPIES	$ 0.32 PER COPY

All time over eight (8) hours per day and/or forty (40) hours in our regular workweek shall be charged for at the above rate multiplied by 1.42.

*If Principal or Professional Engineer is provided for this service, use Principal or Professional Engineer charges.

** CAD OPERATOR I is the equivalent of an EGINEERING TECHNICIAN.

Engineering service fees include personnel, transportation and equipment, except as noted. Services by other such as reproduction, printing and testing processed through this

office are not included in the above fees and will be billed at cost plus 15% (Minimum billing – ½ hour.)

Hourly rate charges may escalate annually on the anniversary date.

RATE SCHEDULE FOR SURVEING SERVICES

REGISTERED PROFESSIONAL LAND SURVEYOR	$ 116.00 PER HOUR
SURVEY TECHNICIAN I	$ 66.00 PER HOUR
SURVEY TECHNICIAN II	$ 61.00 PER HOUR
SURVEY TECHNICIAN III	$ 44.00 PER HOUR
RECORD RESEARCH	$ 61.00 PER HOUR
TWO MAN SURVEY CREW	$ 108.00 PER HOUR
THREE MAN SURVEY CREW	$ 135.00 PER HOUR
FOUR MAN SURVEY CREW	$ 166.00 PER HOUR
FIVE MAN SURVEY CREW	$ 190.00 PER HOUR
GPS SURVEY EQUIPMENT	$ 275.00 PER DAY
XEROX COPIES	$ 0.32 PER COPY
MILEAGE TO AND FROM SURVEY LOCATION	$ 0.485 PER MILE
OVERNIGHT STAY AND MEALS (PER DIEM)	$ 110.00 PER MAN/PER DAY

All time over 8 hours per day and/or 40 hours in our regular workweek shall be charged for at the above rate multiplied by 1.42.

These hourly rates include instruments, equipment, tools, personnel transportation and supplies, including stakes, flagging and necessary equipment to perform the usual operations in connections with pipeline right-of-way surveys, pipeline construction, well locations, exploration well construction staking and boundary surveys. Blueline prints and Xerox copies are included. HOWEVER, IF ADDITIONAL COPIES ARE REQUIRED IN EXCESS OF THREE COPIES FOR EACH PLAT OR INSTRUMENT, THESE COPIES WILL BE CHARGED AT THE RATES INDICATED.

Licon Engineering Company, Inc.

I. GEOTECHNICAL ENGINEERING RATES

Description	Unit Rate
Project Manager (e.g.: G. Licon)	$125.00 per hour
Discipline Leader (e.g.: M. Licon)	$70.00 per hour
Geotechnical Professional (e.g.: B. Lopez)	$60.00 per hour
Laboratory Supervisor (e.g.: S. Dell)	$45.00 per hour
Field/Laboratory Technician	$25.00 to $35.00 per hour
Drafting/Graphics	$30.00 per hour
Clerical	$30.00 per hour
Expenses	At cost plus 10 percent

II. GEOTECHNICAL EXPLORATION RATES

Description	Unit Rate
Soil drilling with SPT sampling at 5-ft intervals	$10.00 per lineal foot
Soil drilling on dense and hard formations (includes SPT sampling)	$16.00 per lineal foot
Rock coring	$25.00 per lineal foot
Drilling Rig Mobilization	$150.00 per day
Support Vehicle	$45.00 per day
Drilling rig stand-by time	$130.00 per hour

III. CONSTRUCTION MATERIALS TESTING RATES

A. Field & Lab Soils Testing

		Unit Rate	ASTM Std. Designation
1	Particle Size Analysis	$30.00 ea.	D-422
2	Shrinkage Factor	$40.00 ea.	D-427
3	Moisture-Density of Soil Cement	$160.00 ea.	D-558
4	Wetting and Drying of Soil Cement (requires ASTM D-559)	$100.00 ea.	D-559
5	Freezing and Thawing of Soil Cement (requires ASTM D-559)	$100.00 ea.	D-560
6	Compaction Characteristics by Standard Effort	$100.00 ea.	D-698
7	Specific Gravity of Soils	$110.00 ea.	D-854
8	Material Finer that #200 Sieve	$25.00 ea.	D-1140
9	Density and Unit Weight by Sand Cone	$30.00 ea.	D-1556
10	Compaction Characteristics by Modified Effort	$100.00 ea.	D-1557
11	California Bearing Ratio (includes either ASTM D-1557 or D-698)	$300.00 ea.	D-1883
12	Unconfined Compressive Strength	$75.00 ea.	D-2166

13 Water Content of Soil	$5.00 ea.	D-2216
14 Permeability by Constant Head	$375.00	D-2434
15 Density and Unit Weight by Nuclear Gauge	$25.00 ea.	D-2922 & D-3017
16 Direct Shear Test in Consolidated Drained Conditions	$120.00 ea.	D-3080
17 Liquid Limits and Plastic Limits and Plasticity Index	$45.00 ea.	D-4318

Urban Oasis Landscape Architecture

1. Landscape Architect	$ 86.55/hr.
2. L.S. Architect Intern III	$ 50.00/hr.
3. L.S. Architect Intern II	$ 38.94/hr.
4. L.S. Architect Intern I	$ 31.74/hr.
5. Construction Inspector	$ 30.30/hr.
6. Expert Witness	$ 750.00/Day
7. Mileage	$ 0.33 per/mi
8. Blueprints	$ 1.10 Each
9. Photocopies	$ 0.10 Each

Direct Expenses

Reimbursement for direct expenses, as listed below, incurred in connection with services, will be at cost plus ten percent for items such as:

1. Maps, photographs, postage, toll telephone, special printing, equipment rental, and special supplies related to the services.
2. Consultants, surveying, civil engineers, EMP engineers, soils engineers, ADA consultants, Construction Estimator, contractors, and other outside services.

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

For the Project known as **"ON-CALL DRAINAGE SERVICES,"** hereinafter referred to as the Project, The Consultant will provide the Basic and Additional Services as noted herein upon receipt of written direction from the City's Engineering Department.

BASIC SERVICES

1. Provide engineering services as needed by the Engineering Department. These services include, but are not limited to, Geographic Information System (GIS) data acquisition, Field Survey and Reconnaissance, structure assessments, storm evaluation, hydrologic analyses, hydraulic capacity analyses, system performance assessments, and reporting. Possible third-party services consisting of geotechnical investigations and testing and electrical and mechanical engineering studies and analysis may also be required. The City's Engineering Department will issue a work authorization to the Consultant for each Project, which will sometimes require a very quick response by the Consultant to meet urgent and possible emergency situations.

2. The Consultant shall coordinate his work with the staff of the City's Engineering Department or with other sub-consultants as needed.

3. All engineering services shall be in accordance with generally accepted professional engineering practices.

4. The Consultant shall provide engineering services for projects in connection with but not limited to the following:
    a. Storm Assessment
    b. Flooding Documentation
    c. System Performance Assessment
    d. Drainage Analysis
    e. Drainage Master Planning
    f. GIS Database Development
    g. Capital Improvement Alternative Development and Assessment

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

PAYMENT SCHEDULE

Payment for all work authorized by the City's Engineering Department shall be made on a monthly basis. 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. The Owner shall notify the Consultant of any disputed amount within fifteen (15) days from date of the invoice, give reasons for the objection, and promptly pay the undisputed amount.

The maximum amount that will be allowed under this contract (the cap) is $1,000,000.00. Only that work ordered, approved, and accepted will be paid for the City.

Where charges are "not to exceed" a specified sum, the Consultant shall notify the Owner before such sum is exceeded and shall not continue to provide the services beyond such sum unless the Owner authorizes an increase in the sum. If a "not to exceed" sum is broken down into budgets for specific tasks, the task budget may be exceeded without the Owner authorization as long as the total sum is not exceeded. Changes in conditions, including, without limitation, changes in laws or regulations occurring after the budget is established or other circumstances beyond the Consultant's control shall be a basis for equitable adjustments in the budget and schedule.

DELIVERABLE SCHEDULE

The deliverable schedule will be set forth with each work authorization by the City's Engineering Department. The original term of this contract is eighteen months, but can be extended by mutual written approval by both parties.

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this _____ **day of** _____**, 2006** 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 **Dorado Engineering, Inc.**, a Texas Corporation, hereinafter referred to as the **"Consultant"**.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for a project known as **"ON-CALL DRAINAGE SERVICES,"** 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
Attachment "E"	Insurance Certificates

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 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"**. Payment to Consultant shall not exceed **TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($250,000.00).**

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 prior written amendment to this Agreement, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"**. 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.

> **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 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, or any work order, 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, or a change order to any work order, 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"**. Because of the uncertainties inherent in the services, schedules are estimated and subject to revision unless otherwise specifically described here in.

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 Owner from the Consultant 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 Owner from the Consultant 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 not commence work under this Agreement until the Consultant has obtained sufficient insurance as required herein, 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 or materially altered, except after **thirty (30) consecutive calendar days** written notice of intent to cancel or materially alter 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, agents, 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 apply, and the bodies and officers shall include but not be 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.

6.1.2 DBE GOOD FAITH EFFORTS. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

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 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.

7.3 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.

7.4 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.

Documents include, but are not limited to, the Consultant's personnel job descriptions, instructions, plans, drawings, reports, receipts, vouchers, and memoranda pertaining to the services. The Owner shall not have the right to audit or copy proprietary information

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.

7.5 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.

7.6 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.

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

7.8 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.

7.9 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.

7.10 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:	Dorado Engineering, Inc. Fermin Dorado P.E. 2717 E. Yandell Street 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.

7.14 EXECUTORY AUTHORITY WARRANTED. All signatories to this contract warrant their authority to execute this document.

7.15 CLIENT RESPONSIBILITY. Owner shall: (1) provide the Consultant, in writing, all information relating to Owner's requirements for the project; (2) identify to the Consultant, from reasonably available information, the location of subsurface structures, such as pipes, tanks, cables and utilities as best as can be reasonably determined by the City; (3) notify the Consultant of any potential hazardous substances or other health and safety hazard or condition known to the Consultant existing on or near the project site as best as can be reasonably determined by the City; (4) give the Consultant prompt written notice of any suspected deficiency in the services; and (5) with reasonable promptness, provide required approvals and decisions. In the event that the Consultant is requested by the Owner or is required by subpoena to produce documents or give testimony in any action or proceeding to which the Owner is a party and the Consultant is not a party, the Owner shall pay the Consultant for any time and expenses required in connection therewith, including reasonable attorney's fees.

7.16 RIGHT OF ENTRY. Owner grants to the Consultant, and, if the project site is not owned by the Owner, warrants that permission has been granted for, a right of entry from time to time by the Consultant, its employees, agents and subcontractors, upon the project site for the purpose of providing the services. The Owner recognizes that the use of investigative equipment and practices may unavoidably alter the existing site conditions and affect the environment in the area being studied, despite the use of reasonable care.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

Joyce A. Wilson

Joyce Wilson, City Manager

CONSULTANT:

Fermin Dorado

Fermin Dorado, P.E.
Principal

(Signatures continue on following page)

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Rick Conner, P.E.
City Engineer

ATTACHMENT "A"
SCOPE OF SERVICES AND PROJECT BUDGET

The Consultant shall perform professional services relevant to the project known as **"ON-CALL DRAINAGE SERVICES,"** herein referred to as the "Project", in accordance with the terms and conditions set forth herein. The scope of services, the time schedule, and the charges are to be set forth in a written work order in accordance with this agreement. If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

SCOPE OF SERVICES

The Consultant shall provide traditional engineering services for the City of El Paso's Engineering Department on an as-needed basis. The City's Engineering Department shall provide authorizations to the Consultant for providing engineering services for the Project. Each authorization shall be in writing and shall include a Basic Fee, Scope of Services, and Schedule of Deliverables to be provided by the Consultant.

The Owner's Project Manager shall provide the Consultant a description of the desired services and schedule for each specific project. The Consultant shall submit a detailed proposal for the scope and cost of services delineating the man-hours required by the Consultant or its sub-consultants. The Consultant shall receive written work authorization from the Owner before proceeding with the specific project. The work authorization may consist of tasks within the basic services as described in Attachment "C".

Attachment "B"

DORADO ENGINEERING, INC.

2717 E. Yandell Street, El Paso, TX 79903 (915) 562-0002 Fax (915) 562-7743

October 26, 2006

City of El Paso
El Paso, TX 79901

RE: Northgate Diversion Channel

HOURLY RATE

Principal Engineer	$141/hr.
Project Manager	$110/hr.
Project Engineer	$95/hr.
Field Engineer	$75/hr.
Two-Man Survey Crew	$85/hr.
Three-Man Survey Crew	$99/hr.
Engineer Technician	$60/hr.
Clerical	$45/hr.
Expert Eyewitness	$150/hr.
Construction Inspection	$60/hr.
Traffic Engineer	$110/hr.
Traffic Technician	$60/hr.
Community Involvement Representative	$90/hr.
Computer Information Technician	$80/hr.

Sincerely,

Fermin Dorado, P.E.

October 20, 2006
Dorado Engineering, Inc.
City of El Paso – Storm 2006 Drainage Repairs /Improvement Projects
Proposal No. PGCQC06-094

construction quality control
testing and engineering

Jaime Rojas, dba
6802 Commerce, Unit A
El Paso, Texas 79915
Ph. (915) 771-7766
Fax (915) 771-7786

EXHIBIT A
GEOTECHNICAL AND MATERIALS TESTING SERVICES
SCHEDULE OF UNIT RATE FEES
Effective Period – Year 2006 – 2007

I. Geotechnical Field Investigation and Professional Services

Item Description	Contract Unit Rates* 2006	2007
1.) Soil Boring with Shelby Tube and/or S.S. Sampling	$13.00/ft.	$13.50/ft.
2.) Soil Borings with Sampling from Auger Flights	$8.50/ft.	$8.85/ft.
3.) NW Rock Coring and Sampling (does not include bit costs)	$45.00 - $70.00/ft.	$46.80 - $72.80/ft.
4.) Drill Crew Mobilization, within city limits	$250.00/trip	$260.00/trip
5.) Per diem, per person	$80.00/day	$83.20/day
6.) Material Costs and Equipment Rental, if required	@ Cost + 10%	@ Cost + 10%
7.) Support Vehicle, within city limits	$35.00/day	$36.40/day
8.) Project Setup	$65.00/ea.	$67.60/ea.
9.) Clerical and Administrative Support	$35.00/hr.	$36.40/hr.
10.) Drafting Services	$40.00/hr.	$41.60/hr.
11.) Sr. Technician	$42.00/hr.	$43.68
12.) Laboratory and Field Manager	$50.00/hr.	$52.00/hr.
13.) Intern Engineer (EIT)	$40.00/hr.	$41.60/hr.
14.) Project Manager/Engineer	$60.00/hr.	$62.40/hr.
15.) Principal Engineer/ Sr. Engineer	$85.00/hr.	$88.40/hr.
16.) Report Printing and Reproduction	$50.00/ea.	$52.00/ea.

*** Note: (1) – Contract rates for 2007 include a 4 % escalation rate increase**
(2) – Contract rates were established with a base labor rate multiplier of 2.5
- **Profit Rate – 10%**

(3) Overtime charges beyond normal working hours and holidays shall be billed at 1.3 times the normal rates
(4) Outside Services and reimbursables will be billed at Cost + 10%

II. Laboratory and Field Construction Materials Testing Services

Item Description	Contract Unit Rates* 2006	2007
1.) Moisture/Density Relationship (Methods: ASTM D698/1557); including PI, Sieve Analysis, 1 hr. of tech-time on site, trip charge, reporting	$300.00/ea.	$312.00/ea.
2.) Atterberg Limits Test – Plasticity Index	$35.00/ea.	$36.40/ea.
3.) Soil Sieve Analysis	$30.00/ea.	$31.20/ea.
4.) Soil Moisture Content Test, Method: ASTM D2216	$8.00/ea.	$8.32/ea.
5.) Field Density Tests – 3 min. per Trip (Method: Nuclear Density Gage); includes 1 hr. of tech-time, trip charge and reporting	$38.00/ea.	$39.52/ea.
6.) Technician Time and Stand by time	$30.00/hr.	$31.20/hr.
7.) Sr. Technician Time and Stand by time	$42.00/hr.	$43.68/hr.
8.) Concrete Compressive Strength Testing: 4 concrete cylinders per set (Includes: 1 hr. tech-time, trip charge, slump, temperature, pick-up charge and reporting)	$180.00/set	$187.20/set

construction quality control
testing and engineering

Jaime Rojas, dba
6802 Commerce, Unit A
El Paso, Texas 79915
Ph. (915) 771-7766
Fax (915) 771-7786

9.) Grout Prisms Compressive Strength Testing: 4 prisms per set (Includes: 1 hr. tech-time, trip charge, temperature, pick-up charge and reporting)	$180.00/set	$187.20/set
10.) Mortar Cubes Compressive Strength Testing: 3 cubes per set (Includes: 1 hr. tech time, trip charge, temperature, pick-up charge and reporting)	$170.00/set	$176.80/set
11.) Air Content and Additional Slump Tests, (does not include additional tech-time stand by time, if required)	$15.00/ea.	$15.60/ea.
12.) Vehicle Trip Charge, within city limits	$35.00/trip	$36.40/trip
13.) Cement Stabilized Backfill Testing	$34.00/hr.	$35.40/hr.
14.) Asphaltic-Concrete Extraction, Gradation, Bitumen Content, Marshall Stability & Flow, trip charge and reporting	$245.00/ea.	$254.80/ea.
15.) Ashpaltic-Concrete Maximum Theoretical Specific Gravity Test (Rice)	$85.00/ea.	$88.40/ea.
16.) Coring of Asphaltic Concrete, Determine Thickness & Density, 3 Cores Min., trip charge and reporting	$125.00/ea.	$130.00/ea.
17.) Soil Consolidation Test, Method: ASTM D2434	$420.00/ea.	$436.80/ea.
18.) One Dimensional Swell Test, Method ASTM D4546	$142.00/ea.	$147.68/ea.
19.) Permeability Test, Constant Head, Method: ASTM D2434	$138.00/ea.	$143.52/ea.
20.) Permeability Test, Flexible Wall (Triaxial), Method: ASTM D5084	$400.00/ea.	$416.00/ea.
21.) Laboratory Soil pH and Electrical Resistivity Test	$115.00/ea.	$119.60/ea.
22.) Laboratory California Bearing Ratio Test, 2 pt.	$250.00/ea.	$260.00/ea.

Note:
(1) Overtime charges beyond normal working hours and holidays shall be billed at 1.3 times the normal rates
(2) Outside Services and reimbursables will be billed at Cost + 10%

III. Technical Professional – Non-Traditional Services

The following tests are considered relatively non-traditional tests. Fees for these tests will be provided based on our rates established above as requested or required for specific projects based on our review of the project site conditions.

1.) Soil Percolation Tests
2.) Field California Bearing Ratio Tests or Plate Bearing Tests
3.) Dynamic Cone Penetrometer (DCP) Tests
4.) Field Soil Resistivity Tests
5.) Field Permeability Tests
6.) Seismic Refraction and Ground Penetrating Radar Evaluations
7.) Deep Foundation Drilling and Placement Observation and Inspections
8.) Pier or Auger Cast Pile Load Test Observations and Evaluation
9.) Grout Flow Testing
10.)Testing and Observation of Engineering Fill Materials

*Charges will be assessed only for actual tests performed and services rendered. This proposal does not include services conducted on Sundays, Saturdays or holidays or not within regular working hours (8:00 a.m. to 5:00 p.m.) from Monday through Friday. Our services on Sundays, Saturdays holidays, or not within working hours will be invoiced at 1.5 times the unit rates presented within this fee schedule.

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

For the Project known as **"ON-CALL DRAINAGE SERVICES,"** hereinafter referred to as the Project, The Consultant will provide the Basic and Additional Services as noted herein upon receipt of written direction from the City's Engineering Department.

BASIC SERVICES

1. Provide engineering services as needed by the Engineering Department. These services include, but are not limited to, Geographic Information System (GIS) data acquisition, Field Survey and Reconnaissance, structure assessments, storm evaluation, hydrologic analyses, hydraulic capacity analyses, system performance assessments, and reporting. Possible third-party services consisting of geotechnical investigations and testing and electrical and mechanical engineering studies and analysis may also be required. The City's Engineering Department will issue a work authorization to the Consultant for each Project, which will sometimes require a very quick response by the Consultant to meet urgent and possible emergency situations.

2. The Consultant shall coordinate his work with the staff of the City's Engineering Department or with other sub-consultants as needed.

3. All engineering services shall be in accordance with generally accepted professional engineering practices.

4. The Consultant shall provide engineering services for projects in connection with but not limited to the following:
    a. Storm Assessment
    b. Flooding Documentation
    c. System Performance Assessment
    d. Drainage Analysis
    e. Drainage Master Planning
    f. GIS Database Development
    g. Capital Improvement Alternative Development and Assessment

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

PAYMENT SCHEDULE

Payment for all work authorized by the City's Engineering Department shall be made on a monthly basis. 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. The Owner shall notify the Consultant of any disputed amount within fifteen (15) days from date of the invoice, give reasons for the objection, and promptly pay the undisputed amount.

The maximum amount that will be allowed under this contract (the cap) is $250,000.00. Only that work ordered, approved, and accepted will be paid for the City.

Where charges are "not to exceed" a specified sum, the Consultant shall notify the Owner before such sum is exceeded and shall not continue to provide the services beyond such sum unless the Owner authorizes an increase in the sum. If a "not to exceed" sum is broken down into budgets for specific tasks, the task budget may be exceeded without the Owner authorization as long as the total sum is not exceeded. Changes in conditions, including, without limitation, changes in laws or regulations occurring after the budget is established or other circumstances beyond the Consultant's control shall be a basis for equitable adjustments in the budget and schedule.

DELIVERABLE SCHEDULE

The deliverable schedule will be set forth with each work authorization by the City's Engineering Department. The original term of this contract is eighteen months, but can be extended by mutual written approval by both parties.

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this **_____ day of _____, 2006** 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 **Conde, Inc.**, a Texas Corporation, hereinafter referred to as the **"Consultant"**.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for a project known as **"ON-CALL DRAINAGE SERVICES,"** 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
Attachment "E"	Insurance Certificates

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 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"**. Payment to Consultant shall not exceed **ONE MILLION SIX HUNDRED THOUSAND AND 00/100 DOLLARS ($1,600,000.00).**

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 prior written amendment to this Agreement, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"**. 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.

> **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 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, or any work order, 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, or a change order to any work order, 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"**. Because of the uncertainties inherent in the services, schedules are estimated and subject to revision unless otherwise specifically described here in.

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 Owner from the Consultant 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 Owner from the Consultant 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 not commence work under this Agreement until the Consultant has obtained sufficient insurance as required herein, 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 or materially altered, except after **thirty (30) consecutive calendar days** written notice of intent to cancel or materially alter 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, agents, 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 apply, and the bodies and officers shall include but not be 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.

6.1.2 **DBE GOOD FAITH EFFORTS**. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. The offeror shall make good faith efforts, as defined in Appendix

A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

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 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.

7.3 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.

7.4 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.

Documents include, but are not limited to, the Consultant's personnel job descriptions, instructions, plans, drawings, reports, receipts, vouchers, and memoranda pertaining to the services. The Owner shall not have the right to audit or copy proprietary information

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.

7.5 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.

7.6 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.

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

7.8 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.

7.9 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.

7.10 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:	Conde, Inc. 1790 Lee Trevino, Suite 400 El Paso, Texas 79936

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.

7.14 EXECUTORY AUTHORITY WARRANTED. All signatories to this contract warrant their authority to execute this document.

7.15 CLIENT RESPONSIBILITY. Owner shall: (1) provide the Consultant, in writing, all information relating to Owner's requirements for the project; (2) identify to the Consultant, from reasonably available information, the location of subsurface structures, such as pipes, tanks, cables and utilities as best as can be reasonably determined by the City; (3) notify the Consultant of any potential hazardous substances or other health and safety hazard or condition known to the Consultant existing on or near the project site as best as can be reasonably determined by the City; (4) give the Consultant prompt written notice of any suspected deficiency in the services; and (5) with reasonable promptness, provide required approvals and decisions. In the event that the Consultant is requested by the Owner or is required by subpoena to produce documents or give testimony in any action or proceeding to which the Owner is a party and the Consultant is not a party, the Owner shall pay the Consultant for any time and expenses required in connection therewith, including reasonable attorney's fees.

7.16 RIGHT OF ENTRY. Owner grants to the Consultant, and, if the project site is not owned by the Owner, warrants that permission has been granted for, a right of entry from time to time by the Consultant, its employees, agents and subcontractors, upon the project site for the purpose of providing the services. The Owner recognizes that the use of investigative equipment and practices may unavoidably alter the existing site conditions and affect the environment in the area being studied, despite the use of reasonable care.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

Joyce Wilson, City Manager

CONSULTANT:

~~Conrad Conde~~ Yvonne Conde Curry
~~Chief Financial Officer~~
Vice President

(Signatures continue on following page)

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Rick Conner, P.E.
City Engineer

ATTACHMENT "A"
SCOPE OF SERVICES AND PROJECT BUDGET

The Consultant shall perform professional services relevant to the project known as **"ON-CALL DRAINAGE SERVICES,"** herein referred to as the "Project", in accordance with the terms and conditions set forth herein. The scope of services, the time schedule, and the charges are to be set forth in a written work order in accordance with this agreement. If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

SCOPE OF SERVICES

The Consultant shall provide traditional engineering services for the City of El Paso's Engineering Department on an as-needed basis. The City's Engineering Department shall provide authorizations to the Consultant for providing engineering services for the Project. Each authorization shall be in writing and shall include a Basic Fee, Scope of Services, and Schedule of Deliverables to be provided by the Consultant.

The Owner's Project Manager shall provide the Consultant a description of the desired services and schedule for each specific project. The Consultant shall submit a detailed proposal for the scope and cost of services delineating the man-hours required by the Consultant or its sub-consultants. The Consultant shall receive written work authorization from the Owner before proceeding with the specific project. The work authorization may consist of tasks within the basic services as described in Attachment "C".

Attachment "B"

CITY OF EL PASO
A and E CONTRACT
CONDE, INC.

DATE: OCT. 2006

DIRECT LABOR	HOURLY RATE
QA/QC ENGINEER - RICK CORDOVA / TONY CONDE	$ 105.00
PROJECT MANAGER - YVONNE C. CURRY, P. E.	$ 110.00
DESIGN ENGINEER - FRANCISCO CAMPA, E. I. T.	$ 75.00
PLANNER (PUBLIC INVOLVEMENT) - CONRAD CONDE	$ 88.00
RPLS - RON CONDE	$ 105.00
2-MEN SURVEY CREW	$ 90.00
3-MEN SURVEY CREW	$ 105.00
ENGINEERING TECH II	$ 55.00
ENGINEERING TECH III	$ 62.00
CLERICAL - VICKY URENA	$ 40.00
CONSTRUCTION INSPECTION - RICK CORDOVA	$ 95.00
OTHER DIRECT COSTS	**COST**
PUBLIC INVOLVEMENT MEETINGS (per meeting)	$ 500.00
24" X 36" PLOTS (per sheet)	$ 2.20
MYLARS (per sheet)	$ 7.20
POSTAGE (per letter weight)	$ 0.39
SUB-CONSULTANTS	
RABA - KISTNER -GEOTECHNICAL	
TBE - SUBSURFACE UTILITY	
EMC ENGINEERING, LLC-MECHANICAL ENGINEERING	

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

For the Project known as **"ON-CALL DRAINAGE SERVICES,"** hereinafter referred to as the Project, The Consultant will provide the Basic and Additional Services as noted herein upon receipt of written direction from the City's Development Services Department.

BASIC SERVICES

1. Provide engineering services as needed by the Development Services Department. These services include, but are not limited to, Geographic Information System (GIS) data acquisition, Field Survey and Reconnaissance, structure assessments, storm evaluation, hydrologic analyses, hydraulic capacity analyses, system performance assessments, and reporting. Possible third-party services consisting of geotechnical investigations and testing and electrical and mechanical engineering studies and analysis may also be required. The City's Engineering Department will issue a work authorization to the Consultant for each Project, which will sometimes require a very quick response by the Consultant to meet urgent and possible emergency situations.

2. The Consultant shall coordinate his work with the staff of the City's Engineering Department or with other sub-consultants as needed.

3. All engineering services shall be in accordance with generally accepted professional engineering practices.

4. The Consultant shall provide engineering services for projects in connection with but not limited to the following:
    a. Storm Assessment
    b. Flooding Documentation
    c. System Performance Assessment
    d. Drainage Analysis
    e. Drainage Master Planning
    f. GIS Database Development
    g. Capital Improvement Alternative Development and Assessment

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

PAYMENT SCHEDULE

Payment for all work authorized by the City's Engineering Department shall be made on a monthly basis. 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. The Owner shall notify the Consultant of any disputed amount within fifteen (15) days from date of the invoice, give reasons for the objection, and promptly pay the undisputed amount.

The maximum amount that will be allowed under this contract (the cap) is $1,600,000.00. Only that work ordered, approved, and accepted will be paid for the City.

Where charges are "not to exceed" a specified sum, the Consultant shall notify the Owner before such sum is exceeded and shall not continue to provide the services beyond such sum unless the Owner authorizes an increase in the sum. If a "not to exceed" sum is broken down into budgets for specific tasks, the task budget may be exceeded without the Owner authorization as long as the total sum is not exceeded. Changes in conditions, including, without limitation, changes in laws or regulations occurring after the budget is established or other circumstances beyond the Consultant's control shall be a basis for equitable adjustments in the budget and schedule.

DELIVERABLE SCHEDULE

The deliverable schedule will be set forth with each work authorization by the City's Engineering Department. The original term of this contract is eighteen months, but can be extended by mutual written approval by both parties.

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this **_____ day of _____, 2006** 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 **CEA Engineering Group**, a Texas Corporation, hereinafter referred to as the **"Consultant"**.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for a project known as **"ON-CALL DRAINAGE SERVICES,"** 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
Attachment "E"	Insurance Certificates

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 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"**. Payment to the Consultant shall not exceed **ONE MILLION AND 00/100 DOLLARS ($1,000,000.00).**

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 prior written amendment to this Agreement, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"**. 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.

> **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 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, or any work order, 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, or a change order to any work order, 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"**. Because of the uncertainties inherent in the services, schedules are estimated and subject to revision unless otherwise specifically described here in.

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 Owner from the Consultant 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 Owner from the Consultant 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 not commence work under this Agreement until the Consultant has obtained sufficient insurance as required herein, 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 or materially altered, except after **thirty (30) consecutive calendar days** written notice of intent to cancel or materially alter 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, agents, 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 apply, and the bodies and officers shall include but not be 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.

6.1.2 DBE GOOD FAITH EFFORTS. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. The offeror shall make good faith efforts, as defined in Appendix

A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

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 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.

7.3 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.

7.4 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.

Documents include, but are not limited to, the Consultant's personnel job descriptions, instructions, plans, drawings, reports, receipts, vouchers, and memoranda pertaining to the services. The Owner shall not have the right to audit or copy proprietary information

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.

7.5 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.

7.6 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.

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

7.8 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.

7.9 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.

7.10 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:	CEA Engineering 1204 Montana Ave. El Paso, Texas 79902

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.

7.14 EXECUTORY AUTHORITY WARRANTED. All signatories to this contract warrant their authority to execute this document.

7.15 CLIENT RESPONSIBILITY. Owner shall: (1) provide the Consultant, in writing, all information relating to Owner's requirements for the project; (2) identify to the Consultant, from reasonably available information, the location of subsurface structures, such as pipes, tanks, cables and utilities as best as can be reasonably determined by the City; (3) notify the Consultant of any potential hazardous substances or other health and safety hazard or condition known to the Consultant existing on or near the project site as best as can be reasonably determined by the City; (4) give the Consultant prompt written notice of any suspected deficiency in the services; and (5) with reasonable promptness, provide required approvals and decisions. In the event that the Consultant is requested by the Owner or is required by subpoena to produce documents or give testimony in any action or proceeding to which the Owner is a party and the Consultant is not a party, the Owner shall pay the Consultant for any time and expenses required in connection therewith, including reasonable attorney's fees.

7.16 RIGHT OF ENTRY. Owner grants to the Consultant, and, if the project site is not owned by the Owner, warrants that permission has been granted for, a right of entry from time to time by the Consultant, its employees, agents and subcontractors, upon the project site for the purpose of providing the services. The Owner recognizes that the use of investigative equipment and practices may unavoidably alter the existing site conditions and affect the environment in the area being studied, despite the use of reasonable care.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

Joyce A. Wilson

Joyce Wilson, City Manager

CONSULTANT:

Jorge L. Azcarate RUBEN CHAVEZ
President VICE PRESIDENT

(Signatures continue on following page)

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Rick Conner, P.E.
City Engineer

ATTACHMENT "A"
SCOPE OF SERVICES AND PROJECT BUDGET

The Consultant shall perform professional services relevant to the project known as **"ON-CALL DRAINAGE SERVICES,"** herein referred to as the "Project", in accordance with the terms and conditions set forth herein. The scope of services, the time schedule, and the charges are to be set forth in a written work order in accordance with this agreement. If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

SCOPE OF SERVICES

The Consultant shall provide traditional engineering services for the City of El Paso's Engineering Department on an as-needed basis. The City's Engineering Department shall provide authorizations to the Consultant for providing engineering services for the Project. Each authorization shall be in writing and shall include a Basic Fee, Scope of Services, and Schedule of Deliverables to be provided by the Consultant.

The Owner's Project Manager shall provide the Consultant a description of the desired services and schedule for each specific project. The Consultant shall submit a detailed proposal for the scope and cost of services delineating the man-hours required by the Consultant or its sub-consultants. The Consultant shall receive written work authorization from the Owner before proceeding with the specific project. The work authorization may consist of tasks within the basic services as described in Attachment "C".

engineering group

Attachment "B"

HOURLY BILLING RATES AND REIMBURSABLE COSTS

Effective Date: January, 2006

Classification

1.	Principal Engineer	$158.00
2.	Engineer VI	$138.00
3.	Engineer V	$115.00
4.	Engineer IV	$85.00
5.	Engineer III	$70.00
6.	Engineer I/II	$55.00
7.	Principal Architect	$158.00
8.	Architect VI	$138.00
9.	Architect V	$115.00
10.	Architect IV	$85.00
11.	Architect III	$70.00
12.	Architect I/II	$55.00
13.	Resident Project Representative	$85.00
14.	Designer	$76.00
15.	Drafting Technician III	$56.00
16.	Drafting Technician II	$42.00
17.	Drafting Technician I	$32.00
18.	Administrative Manager	$72.00
19.	Administrative Assistant	$50.00
20.	Clerical	$30.00

Reimbursable Costs

1.	Mileage:	$0.445/mile
2.	Sub-Consultants:	Cost x 1.05
3.	Printing/Copying/Plotting:	Cost x 1.15
4.	Other Costs (Shipping, Long Distance Telephone, etc.):	Cost x 1.15

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

For the Project known as **"ON-CALL DRAINAGE SERVICES,"** hereinafter referred to as the Project, The Consultant will provide the Basic and Additional Services as noted herein upon receipt of written direction from the City's Engineering Department.

BASIC SERVICES

1. Provide engineering services as needed by the Engineering Department. These services include, but are not limited to, Geographic Information System (GIS) data acquisition, Field Survey and Reconnaissance, structure assessments, storm evaluation, hydrologic analyses, hydraulic capacity analyses, system performance assessments, and reporting. Possible third-party services consisting of geotechnical investigations and testing and electrical and mechanical engineering studies and analysis may also be required. The City's Engineering Department will issue a work authorization to the Consultant for each Project, which will sometimes require a very quick response by the Consultant to meet urgent and possible emergency situations.

2. The Consultant shall coordinate his work with the staff of the City's Engineering Department or with other sub-consultants as needed.

3. All engineering services shall be in accordance with generally accepted professional engineering practices.

4. The Consultant shall provide engineering services for projects in connection with but not limited to the following:
    a. Storm Assessment
    b. Flooding Documentation
    c. System Performance Assessment
    d. Drainage Analysis
    e. Drainage Master Planning
    f. GIS Database Development
    g. Capital Improvement Alternative Development and Assessment

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

PAYMENT SCHEDULE

Payment for all work authorized by the City's Engineering Department shall be made on a monthly basis. 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. The Owner shall notify the Consultant of any disputed amount within fifteen (15) days from date of the invoice, give reasons for the objection, and promptly pay the undisputed amount.

The maximum amount that will be allowed under this contract (the cap) is $1,000,000.00. Only that work ordered, approved, and accepted will be paid for the City.

Where charges are "not to exceed" a specified sum, the Consultant shall notify the Owner before such sum is exceeded and shall not continue to provide the services beyond such sum unless the Owner authorizes an increase in the sum. If a "not to exceed" sum is broken down into budgets for specific tasks, the task budget may be exceeded without the Owner authorization as long as the total sum is not exceeded. Changes in conditions, including, without limitation, changes in laws or regulations occurring after the budget is established or other circumstances beyond the Consultant's control shall be a basis for equitable adjustments in the budget and schedule.

DELIVERABLE SCHEDULE

The deliverable schedule will be set forth with each work authorization by the City's Engineering Department. The original term of this contract is eighteen months, but can be extended by mutual written approval by both parties.

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this **_____ day of _____, 2006** 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 **Camp Dresser & McKee Inc.**, a Massachusetts Corporation, hereinafter referred to as the **"Consultant"**.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for a project known as **"ON-CALL DRAINAGE SERVICES**, 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
Attachment "E"	Insurance Certificates

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 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 prior written amendment to this Agreement, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"**. 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.

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 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, or any work order, 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, or a change order to any work order, 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"**. Because of the uncertainties inherent in the services, schedules are estimated and subject to revision unless otherwise specifically described here in.

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 Owner from the Consultant 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 Owner from the Consultant 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 not commence work under this Agreement until the Consultant has obtained sufficient insurance as required herein, 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 or materially altered, except after **thirty (30) consecutive calendar days** written notice of intent to cancel or materially alter 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, agents, 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 apply, and the bodies and officers shall include but not be 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.

6.1.2 **DBE GOOD FAITH EFFORTS**. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

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 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.

7.3 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.

7.4 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.

Documents include, but are not limited to, the Consultant's personnel job descriptions, instructions, plans, drawings, reports, receipts, vouchers, and memoranda pertaining to the services. The Owner shall not have the right to audit or copy proprietary information

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.

7.5 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.

7.6 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.

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

7.8 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.

7.9 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.

7.10 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:	Camp Dresser & McKee Inc. 4110 Rio Bravo, Ste. 201 El Paso, Texas 79902

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.

7.14 EXECUTORY AUTHORITY WARRANTED. All signatories to this contract warrant their authority to execute this document.

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Rick Conner, P.E.
City Engineer

7.15 CLIENT RESPONSIBILITY. Owner shall: (1) provide the Consultant, in writing, all information relating to Owner's requirements for the project; (2) identify to the Consultant, from reasonably available information, the location of subsurface structures, such as pipes, tanks, cables and utilities as best as can be reasonably determined by the City; (3) notify the Consultant of any potential hazardous substances or other health and safety hazard or condition known to the Consultant existing on or near the project site as best as can be reasonably determined by the City; (4) give the Consultant prompt written notice of any suspected deficiency in the services; and (5) with reasonable promptness, provide required approvals and decisions. In the event that the Consultant is requested by the Owner or is required by subpoena to produce documents or give testimony in any action or proceeding to which the Owner is a party and the Consultant is not a party, the Owner shall pay the Consultant for any time and expenses required in connection therewith, including reasonable attorney's fees.

7.16 RIGHT OF ENTRY. Owner grants to the Consultant, and, if the project site is not owned by the Owner, warrants that permission has been granted for, a right of entry from time to time by the Consultant, its employees, agents and subcontractors, upon the project site for the purpose of providing the services. The Owner recognizes that the use of investigative equipment and practices may unavoidably alter the existing site conditions and affect the environment in the area being studied, despite the use of reasonable care.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

Joyce Wilson, City Manager

CONSULTANT:

Paul J. Gorder, P.E.
Senior Vice President
Principal in Charge

APPROVED AS TO FORM:

Lupe Cuellar
Deputy City Attorney

APPROVED AS TO CONTENT:

Rick Conner
City Engineer

ATTACHMENT "A"
SCOPE OF SERVICES AND PROJECT BUDGET

The Consultant shall perform professional services relevant to the project known as "ON-CALL DRAINAGE SERVICES", herein referred to as the "Project", in accordance with the terms and conditions set forth herein. The scope of services, the time schedule, and the charges are to be set forth in a written work order in accordance with this agreement. If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

SCOPE OF SERVICES

The Consultant shall provide traditional engineering services for the City of El Paso's Engineering Department on an as-needed basis. The City's Engineering Department shall provide authorizations to the Consultant for providing engineering services for the Project. Each authorization shall be in writing and shall include a Basic Fee, Scope of Services, and Schedule of Deliverables to be provided by the Consultant.

The Owner's Project Manager shall provide the Consultant a description of the desired services and schedule for each specific project. The Consultant shall submit a detailed proposal for the scope and cost of services delineating the man-hours required by the Consultant or its sub-consultants. The Consultant shall receive written work authorization from the Owner before proceeding with the specific project. The work authorization may consist of tasks within the basic services as described in Attachment "C".

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

For the Project known as ON-CALL DRAINAGE SERVICES, hereinafter referred to as the Project, The Consultant will provide the Basic and Additional Services as noted herein upon receipt of written direction from the City's Development Services Department.

BASIC SERVICES

1. Provide engineering services as needed by the Development Services Department. These services include, but are not limited to, Geographic Information System (GIS) data acquisition, Field Survey and Reconnaissance, structure assessments, storm evaluation, hydrologic analyses, hydraulic capacity analyses, system performance assessments, and reporting. Possible third-party services consisting of geotechnical investigations and testing and electrical and mechanical engineering studies and analysis may also be required. The City's Engineering Departmentwill issue a work authorization to the Consultant for each Project, which will sometimes require a very quick response by the Consultant to meet urgent and possible emergency situations.
2. The Consultant shall coordinate his work with the staff of the City's Engineering Departmentor with other sub-consultants as needed.
3. All engineering services shall be in accordance with generally accepted professional engineering practices.
4. The Consultant shall provide engineering services for projects in connection with but not limited to the following:
    a. Storm Assessment
    b. Flooding Documentation
    c. System Performance Assessment
    d. Drainage Analysis
    e. Drainage Master Planning
    f. GIS Database Development
    g. Capital Improvement Alternative Development and Assessment

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

PAYMENT SCHEDULE

Payment for all work authorized by the City's Engineering Departmentshall be made on a monthly basis. 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. The Owner shall notify the Consultant of any disputed amount within fifteen (15) days from date of the invoice, give reasons for the objection, and promptly pay the undisputed amount.

The maximum amount that will be allowed under this contract (the cap) $500,000.00. Only that work ordered, approved, and accepted will be paid for the City.

Where charges are "not to exceed" a specified sum, the Consultant shall notify the Owner before such sum is exceeded and shall not continue to provide the services beyond such sum unless the Owner authorizes an increase in the sum. If a "not to exceed" sum is broken down into budgets for specific tasks, the task budget may be exceeded without the Owner authorization as long as the total sum is not exceeded. Changes in conditions, including, without limitation, changes in laws or regulations occurring after the budget is established or other circumstances beyond the Consultant's control shall be a basis for equitable adjustments in the budget and schedule.

DELIVERABLE SCHEDULE

The deliverable schedule will be set forth with each work authorization by the City's Development Services Department. The original term of this contract is eighteen months, but can be extended by mutual written approval by both parties.