CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Engineering and Construction Management

AGENDA DATE: December 11, 2012

CONTACT PERSON NAME AND PHONE NUMBER: Irene D. Ramirez, P.E., Assistant City Engineer (X4428)
Mass Transit Department, Raul Escobedo, 534-5810

DISTRICT(S) AFFECTED: District 2, 4, 8

SUBJECT:

That the City Manager be authorized to sign an Agreement for Professional Services by and between the **CITY OF EL PASO** and **Huitt-Zollars, Inc.,** a Texas Corporation, for a project known as **"Dyer Corridor Rapid Transit System (Dyer RTS)"** for an amount not to exceed One Million Nine Hundred Five Thousand Three Hundred Thirty and 00/100 Dollars ($1,905,330.00); and that the City Engineer be authorized to approve up to $50,000.00 in additional services, for a total contract amount not to exceed One Million Nine Hundred Fifty Five Thousand Three Hundred Thirty and 00/100 ($1,955,330.00); and that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this agreement.

BACKGROUND / DISCUSSION:

The project is part of the City's implementation of the Rapid Transit System program for the Dyer Corridor which is set to provide service from the Downtown Transfer Center to the Northgate Transit Terminal. The contract provides engineering services for the design of the system to include: RTS station design, pedestrian amenities, traffic signal priority system, coordination with TXDOT/FTA, traffic control, signing, striping, complete street design (landscape, lighting, sidewalks, amenities), utility service/relocation coordination, and assist the City with public outreach efforts (City will take the lead). The design is scheduled for 12 month completion and is scheduled to bid for construction in March 2014. Public Art is being done as part of the project and will be coordinated with this design contract.

Huitt-Zollars was selected through the City's AE selection process, which is qualifications based. Attached is the AE selection summary.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

$1,905,330.00. Funding source: 2011 Certificates of Obligation Transportation Funding

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: Irene D. Ramirez

RESOLUTION

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

That the City Manager be authorized to sign an Agreement for Professional Services by and between the City of El Paso and Huitt-Zollars, Inc., a Texas Corporation, for a project known as "Dyer Corridor Rapid Transit System (Dyer RTS)", for an amount not to exceed One Million Nine Hundred Five Thousand Three Hundred Thirty and 00/100 Dollars ($1,905,330.00); and that the City Engineer be authorized to approve up to $50,000.00 in additional services, for a total contract amount not to exceed One Million Nine Hundred Fifty Five Thousand Three Hundred Thirty and 00/100 Dollars ($1,955,330.00); and that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this agreement.

ADOPTED THIS _____ DAY OF _____ 2012.

CITY OF EL PASO:

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

_____
Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT

_____
Irene D. Ramirez, P.E.
Interim City Engineer

Matter # 12-1004-283 #PI 147733
Reso Prof Svc Agreement
Dyer RTS
Huitt-Zollars, Inc.
COSB

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this _____ **day of** _____, **2012** 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, 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 **"DYER CORRIDOR RAPID TRANSIT SYSTEM (DYER RTS)"**, 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"	Certificate of Insurance

ARTICLE II.
PROJECT

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

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

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

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

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

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

ARTICLE III.
CONSULTANT FEES AND PROJECT BUDGET

3.1 PAYMENT TO CONSULTANT. The Owner shall pay to the Consultant an amount not to exceed **ONE MILLION NINE HUNDRED FIVE THOUSAND THREE HUNDRED THIRTY AND 00/100 DOLLARS ($1,905,330.00)** for all basic services and reimbursables performed pursuant to this Agreement. The Consultant's fee proposal for the performance of all Basic Services and reimbursables is attached hereto as **Attachment "B"**. Payments to the Consultant shall be made pursuant to the schedule enumerated within **Attachment "D"**.

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

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

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

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

3.4 PROJECT CONSTRUCTION BUDGET. The Consultant acknowledges that the construction budget for this Project allocates **SEVENTEEN MILLION FOUR HUNDRED EIGHTY ONE THOUSAND EIGHT HUNDRED FORTY FOUR AND 00/100 DOLLARS ($17,481,844.00)** for the award of a construction contract base bid, which is to include all features essential to the operation of the Project for its intended use as described in the Scope of Services and Project budget in **Attachment "A"**. The Consultant does hereby agree to design the Project such that the Consultant's final agreed cost opinions for the construction of the Project, including all features essential to its intended use, is within the above budgeted amount for the base bid. If the Consultant's cost opinions exceed the Project Budget at any time, the Consultant shall make recommendations to the Owner to adjust the Project's size or quality and the Owner shall cooperate with the Consultant to adjust the scope of the Project. If all responsible bids exceed the City approved Consultant's final cost opinions by more than **ten percent (10%)**, the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

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

ARTICLE IV.
PERIOD OF SERVICE AND TERMINATION

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

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

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

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

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

4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE. Termination by either party shall not be construed as a release of any claims that the

terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

ARTICLE V.
INSURANCE AND INDEMNIFICATION

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

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

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

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

a) <u>COMMERCIAL GENERAL LIABILITY</u>
Personal Injury or Death
$1,000,000.00 for one person or occurrence
$1,000,000.00 for two or more persons or occurrences
Property Damage
$1,000,000.00 per occurrence
General Aggregate
$1,000,000.00

b) <u>AUTOMOBILE LIABILITY</u>
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 shall also include the name of the project on the corresponding insurance certificate. Further, each certificate shall contain the following statement:

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

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

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

5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS. Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other

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

ARTICLE VI.
FEDERAL PROVISIONS

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

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

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

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

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

Copies of grant assurances will be made available to Consultant. However, provided copies shall

in no way be a limitation on the Consultant's obligation to comply with any Federal agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project.

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

6.1.2 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. A DBE contract goal of 0.00% has been established for this contract. 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 OPINION OF PROBABLE COST. As a design professional practicing in El Paso the Consultant is expected to be familiar with the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The cost opinions of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within **ten percent (10%)** of the bid for the base bid item expected from the lowest responsible bidder.

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

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

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

7.3 CONSULTANT'S QUALITY OF WORK. The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project and in accordance with the time periods established in **Attachment "D"** and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time

required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner. Services provided by the Consultant under this Agreement shall be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar circumstances.

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

7.5 AUDITING RECORDS FOR THE SPECIFIC PROJECT. Consultant's records subject to audit shall include but not be limited to records which, in the Owner's discretion, have a bearing on matters of interest to the Owner in connection with the Consultant's work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

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

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

inspection and photo copying of selected documents from time to time at reasonable times and places.

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

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

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

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

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

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

To the Owner:	The City of El Paso Attn: City Manager 2 Civic Center Plaza El Paso, Texas 79901
With a Copy to:	The City of El Paso Attn: City Engineer 2 Civic Center Plaza El Paso, Texas 79901
To the Consultant:	Huitt-Zollars, Inc. Attn: Jose Rodarte, P.E., Vice-President 5822 Cromo Drive, Suite 210 El Paso, TX 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.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

_____
Joyce A. Wilson,
City Manager

CONSULTANT:
HUITT-ZOLLARS, INC.

_____
By: Jose Rodarte, P.E.
Title: Vice-President

APPROVED AS TO FORM:

Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

Irene D. Ramirez, P.E.
Interim City Engineer

(Acknowledgements on following page)

ACKNOWLEDGEMENTS

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____, 2012, by **Joyce A. Wilson,** as **City Manager** of the **City of El Paso, Texas.**

_____
Notary Public, State of Texas

My commission expires:

_____

THE STATE OF TEXAS §
§
COUNTY OF El PASO §

This instrument was acknowledged before me on this _____ day of _____, 2012, by **Jose Rodarte, P.E.,** as **Vice-President** of **Huitt-Zollars, Inc.**

_____
Notary Public, State of Texas

My commission expires:

_____

Attachment A

PROJECT SCOPE

TITLE: **Dyer Corridor Rapid Transit System (RTS)**

LOCATION: **Dyer Corridor from Downtown Transfer Center to Northeast Transfer Center**

GENERAL DESCRIPTION:

The project consists of development of the City of El Paso Dyer Rapid Transit System (RTS) Corridor from the Downtown Transit Center (DTC) to the Northeast Transfer Center in El Paso, Texas.

The project shall address the following project elements, which include:

Development of the Dyer RTS Corridor originating at the DTC, connecting to the Five Points Transit Terminal, ultimately to the Northeast Transfer Center.

Stations include the area surrounding the station canopy. This station area extends from the station canopy to the closest intersection, plus 250' on the other side of the canopy away from the intersection as well as 300' from the intersection on all four legs of the intersection.

OBJECTIVE:

The purpose of this project is to provide a uniform and efficient approach to enhance the City's Mass Transit System. The project is the genesis of the City's transportation model for the community and is to serve as the benchmark for future corridors to grow from.

For the purposes of the definition of work in this scope, the information below specifies the tasks covered in the contract. When a task within the "scope" section conflicts with the any other Attachment section, the "Scope" elements will control and form the complete set of tasks to the exclusion of all others.

SCOPE:

Report Phase

The actions of this phase as described in "Attachment C" will be compiled and completed as a function of developing the "Preliminary Design Phase" below. An Alternatives Analysis has already been performed, and is not part of this scope.

Preliminary Design Phase

1.1 Project Management

General
The consultant shall be responsible for the management of the design effort described in this scope of service. In addition to specific responsibilities described in this section, the Consultant shall attend the meetings contained herein at the direction of City of El Paso and participate as the technical expert on this project.

1.1.01 Cost Control
The Consultant shall prepare and submit a monthly invoice, including all back-up documents, and a Cost Report in the format and level of detail as specified by City of El Paso. The Cost Report shall include cost data regarding: original budget, current budget (original + approved modifications) actual cost for the period, actual cost to date, earned value, estimate to complete, estimated cost at completion, and the variance between current budget and estimate at completion.

The Consultant shall submit each Monthly Invoice and Cost Report electronically (include a hardcopy of invoice) with the monthly Schedule Update

1.1.02 Schedule Control

The Consultant shall prepare and maintain a schedule that ensures the timely completion of all major milestones and activities.

1.1.02.1 Baseline Schedule
The Consultant shall prepare and submit a Baseline Schedule that clearly shows the timely completion of all major milestones and activities. The Baseline Schedule shall be submitted to City of El Paso within 14 calendar days after NTP is issued.

1.1.02.2 Monthly Schedule Updates
A written monthly report that addresses any schedule issues and proposed recovery actions required to correct them shall be provided.

1.1.03 Weekly Project Meetings
Consultant shall attend weekly project meetings during the preliminary design phase for general project discussion and information dissemination.

1.1.04 Interagency/Consultant Coordination
The consultant shall provide support to City of El Paso related to Interagency/Consultant coordination and shall coordinate directly with these groups with guidance from the City of El Paso. Preparation of Memoranda of Understanding, Inter-local agreements, or utility agreements are not part of this scope.

1.1.05 Quality Assurance/Quality Control Plan/Program
Consultant will develop QA Plan Guidelines. The consultant shall review all comments on deliverables and provide City of El Paso with record of resolution of all comments.

1.1.06 Design Reviews
In addition to continuous monitoring throughout the project, progress and products may be reviewed by the City of El Paso and others at comprehensive design reviews sponsored by the City of El Paso. The Consultant shall submit a schedule for establishing milestone dates for approval through City of El Paso. Reviews will focus on constructability, maintainability, cost effectiveness, life cycle cost, user safety, aesthetics, user convenience and community acceptance. A comprehensive review is expected at the mid-point and completion of Preliminary engineering plans, specifications and cost estimates. The review shall include, but not be limited to, assumptions, standards, codes, plans, design concepts, and cost estimates. The

Consultant shall be the key participant in Design Review and respond to review comments. (2 meetings)

1.1.07 Change Control
The Consultant shall provide City of El Paso with notification of any proposed change to the baseline design from any source and provide estimates of the design cost, construction cost and project schedule impact for each request. Variations outside of approved scope elements will be included in a supplemental to this scope.

1.1.08 Document/CADD Control
City of El Paso will develop the Document Control Procedures (DCP) for control of all project documents. This shall include correspondence, specifications, and design plans.

City of El Paso has also developed Computer Aided Design & Drafting (CADD) Standards Manual for control of all Project drawings. Control of all project drawings that define the baseline configuration is essential during the project. This includes: the issuance of drawing numbers, drawing titles, the storage of approved drawings, and the controlled distribution of design reviews. The Consultant shall control project documentation involving subconsultant.

1.1.09 Design Analysis:
The designer shall perform design analysis to ensure compliance with the prevailing standard of care for engineering work. Furthermore, all design analysis must comply with all applicable City, County, State, and Federal laws and regulations.

1.1.10 Value Engineering
Conducting, or participating in a Value Engineering session/workshop, either formally or informally, by the Consultant is not part of this scope.

1.2 Investigation

1.2.01 Soils Investigation:
The designer shall provide a subsurface soil investigation study for the project and should be submitted to the Owner for a review. Log boring information can be shown on construction documents with appropriate notes and disclaimers that will minimize change orders.

1. Consultant will conduct geotechnical investigations at each station site to a maximum boring depth of ten (10) feet for a Dynamic Cone Penetrometer test.
2. A maximum of nineteen (19) soil exploration borings to a maximum depth of fifteen (15) feet or reasonable auger refusal will be performed. Standard Penetration Tests will be collected at discrete intervals and soil samples will be collected using conventional split-spoon sampling (as required). Soil laboratory tests shall consist of moisture contents, plasticity index tests, sieve analysis and swell tests. All borings shall be backfilled with auger cuttings and patched with concrete and/or "cold-mix" asphaltic-concrete material.
3. A maximum of ten (10) bulk subgrade samples shall be collected from selected boring locations for CBR testing.

Minor, temporary traffic control will be performed for the drilling activities, and is limited to signs, cones, and barricades. Lane closures or after-hours/night/weekend drilling operations are not part of this scope.

4. The City shall provide assistance or permissions/permits for to allow for the boring operations.
5. A maximum of two (2) retaining wall borings or global stability analysis shall be performed to a maximum of 10 feet.
6. Pavement design is not included in this scope other than matching existing / TxDOT standard pavement section. Assume existing pavement details will be provided, and existing structure will be utilized.
7. A Geotechnical report shall be provided, and a maximum of two (2) copies are included in this scope of services.

1.2.02 Environmental Issues

1. Coordination activities with the City's environmental consultant will encompass a maximum of two (2) meetings. Testing, analysis, and specific investigations for contaminated soil are not part of this scope.
2. Environmental permitting, investigations, coordination, and other environmental-related activities (such as noise and vibration analysis, mitigation measures, remediation plans, etc.) are not part of this scope.

1.2.03 Surveys

The designer shall provide topographic, horizontal surveys and denote ROW lines, limited to in-line station sites only.

1. Recover Control & ROW points shown on signed and sealed right-of-way survey drawings by Conde, Inc. (These hard copy certified drawings shall be provided by the City of El Paso). Consultant shall perform additional survey to complete the survey of the station area. In addition, recover intersecting boundaries where the proposed Bus Rapid Transit Station property requirements straddle more than one property owner. Such intersecting boundaries shall be represented on a design survey base map, along with the street right-of-way.

2. Perform record utility research, and integrate such record data with field shots taken on line spots (DIG-TESS or equivalent) and surface field evidence of such utilities. Plot Level C representation of utilities on the design survey base map for an area sufficient to support the design work.

3. Perform a topographic survey in the vicinity of each bus rapid transit station sufficient to allow design of platform grades and to assess storm water drainage issues that will affect the rapid transit station. Incorporate the topographic survey data into a design survey base map and surface model (DTM). Gather additional planimetric data using office based methods on main and side streets as required to allow design of improvements to integrate the station into the surrounding setting.

4. Set or adopt construction control monuments (three per bus rapid transit station), and show such monuments on the design survey base map. Provide a table on the design survey base map showing the coordinates and elevations of each construction control monument, for the purpose of guiding the contractor in the construction of the Bus Rapid Transit Station improvements.

1.2.04 Sidewalks

1. Includes design of level sidewalks in station areas. The design includes:
a) level sidewalks across driveways (and driveway modifications if necessary).
b) Eight foot wide sidewalk where possible.
c) Three foot minimum parkway next to the curb, except in downtown area where only trees will be used for landscaping (no shrubs).
d) Design will follow CNU and Smart Growth principles.

1.3 Geometrics Planning

1.3.01 Traffic – System

1. Striping plans for immediate station vicinity will be developed in accordance with TxDOT standards.

2 Accessible Pedestrian Signals and Transit Signal Priority

Intersections adjacent to the proposed stations shall be identified for Accessible Pedestrian Signals (APS) retrofit. Intersections along the corridor shall be indentified for Transit Signal Priority retrofit.

1.3.02 Civil – In-Line Station Sites

1. Prototypical site layout (schematic-level) with varying platform width depending on available ROW.
2. Preliminary plan layout of each station (20 total).
3. Consultant will note potential ROW encroachment at each platform
4. Identification of roadway modifications at platform locations.

1.3.03 Civil – Downtown Transit Center Site

1. Preliminary plan layout includes modification of four existing platforms, demolition plans, pedestrian control,and traffic control
2. Preliminary layout for pedestrian access to the BRT platforms to include ADA compliant facilities.

1.3.04 Civil – Transit Center Site (5 Points)

Preliminary design at the Five Points Transit Center includes the following:

1. Preliminary plans for design of concrete pavement on half the width of Birch from alley on Birch to Montana, including demo of existing pavement.
2. Identify and provide preliminary plans for 400 LF of sidewalk, landscaping and illumination improvements.

1.3.05 Construction Sequencing

1. Preparation of a construction sequencing plan, in coordination with the City, to identify the phases and sequence of construction.
2. Attend a maximum of one (1) meeting for development of the plan for this phase.

1.4 Utility & Drainage

1.4.01 Drainage – In-Line Station Sites

1. Preliminary plan layout of each station (20 total), with drainage flow directions noted.
2. Identification of existing drainage system impacts due to conflicts with station platforms will be noted.

1.4.02 Utility Services

No utility design services are included in this scope. If it is determined that the utility will remain in place, the consultant will develop plans to accommodate the existing utility.

1.4.03 Utility Coordination

1. Consultant will evaluate/review record drawings produced by the utility companies. Identify utility companies in the project area, send project notification letters, and initiate contact. Coordinate with utility companies and acquire information on their existing facilities located within the project corridor. Prepare existing utility layout plans utilizing the topographic survey as base map and supplement the survey with other information provided by the utility companies.
2. Overlay proposed project improvements with existing utility layouts and determine potential utility conflicts. A potential utility conflict list will be created and provided to each utility company.
3. The consultant will be responsible for all utility coordination up to the point that the utility provides the clearance letter.
4. Utility Adjustment Design (Third Party) Coordination: Utilities determined to be in conflict with the project will be designed and adjusted by each of the utility companies with ownership of those facilities. Consultant will request, on behalf of the Owner, the relocation of utilities in conflict with the project and/or the inclusion of the utility relocation work as part of the project construction as described in the Project Scope. Consultant will request utility clearance letters from utilities having facilities in the project area. Utility plans, design, engineering, and SUE are not part of this scope.

1.5 Stations Architecture

1.5.01 Station Planning/Architecture – In-Line Station Sites

1. Prepare one (1) typical station platform layout. Layout will include the preliminary location of furniture, TVM and communication conduits, pedestrian elements such as handrails and bike racks. Locations of landscaping space will be noted.

1.5.02 Public Art Coordination

1. Provide input to selection criteria for the Public Art Committee's RFP for artist(s), which will be limited to the available space, guidelines as to types of elements (from a technical/impact basis), and prohibitions.
2. Serve on the review and selection panel for the artist, if requested by Public Art Coordinator, and coordinate the internal review of artwork at the Conceptual Design level.

3. Consultant, Public Art Coordinator, and the selected artists will collaborate on developing integrated art and architectural concepts as stated in the Public Art Ordinance 16324, sec 1. Purpose.
4. Coordinate with the Public Art Coordinator, attend meetings, and solicit input from the Community on the vision and objectives statements for art.
5. Team project manager and selected artists will collaborate with the Public Art Coordinator to obtain approval of the Art Design from the Public Art Committee.
6. Cost estimates for the art program or art elements are not part of this scope.
7. A maximum of four (4) meetings are included for Public Art Coordination.

1.5.03 Branding – System

The designer will coordinate with the Branding Consultant chosen by the City of El Paso for the Dyer BRT corridor.

1.6 Stations MEP & Foundation/Structural

1.6.01 Station Structural

1. Foundations concepts (spread footing or drilled shaft) will be provided for for the four prototypical station sizes were completed during the design for the Alameda and Mesa RTS corridors.
2. Structural concepts for the canopy and superstructure were completed during the design for the Alameda and Mesa RTS corridors.

1.6.02 Station MEP/Communications – In-Line Station Sites

1. For the prototypical station, preliminary electrical conduit run layouts have been laid out as part of the Alameda and Mesa RTS Corridor Design.
2. A consultation meetings with City of El Paso staff and law enforcement will be required (1 meeting) to identify security infrastructure.
3. Implement lighting options (one design for downtown station and another for remaining stations) selected by the City of El Paso during the Alameda and Mesa RTS Corridors Design.

1.6.03 Station MEP/Communications – Transit Center (Five Point TC and DTC)

1. MEP/Communications elements within the canopy will be shown as the typical configuration for the in-line stations.
2. City of El Paso to provide existing plans for transit centers.

1.6 Landscaping and Irrigation

1.6.01 Landscape – In-Line Station Sites

1. Conceptual landscaping schemes (maximum of three) will be developed for the station site, showing standard areas for planting and hardscape, for review and consideration. Landscaping schemes will make use of the trees and plants selected for the Alameda and Mesa RTS corridors.
2. Preliminary identification of applicable drought tolerant, water-wise plantings. City of El Paso to provide approved (City and TxDOT) tree and planting lists.
3. Irrigation requirements will be identified for the prototypical station.

1.7 Systems – Concepts

1. Preliminary design developed during the Alameda and Mesa RTS design process for the necessary communications link between the TVMs and the central data system
2. Use existing plans and configuration for a secure broadband wireless network system for CCTV video and TVM data. Interconnect to the fiber-optic backbone is not part of this scope.
3. Use existing layout of variable message signs. These will be the current signs utilized by the City, and this scope does not include evaluation or implementation of other technologies.
4. Preliminary design of a Closed Circuit Television (CCTV) system for platform monitoring. Selection of CCTV equipment is not part of the scope.
5. Vehicle procurement support is not part of this scope.

1.8 Public Outreach

Public Involvement

The consultant shall attend a maximum of six (6) public meetings for an outreach program for the project. Consultant shall prepare presentation materials (powerpoint, renderings, site plans, etc.), and City of El Paso will coordinate, schedule and present the materials at meetings. Consultant shall answer any technical questions regarding project and design documents.

1.8.01 – Public Meeting Participation

1. Consultant will note comments made by the public, and draft a response to the comments and provide to the City. The City will issue any comment responses.
2. Consultant will provide exhibits of the corridor, prototypical platforms, and identified ROW impacts. Public meeting support for translation services, court reporting, and sign language services are not included in this scope.

1.8.02 – Public Meeting Arrangement

1. City of El Paso will provide public notices, advertising, and secure the sites for the public meetings.

Deliverables:

Preliminary Design:

Upon the completion preliminary design phase, the designer shall submit ten (10) copies of the preliminary design documents and cost estimates for approval. If the Owner does not approve the preliminary design documents, the designer shall furnish five (5) copies of the resubmitted design documents. The consultant shall also submit electronic files of the deliverables that includes CADD and pdf versions. During this phase the consultant shall conduct, at a minimum, monthly progress meetings. Drawings will be on 11"x17" paper.

Reproduction of Project Deliverables

The City will provide a Purchase Order for the reproduction of all deliverables mentioned on this scope. The designer shall be responsible to coordinate all printing for the different phases and for code review requirements. For bidding consultant shall be responsible for coordinating the printing of the El Paso Water Utilities improvements or any other affected utility drawings and include them in construction drawing bidding sets.

2.0 Pre-Final Design Phase

2.1 Project Management

2.1.01 Cost Control

The Consultant shall prepare and submit a monthly invoice, including all back-up documents, and a Cost Report in the format and level of detail as specified by City of El Paso. The Cost Report shall include cost data regarding: original budget, current budget (original + approved modifications) actual cost for the period, actual cost to date, earned value, estimate to complete, estimated cost at completion, and the variance between current budget and estimate at completion.

The Consultant shall submit each Monthly Invoice and Cost Report electronically (include a hardcopy of invoice) with the monthly Schedule Update

2.1.02 Schedule Control

The Consultant shall prepare and maintain a schedule that ensures the timely completion of all major milestones and activities. Primavera Project (P6) shall be used as the project scheduling software.

2.1.02.1 Baseline Schedule

The Consultant shall prepare and submit, if requested, a re-cast Baseline Schedule, based on any adjustments in the program resulting from the Preliminary Phase.

2.1.02.2 Monthly Schedule Updates

No monthly update shall be provided during this phase.

2.1.03 Bi-weekly Project Meetings

Consultant shall attend project meetings every two weeks for general project discussion and information dissemination.

2.1.04 Interagency/Consultant Coordination

The consultant shall provide support to City of El Paso related to Interagency/Consultant coordination and shall coordinate directly with these groups with guidance from the City of El Paso. Preparation of Memoranda of Understanding, Inter-local agreements, or utility agreements are not part of this scope.

2.1.05 Quality Assurance/Quality Control Plan/Comment Resolution

1. Consultant will perform internal QA/QC through review by qualified personnel, and as required by FTA.
2. Consultant will review, respond to, and incorporate (if appropriate) comments received from previous phase of work. A record of comment resolutions will be provided to the City.

2.1.06 Design Reviews

In addition to continuous monitoring throughout the project, progress and products may be reviewed by the City of El Paso and others at comprehensive design reviews sponsored by the City of El Paso. The Consultant shall submit a schedule for establishing milestone dates for approval through City of El Paso. Reviews will focus on constructability, maintainability, cost effectiveness, life cycle cost, user safety,

aesthetics, user convenience and community acceptance. The review shall include, but not be limited to, assumptions, standards, codes, plans, design concepts, and cost estimates. The Consultant shall be the key participant in Design Review and respond to review comments. (2 meetings)

2.1.07 Change Control
The Consultant shall provide City of El Paso with notification of any proposed change to the baseline design from any source (including the City of El Paso) and provide estimates of the design cost, construction cost and project schedule impact for each request. Variations outside of approved scope elements will be considered as additional services and shall be subject to a change order.

2.1.08 Document/CADD Control
The Consultant shall control project documentation involving subconsultant.

2.1.09 Design Analysis:
The designer shall perform design analysis to ensure compliance with the prevailing standard of care for engineering work. Furthermore, all design analysis must comply with all applicable City, County, State, and Federal laws and regulations.

2.1.10 Value Engineering
Conducting, or participating in a Value Engineering session/workshop, either formally or informally, by the Consultant is not part of this scope.

2.1.11 Cost Estimates
1. Consultant will provide a Statement of Probable Cost at the conclusion of this phase. The cost estimate will include an estimate for all items eligible for TxDOT Category 2 funding and an estimate for all remaining items.
2. A draft set of specifications will be provided with the Pre-Final Design package.

2.1.12 Construction Sequencing/Schedule
1. Preparation of a construction sequencing plan, in coordination with the City, to identify the phases and sequence of construction.
2. Preparation of an approximate construction schedule based on the sequencing developed in coordination with the City, to include phase progression and general timeline.
3. Attend a maximum of two (2) meetings for development of the plan for this phase.

2.2 Utility Coordination

2.2.01 Utility Services
No utility design services are included in this scope. If it is determined that the utility will remain in place, the consultant will develop plans to accommodate the existing utility.

2.2.02 Utility Coordination
1. Review utility-provided information. SUE activities are not included in this scope.

2. The potential utility conflict list will be refined through coordination with each utility company, and adjust the existing utility layouts based on information provided by the utility companies.
3. . The consultant will be responsible for all utility coordination up to the point that the utility provides the clearance letter.
4. Utility design is not part of this scope. Where necessary, the consultant will adjust the design plans to accommodate the utility.
5. Traffic control for utility purposes are not part of this scope.

2.3 Traffic Signals & Lane Configuration

2.3.01. Signing and striping concepts will be developed for immediate station vicinity including the nearest intersection.

2.3.02. Temporary traffic control plans and pedestrian control plans will be shown for each station (20 sites). The City shall provide any information as to known restrictions of construction activity (proximity to sensitive sources, etc.) to Consultant during the Preliminary Design Phase.

2.3.03. **Accessible Pedestrian Signals and Transit Signal Priority**

1. The Engineer shall develop detailed layouts for each location to illustrate the APS and TSP hardware and develop the necessary details to support the installation.
2. TSP Transponders at intersections. Consultant to provide design utilitzing line-of-sight application compatible with the emitters that are part of the articulated vehicle procurement.

2.4 Civil / Drainage Design

2.4.01 Civil – In-Line Station Sites

1. Site layout and configuration of civil elements to include platform, curbing, transitions, and ADA compliant pedestrian elements, for level-boarding platform height.
2. Review of layout for inclusion at a maximum of twenty-three (20) platform locations. Minor adjustments to flatwork/tie-ins to each site will be included. Retaining walls, specialized site elements are not included.
3. Development and analysis of line-of-site triangles for adjacent access points will be developed for a maximum of 20 sites.
4. Develop preliminary local drainage areas. Perform analysis of existing drainage conditions at each of the proposed station locations to define potential for area flooding, localized flooding, and/or drainage problems, and compute peak runoff for the design of project improvements. The drainage analysis excludes study/design of storm water management systems and/or improvements not associated with the proposed station improvements.
5. Plan layout of each station (20 total), to include stationing, elevations of critical points, with drainage flow directions noted.
6. One (1) section for each station (20) will be developed showing elevations, offsets, widths, and approximate ROW locations.
7. Incorporation of City of El Paso standard detail for bus pads. Modifications will only encompass length and width. Design of the pavement structure is not included in this scope.
8. Development of project layout sheets to identify project and station locations.

9. Roadway modifications at platform locations will be limited to minor widening (with a pavement design provided by the City of El Paso) and curb transitions (1'-2' offset from existing), with associated striping for 20 locations. No roadway reconstruction is included in this scope.
10. A bus pullout detail will be developed as a stand-alone exhibit. Inclusion at individual sites and associated impact mitigation, if desired, is not part of this scope of work.
11. Storm water pollution prevention plans (SW3P) and details will be included for each of the 20 locations, along with a general SW3P narrative and standard details as provided by the City of El Paso, or TxDOT.
12. Evaluate Drainage Impacts: Investigate existing storm outfalls and/or other systems in the vicinity of the project areas, evaluate their capacity and using the peak runoff computed for improvements, determine impact to those systems and/or if they can accept additional runoff from project areas. Make recommendations for feasible connections to existing nearby storm sewer systems. Hydraulic calculations, drainage areas, water harvesting, stormwater detention, and inlet/storm drain design are not included in this scope of work.
13. No plan sheets will be shown for off-station sidewalk improvements; if required, this will be additional services.

2.4.02 Civil – Downtown Transit Center Site

1. Design includes modification of four existing platforms, demolition plans, pedestrian control,and traffic control
2. Design plans for pedestrian access to the BRT platforms to include ADA compliant facilities.

2.4.03 Civil – Transit Center Site (5 Points)
Pre-final design at the Five Points Transit Center includes the following:

1. Design plans for concrete pavement on half the width of Birch from alley on Birch to Montana, including demo of existing pavement.
2. Design plans for 400 LF of sidewalk, landscaping and illumination improvements.

2.5 Stations Architecture

2.05.01 Station Planning/Architecture – In-Line Station Sites
1. Station architecture will be the same designs used for the Alameda and Mesa RTS Corridors.
2. Upon selection of preferred station scheme (from those presented in the Preliminary Design Phase), typical elevations and section details will be developed for the identification of superstructure locations of signage, security cameras, lighting, message signs, and communication infrastructure. This will include a maximum of four (4) sheets. The selected concept will be consistent throughout the corridor, and structural or configuration modifications are not part of this scope.
3. Locations for public art will be identified and noted on one (1) plan sheet and will be standard for all stations.
4. As this project will not meet current requirements for LEED certification consideration, no such activities are included in this scope.

5. Pedestrian Lighting options: Selected prototypical lighting option for the station area and selected prototypical lighting option for pedestrian approaches (200' each side) will be developed for each station site.

2.5.02 Station Planning/Architecture – Northeast Transit Center Site

1. Designs, modifications, architectural elements, or changes to the existing station layout, finish, or configuration are not part of this scope, and will be additional services if necessary.

2.5.03 Public Art Coordination

1. Consultant will identify available opportunities/spaces for public art, along with any restrictions/prohibitions (based on technical criteria).
2. Consultant, Public Art Coordinator, and the selected artists will collaborate on developing integrated art and architectural concepts as design elements progress.
3. Cost estimates for the art program or art elements are not part of this scope.
4. A maximum of four (4) meetings are included in this scope.

2.5.04 ADA Compliance and Requirements

1. During Pre-final design, an ADA consultant certified to perform plan review and inspections for ADA, T.A.S, and Texas Department of Licensing and Regulation requirements, will review the Pre-Final Design Plans and provide comments to be included in the Final Design.
2. Design waiver preparation, if any, are not part of this scope.

2.5.05 Branding – System

The designer will coordinate with the Branding Consultant chosen by the City of El Paso for the Dyer BRT corridor.

2.6 Stations MEP & Foundation/Structural

2.6.01 Station Structural

1. For the prototypical stations, structural design and details for the platform have been developed during the design of the Alameda and Mesa RTS corridors.
2. Foundations options (spread footing or drilled shaft) provided during the Preliminary Engineering Phase and the selected option will be designed to support the station superstructure elements.
3. Structural design for the canopy and superstructure will be performed and details provided for supports, connections, and frame elements.
4. Special structural designs and options due to varying subsurface conditions (soils, utilities), or unique positioning of the site (building proximity, etc.) are not included in this scope.
5. Retaining wall design at three (3) locations is included in this scope.

2.6.02 Station MEP/Communications – In-Line Station Sites

1. For the prototypical station, electrical conduit run layouts will be provided, and load and wiring requirements will be shown and located to service lighting, TVM, and dynamic signage.
2. Typical communications locations, conduit, and loading will be identified on the plans for the inclusion of other necessary communications equipment. All hardware and specific electronics, including the AVL system, TVMs, CCTVs,

message signs, etc., are not included in the design, drawings or specifications of this contract.
3. Plan locations and specifications for the fixtures will be included in the plans.
4. Plans for each platform (23) will be developed to identify and layout the necessary off-platform connections to water, electric, and communication equipment cabinets. This will be a maximum of two (2) sheets per site. No wireless network interfaces with Sun Metro City systems are included in this scope. Consultant will meet with El Paso Electric Company to determine location of appropriate power source. Design will include plans showing connections to the power source.
5. Off project site improvements or designs for communication systems, pole mounts, wi-fi, and interfaces, or modifications at City or Sun Metro facilities are not included in this contract.
6. Information/plans/details on existing infrastructure (cable/conduit) along the BRT corridor shall be provided by the City.
7. Prototype Configuration for TVMs and City's Central Data System.
The Engineer shall design a data communication link required for the TVM to communicate with the City's central data system. Fiber optic communication lines will not be used. The Engineer shall obtain and review all project related information including previous reports, plans, TMS/ITS as-builts and schematics, example plan sets, City design guidelines, City standard specifications, TxDOT standards and specifications, and maps.

2.6.03 Station MEP/Communications – Downtown and Five PointsTransit Centers
1. Design includes communications for variable message signs and pylon at five RTS platforms.

2.7 Landscaping and Irrigation
1. A prototype landscaping scheme will be developed (from the selected option in the preliminary phase) for the station site, showing standard areas for planting and hardscape. Hardscape options will be provided for review and approval of the City of El Paso.
2. Design will include drought tolerant, water-wise plantings, which will be specified for uniform application throughout the corridor, based on City-provided approved lists and the design from the Alameda and Mesa RTS corridors.
3. Custom landscape schemes are not part of this scope; however, up to eighteen (18) minor modifications to the selected scheme is included in this scope.
4. Irrigation plans for the prototypical station layout will be provided using a sub-surface system. Plan layouts and details will be included.

2.8 ITS Design
1 Communication links between the TVMs and Central Data System Specifications
a. The Engineer shall perform field site reviews including verify locations of existing and proposed equipment., determine power service availability, measure Signal strength for the proposed wireless network to insure reliability.

b. The Engineer shall conduct a preliminary "walk through" with the City's Project Manager to verify and obtain approval of proposed locations for devices and identify potential safety issues. Meeting minutes shall be recorded and distributed.
c. The Engineer shall develop detailed layouts for each location and develop the necessary details to support the installation.

2.. Provide plans and configuration for a secure broadband wireless network system for CCTV video and TVM data. Interconnect to the fiber-optic backbone is not part of this scope.
3. Layout of variable message signs. These will be the current signs utilized by the City, and this scope does not include evaluation or implementation of other technologies.
4. Design of a Closed Circuit Television (CCTV) system for platform monitoring.
5. Vehicle procurement support is not part of this scope.

Deliverables:

Pre-Final Design:
Upon the completion of pre-final design phase, the designer shall submit ten (10) copies of the pre-final design phase documents. If the Owner does not approve the pre-final design documents, the designer shall submit five (5) copies of the resubmitted pre-final design documents. Additionally, the designer should submit three (3) copies of the Specifications and three (3) copies of the design analysis. The consultant shall also submit electronic files of the deliverables that includes CADD and pdf versions. During this phase the consultant shall conduct, at a minimum, monthly progress meetings. Drawings will be on 11"x17" paper.

Specifications:
All specifications must include type of materials listed in the construction drawings, placement method and quality control and quality assurance testing. The specification shall correlate with unit price format. All specifications must comply with established specification standards and formats. The City of El Paso will provide Consultant with the latest version of the City's standard specifications.

Reproduction of Project Deliverables
The City will provide a Purchase Order for the reproduction of all deliverables mentioned in this scope. The designer shall be responsible to coordinate all printing for the different phases and for code review requirements. For bidding consultant shall be responsible for coordinating the printing of the El Paso Water Utilities improvements or any other affected utility drawings and include them in construction drawing bidding sets.

3.0 Final Design Phase

3.1 Project Management

3.1.01 Cost Control
The Consultant shall prepare and submit a monthly invoice, including all back-up documents, and a Cost Report in the format and level of detail as specified by City of El Paso. The Cost Report shall include cost data regarding: original budget, current

budget (original + approved modifications) actual cost for the period, actual cost to date, earned value, estimate to complete, estimated cost at completion, and the variance between current budget and estimate at completion.

The Consultant shall submit each Monthly Invoice and Cost Report electronically (include a hardcopy of invoice) with the monthly Schedule Update

3.1.02 Schedule Control
The Consultant shall prepare and maintain a schedule that ensures the timely completion of all major milestones and activities. Primavera Project (P6) shall be used as the project scheduling software.

3.1.02.1 Baseline Schedule
The Consultant shall prepare and submit, if requested, a re-cast Baseline Schedule, based on any adjustments in the program resulting from the Pre-Final Phase

3.1.02.2 Monthly Schedule Updates
A written monthly report that addresses any schedule issues and proposed recovery actions required to correct them shall be provided.

3.1.03 Monthly Project Review
Consultant shall attend two (2) monthly project meetings for general project discussion and information dissemination.

3.1.04 Interagency/Consultant Coordination
The consultant shall provide support to City of El Paso related to Interagency/Consultant coordination and shall coordinate directly with these groups with guidance from the City of El Paso. Preparation of Memoranda of Understanding, Inter-local agreements, or utility agreements are not part of this scope.

3.1.05 Quality Assurance/Quality Control Plan/Comment Resolution
1. Consultant will perform internal QA/QC through review by qualified personnel.
2. Consultant will review, respond to, and incorporate (if appropriate) comments received from previous phase of work. A record of comment resolution will be provided to the City.

3.1.06 Design Review
In addition to continuous monitoring throughout the project, progress and products may be reviewed by the City of El Paso and others at comprehensive design reviews sponsored by the City of El Paso. Reviews will focus on constructability, maintainability, cost effectiveness, life cycle cost, user safety, aesthetics, user convenience and community acceptance. A final review will occur at the completion of final engineering plans, specifications and cost estimates. The review shall include, but not be limited to, assumptions, standards, codes, plans, design concepts, and cost estimates. The Consultant shall be the key participant in Design Review and respond to review comments. (2 meetings)

3.1.07 Change Control
The Consultant shall provide City of El Paso with notification of any proposed change to the baseline design from any source and provide estimates of the design cost,

construction cost and project schedule impact for each request. Variations outside of approved scope elements will be included in a supplemental to this scope.

3.1.08 Document/CADD Control
The Consultant shall control project documentation involving subconsultant.

3.1.09 Design Analysis:
1. The designer shall perform design analysis for each project to ensure compliance with the prevailing standard of care for engineering work. Furthermore, all design analysis must comply with all applicable City, County, State, and Federal laws and regulations.

3.1.10 Value Engineering
1. Conducting, or participating in a Value Engineering session/workshop, either formally or informally, by the Consultant is not part of this scope.

3.1.11 Cost Estimates
1. Consultant will provide a Statement of Probable Cost at the conclusion of this phase. The cost estimate will include an estimate for items eligible for TxDOT Category 2 funding and an estimate for all remaining items.
2. A set of specifications will be provided with the Final Design package.

3.1.12 Construction Sequencing
1. Preparation of a construction sequencing plan, in coordination with the City, to identify the phases and sequence of construction.
2. Attend a maximum of one (1) meeting for development of the plan for this phase.

3.2 Utility Coordination

3.2.01 Utility Services
No utility design services are included in this scope. . If it is determined that the utility will remain in place, the consultant will develop plans to accommodate the existing utility.

3.2.02 Utility Coordination
1. Consultant will continue all utility coordination necessary to obtain clearance letters from utilities.
2. Consultant will insert any joint-bid utilities into the bid package and incorporate their cost estimates into the project cost estimate. Plans, specifications, quantities, and estimates for joint-bid utilities will be the responsibility of others, and are not a part of this scope.
3. Utility design is not part of this scope. Where necessary, the consultant will adjust the design plans to accommodate the utility.
4. Traffic control for utility purposes is not part of this scope.

3.2.03Traffic Signals & Lane Configuration
1. Signing and striping plans developed in the Pre-Final Phase will be finalized.
2.Temporary traffic control plans and pedestrian control plans will be completed for each station site (23 sites).
3. **Traffic signal upgrades APS and TSP**

Incorporate comments from the City and prepare final the layouts and details .The Engineer will finalize a list and gather all appropriate standards details needed to complete the PS&E. The Engineer will finalize the General Notes for inclusion in the final design package. The Engineer will finalize all specifications, provisions, specification data notes for inclusion in the final design package.
3.3.04. TSP Transponders at intersections. Consultant to provide design utilitzing line-of-sight application compatible with the emitters that are part of the articulated vehicle procurement.

3.4 Civil / Drainage Design

3.4.01 Civil – In-Line Station Sites

1. Final site layouts and configuration of civil elements to include platform, curbing, transitions, and ADA compliant pedestrian elements, for level-boarding platform height.
2. Final station site grading plans (with flow directions).
3. Preparation of one (1) TxDOT Design Exception for the 10" platform. One "blanket" document is assumed' design exceptions for multiple locations will be handled under a supplement to this contract.
4. Plan layout of each station (23 total), to include stationing, elevations of critical points, with drainage flow directions noted.
5. One (1) section for each station (23) will be developed showing elevations, offsets, widths, and approximate ROW locations.
6. Finalize minor roadway modifications at platform locations (1'-2' offset from existing), with associated striping for 23 locations. Inclusion at individual sites and associated impact mitigation, if desired, is not part of this scope of work.
7. Final storm water pollution prevention plans (SW3P) and details will be included for each of the 23 locations, along with a general SW3P narrative and standard details as provided by the City of El Paso, or TxDOT.
8. Evaluate Drainage Impacts: Investigate existing storm outfalls and/or other systems in the vicinity of the project areas, evaluate their capacity and using the peak runoff computed for improvements, determine impact to those systems and/or if they can accept additional runoff from project areas. Make recommendations for feasible connections to existing nearby storm sewer systems. Hydraulic calculations, external drainage areas, water harvesting, stormwater detention, and inlet/storm drain design are not included in this scope of work.
9. Sidewalk design and details for off-station sidewalk improvements are not included in this scope, and if required, will be an additional service.

3.4.02 Civil – Northeaset Transit Center Site

Any design plans for the modification of existing platforms are not part of this scope, and will be additional services.

3.4.03 Civil – Downtown Transit Center Site

1. Design includes modification of four existing platforms, demolition plans, pedestrian control,and traffic control
2. Design plans for pedestrian access to the BRT platforms to include ADA compliant facilities..

3.4.04 Civil Transit Center Site (5 Points)

Final design at the Five Points Transit Center includes the following:

1. Final design plans for concrete pavement on half the width of Birch from alley on Birch to Montana, including demo of existing pavement.
2. Final design plans for 400 LF of sidewalk, landscaping and illumination improvements.

3.5 Stations Architecture

3.5.01 Station Planning/Architecture – In-Line Station Sites

1. Incorporate selected benches/seating, leaning rails, bike racks, and hand rails into station site plans, and include necessary details.
2. Prepare specifications for City of El Paso preferred options for site furniture.
3. Using the design from the Alameda and Mesa RTS Corridors, include the four (4) typical station platform layouts, to include the location of furniture, TVM and communication conduits, pedestrian elements such as handrails and bike loops. Locations of landscaping space will be noted.
4. Include final plans for selected superstructure and canopy from the Alameda and Mesa RTS corridors. This will include materials and finishes. Shade studies, renderings, modeling, and community presentations are not part of this scope.
5. Include final typical elevations and section details including the superstructure locations of signage, security cameras, lighting, message signs, and communication infrastructure based on the Alameda and Mesa RTS corridors. This will include a maximum of four (4) sheets. Special branding accommodations and structural or configuration modifications are not part of this scope.
6. Locations for public art will be identified and noted on one (1) plan sheet.
7. As this project will not meet current requirements for LEED certification consideration, no such activities are included in this scope.
8. Finalize station architecture plans developed in Pre-Final Phase.

3.5.02 Station Planning/Architecture – Northeast Transit Center Site

1. Transit center architecture, layouts, or modifications are not part of this scope, and if necessary will be additional services.
2. Special modifications, architectural elements, or changes to the station layout, finish, or configuration are not part of this scope.

3.5.03 ADA Compliance and Requirements

1. During final design, an ADA consultant certified to perform plan review and inspections for ADA, T.A.S, and Texas Department of Licensing and Regulation requirements, will review the Final Design Plans prior to assembling the bid package.
2. Design waiver preparation, if any, are not part of this scope.

3.5.04 Public Art Coordination and Incorporation

1. Consultant will insert any necessary sheets for joint-bid public art into the plan set. Cost estimates for the art program or art elements are not part of this scope.

2. Locations of art features or areas reserved for public art will be noted on the architectural plans.

3.5.05 Branding – System

The designer will coordinate with the Branding Consultant chosen by the City of El Paso for the Dyer BRT corridor.

3.6 Stations MEP & Foundation/Structural

3.6.01 Station Structural

1. For the four prototypical station sizes, structural design and details for the platform will be included based on the Alameda and Mesa RTS corridors.
2. Foundations will be designed to support the station superstructure elements.
3. Structural design for the canopy and superstructure will be included, and details provided for supports, connections, and frame elements. These are the same designs as for the Alameda and Mesa RTS corridors.
4. Special structural designs and options due to varying subsurface conditions (soils, utilities), or unique positioning of the site (building proximity, etc.) are included in this scope.

3.6.02 Station MEP/Communications – In-Line Station Sites

1. Final plans for the electrical conduit run layouts will be provided, and load and wiring requirements will be shown and located to service lighting, TVM, and dynamic signage (internal to platform).
2. Typical communications locations, conduit, and loading will be identified on the plans for the inclusion of other necessary communications equipment. All hardware and specific electronics, including the AVL system, TVMs, CCTVs, message signs, etc., are not included in the design, drawings or specifications of this contract.
3. Plan locations and specifications for lighting fixtures will be finalized.
4. Plans for each platform (23) will be developed to identify and layout the necessary off-platform connections to water, electric, and communication equipment cabinets. This will be a maximum of two (2) sheets per site. No wireless network interfaces with Sun Metro City systems are included in this scope.
5. Off project site improvements or designs for communication systems, pole mounts, wi-fi, and interfaces, or modifications at City or Sun Metro facilities are not included in this contract.
6. **Prototype configuration for TVMs and City's Central Data System**

The Engineer shall finalize the layouts and details for final submission. The Engineer will verify that the existing network has to capacity to integrate the proposed network. The Engineer will finalize all specifications, provisions, specification data notes for inclusion in the final design package.

3.6.03 Station MEP/Communications – Five Points and DowntownTransit Centers

1. Final design for MEP/communications for the variable message signs and pylons will be developed.

3.7 Landscaping and Irrigation

3.7.01 Landscape – In-Line Station Sites

1. Final standard landscaping scheme for the station site, showing standard areas for planting and hardscape.
2. Plans for plantings, locations, and performance specifications of drought tolerant elements will be included.
3. Custom landscape schemes are not part of this scope; however, up to eighteen (18) minor modifications to the selected scheme is included in this scope.
4. Irrigation plans for the prototypical station layout will be provided using a sub-surface system. Plan layouts and details will be included.

3.8 ITS Design

1. **Communication link design between the TVMs and Central Data System Specifications**

The Engineer shall finalize the layouts and details for final submission. The Engineer will finalize the required communication schematics needed to complete the PS&E. The Engineer will finalize the General Notes for inclusion in the final design package.

2. Final plans and configuration for a secure broadband wireless network system for CCTV video and TVM data. Interconnect to the fiber-optic backbone is not part of this scope.
3. Layout of variable message signs. These will be the current signs utilized by the City, and this scope does not include evaluation or implementation of other technologies.
4. Final design of a Closed Circuit Television (CCTV) system for platform monitoring.
5. Vehicle procurement support is not part of this scope

Deliverables:

Final Design:

Upon the completion of final design phase, the designer shall furnish to the Owner ten (10) copies of final design documents and specifications for review. After the review, the designer shall submit to the Owner three (3) copies for the final revised design documents and specifications for final check. Upon the approval of the final design documents, the designer should furnish the Owner twenty (20) copies of the final design documents for bidding. The consultant shall also submit electronic files of the deliverables that includes CADD and pdf versions.

Specifications:

All specifications must include type of materials listed in the construction drawings, placement method and quality control and quality assurance testing. The specification shall correlate with unit price format. All specifications must comply with established specification standards and formats. The City of El Paso will provide Consultant with the latest version of the City's standard specifications

Reproduction of Project Deliverables

The City will provide a Purchase Order for the reproduction of all deliverables mentioned in this scope. The designer shall be responsible to coordinate all printing for the different phases and for code review requirements. For bidding consultant shall be responsible for

coordinating the printing of the El Paso Water Utilities improvements or any other affected utility drawings and include them in construction drawing bidding sets.

4.0 BIDDING AND CONSTRUCTION

4.1 Bidding Services

1. Consultant will work in partnership with City personnel to determine bid period and date.
2. Consultant will provide, to the City, responses to all questions from perspective bidders
3. Attendance at a pre-bid conference (1 meeting)
4. Preparation of addenda, if necessary. A maximum of two (2) bid addendums are covered in this scope.
5. Assist City in evaluating bids and re-bidding if required.
6. Consultant will provide objective recommendations concerning the acceptability of subcontractors, based on data and documents contained within the submissions provided in the bidding process. Consultant will not provide subjective input based on elements or experiences of the Consultant with any proposing contractors.

4.2 Construction Phase Services

4.2.01 Survey

1. Construction staking is not part of this scope.
2. No survey, staking, or ROW activities will be performed for the transit centers.

4.2.02 Construction Observation Services

1. Consultant shall attend the pre-construction meeting, and act as a resource to the City.
2. Consultant will review, submittals and shop drawings and provide responses.
3. Consultant will provide written answers to requests for information (RFI's).
4. The Consultant will review change orders.
5. The Consultant will conduct periodic site visits and provide written observation reports to the Owner (maximum of 26 under this scope).
6. The Consultant shall participate on the punch list walk thru, and schedule an ADA consultant review prior to this activity.
7. The Consultant shall sign-off on construction closeout documents (for general conformance with design intent only).
8. The Consultant will not provide inspection services, and the City understands that the Consultant does not assume any responsibility for job site safety, and nothing that Consultant or Consultant's representative may do or say, shall cause any responsibility for job site safety to be incurred.
9. The Consultant will incorporate contractor provided record as-built plans, and provide record drawings, both hard copies and electronic format CDs (including specifications and all attachments).

5.0 PROJECT SCHEDULE

Preliminary Design Phase:	115 Calendar Days
Pre-Final Design Phase:	90 Calendar Days
Final Design Phase:	50 Calendar Days

Attachment B

DYER RAPID TRANSIT SYSTEM - SUN METRO/CITY OF EL PASO

Huitt-Zollars, Inc.					
Fee Proposal					
revised 11/20/2012					
	Huitt-Zollars	Jacobs	Walter P Moore	CQC	**Totals**
1.0 Preliminary Design Phase	$398,222	$90,975	$7,708	$53,500	$550,405
1.1 Proj Mgmt	$67,673	$26,500	$0		$94,173
1.2 Investigation	$23,996	$5,080			$29,076
Survey	$73,700				$73,700
1.3 Geom Planning	$111,903	$20,340	$5,120		$137,363
1.4 Utilities & Drainage	$50,277				$50,277
1.5 Stations Architecture	$6,613	$18,305			$24,918
1.6 Stations Struct & Elec	$11,755				$11,755
1.7 Landscaping & Irrig	$29,349				$29,349
1.8 Systems Concepts	$7,526		$2,388		$9,914
1.9 Public Outreach	$8,870	$7,700			$16,570
Direct Costs	$6,560	$13,050	$200		$19,810
2.0 Pre-Final Design Phase	$398,613	$141,145	$70,193		$609,951
2.1 Proj Mgmt	$70,546	$32,710	$1,322		$104,578
2.2 Utility Investigation	$19,230				$19,230
2.3 Traffic Signals & Lane Config	$60,691		$20,019		$80,710
2.4 Civil / Drainage	$102,051	$6,820			$108,871
2.5 Stations Architecture	$5,814	$89,950	$1,322		$97,086
2.6 Stations Struct & Elec	$79,634		$22,376		$102,010
2.7 Landscaping & Irrig	$38,542				$38,542
2.8 ITS Design	$13,941		$24,954		$38,895
Direct Costs	$8,164	$11,665	$200		$20,029
3.0 Final Design Phase	$265,590	$68,275	$71,929		$405,793
3.1 Proj Mgmt	$48,077	$34,300	$2,023		$84,400
3.2 Utility Investigation	$8,720				$8,720
3.3 Traffic Signals & Lane Config	$44,744		$21,726		$66,470
3.4 Civil / Drainage	$68,327		$1,629		$69,956
3.5 Stations Architecture	$4,361	$27,250			$31,611
3.6 Stations Struct & Elec	$46,249		$19,799		$66,048
3.7 Landscaping & Irrig	$26,221				$26,221
3.8 ITS Design	$10,077		$26,550		$36,627
Direct Costs	$8,814	$6,725	$200		$15,739
Design Fee Totals	**$1,062,424**	**$300,395**	**$149,830**	**$53,500**	**$1,566,149**
4.0 Bidding & Construction	$232,967	$29,235	$6,979		$269,181
4.1 Bidding	$10,685	$2,500			$13,185
4.2 Construction Phase	$218,388	$22,980	$6,979		$248,347
Direct Costs	$3,894	$3,755			$7,649
Totals	**$1,295,391**	**$329,630**	**$156,809**	**$53,500**	**$1,835,330**
Unit prices (used at City's Request)				**ea**	**estimated**
Typical Metes and Bounds Survey for Parcel Acquisition				$800	$35,000
SUE Level A Testhole with Traffic Control & Survey				$1,100	$35,000
				Grand Total	**$1,905,330**

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

For the Project known as "**DYER CORRIDOR RAPID TRANSIT SYSTEM (DYER RTS)**", hereinafter referred to as the Project, the Consultant will provide the Basic and Additional Services as noted herein.

BASIC SERVICES OF THE CONSULTANT

GENERAL

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

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

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

4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

REPORT PHASE

1. Upon receipt of the Owner's written authorization to proceed with the **Report Phase**, the Consultant shall:

   a. Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.

   b. Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.

   c. (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory testing, and (d) Inspection or other special consultation; (2) Act as the Owner's

representative in connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

d. Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant's recommendations.

e. As per Attachment "D", furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.

2. Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.

3. As identified in the Scope of Work in Attachment "A", the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

PHASE I - PRELIMINARY DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Consultant shall do the following separately for each construction contract:

1. Consult with the Owner to determine the Owner's requirements for the Project.

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

2. Provide at the Consultant's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.

4. Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.

5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.

7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.

8. Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.

9. As per Attachment "D", furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

PHASE II - PRE-FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Pre-Final Design Phase, the Consultant shall do the following separately for each construction contract:

1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant's assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.

2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the **"Drawings,"** to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called **"Specifications."** These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.

3. Advise the Owner of any adjustment to the Consultant's previous opinion of probable construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant's cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor's method of pricing and that the Consultant's opinion of probable construction costs are made on the basis of professional judgment and experience. The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.
4. Prepare proposal forms.

5. As per Attachment "D", furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

PHASE III - FINAL DESIGN PHASE

Upon receipt of the Owner's written authorization to proceed with the Final Design Phase, the Consultant shall do the following separately for each construction contract:

1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.

2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility company comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.

3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.

4. As per Attachment "D", furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.

5. As per Attachment "D", furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.

6. Additional copies of the drawings and specifications beyond those identified in Attachment "D", required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

BIDDING PHASE

Upon receipt of Owner's written request, the Consultant shall provide any of the following services during the Bidding Phase:

1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.

2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.

3. Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.

4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment "D", deliver copies of all addenda to the Owner for appropriate action.

5. As identified in Attachment "A", assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.

6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

CONSTRUCTION PHASE

At Owner's request, the Consultant shall provide any of the following services associated with the Construction Phase:

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

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

3. Unless otherwise stipulated in Attachment "A", Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.

4. Visit each construction site at least once each week or more frequently, if necessary, to observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional

requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. **Such review must be complete within ten City working days following receipt of submittal documents.** The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.

6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner's approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract documents, subject to the Owner's interpretation of such terms and conditions. If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.

7. Based on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to

the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.

8. Conduct with the Owner and construction contractor no more **than two brief preliminary inspections,** at times requested by the construction contractor to determine if the Project is ready for final inspection.

9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The **"punch list"** shall be furnished to the construction contractor and the Owner within **two City working days** after the final inspection.

10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the final inspection.

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

12. Furnish the Owner one set of reproducible **(D format)** "record" drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints, drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format

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

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

15. Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.

17. Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.

18. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.

19. Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.

20. Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.

21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.

22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.

23. Provide additional or extended services during construction made necessary by: **a)** work damaged by fire or other cause during construction; **b)** prolongation of the construction contract time by more than **twenty-five percent** provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Consultant; **c)** Acceleration of the work schedule involving services beyond normal city working hours; or **d)** the construction contractor's default under the construction contract due to delinquency or insolvency.

24. Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.

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

ADDITIONAL SERVICES OF THE CONSULTANT

GENERAL

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.

2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner's scope or budget, except where the Consultant's preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant's final design cost opinions by **ten percent** or more.

3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.

4. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.

5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

RESIDENT PROJECT SERVICES

1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.

2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.

3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in

the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

For the Project known as **"DYER CORRIDOR RAPID TRANSIT SYSTEM (DYER RTS)"**, hereinafter referred to as the Project, the Owner will compensate the Consultant an amount not to exceed One Million Nine Hundred Five Thousand Three Hundred Thirty and 00/100 Dollars ($1,905,330.00) for all Basic Services and reimbursables noted within the Agreement and its attachments.

PAYMENT SCHEDULE

Basic services for design shall include the phases listed below at the fixed fee shown for each phase. The remainder of the fixed contract amount, if any, shall consist of the estimate for the time and materials for the bidding phase and construction phase.

Fixed fee Payment to Consultant

Preliminary Design Phase	**$550,405.00**
Pre-Final Design Phase	**$609,951.00**
Final Design Phase	**$405,793.00**
Bidding & Construction Phase	**$269,181.00***
Survey	**$ 35,000.00***
SUE	**$ 35,000.00***

*** Time & Materials Proposal Estimated Amount**

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant's proposal found in Attachment B. The time shown in Attachment B is an estimate. Should the services rendered during the bidding and construction phases exceed the estimated amount, written authorization will be required prior to rendering services. Written authorization shall be only by contract amendment in accordance with the contract provisions. For contracts with a total value less than Fifty Thousand and No/100 Dollars ($50,000), the parties agree that at no time may the amount of the compensation under this contract exceed Fifty Thousand and No/100 Dollars ($50,000) except by execution of an amendment to this Agreement.

Payment for each Phase 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.

DELIVERABLE SCHEDULE

REPORT PHASE (Combine with Preliminary Design Phase)
The services called for in the Report Phase of this Agreement shall be completed and N/A **copies** of the Preliminary Study and Report shall be submitted within N/A **consecutive calendar days** following written authorization from the Owner for the Consultant to proceed.

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

PHASE I—PRELIMINARY DESIGN PHASE
The services called for in **Phase I** of this Agreement shall be completed and **ten copies** of any required documents and opinion of probable construction costs shall be submitted within **115 consecutive calendar days** following written authorization from the Owner for the Consultant to proceed.

PHASE II—PRE-FINAL DESIGN PHASE
The services called for in **Phase II** of this Agreement shall be completed and **ten copies** the required documents and services shall be submitted within **90 consecutive calendar days** following written authorization from the Owner for the Consultant to proceed.

PHASE III—FINAL DESIGN PHASE
The services called for in **Phase III** of this Agreement shall be completed and **ten copies** of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes shall be submitted within **50 consecutive calendar days** following written authorization from the Owner for the Consultant to proceed. And, **twenty copies** of the Drawings and Specifications in final approved form for bidding purposes for each construction contract shall be submitted within **3 consecutive calendar days** following written authorization from the Owner for the Consultant to proceed.

PHASE IV—BIDDING PHASE
Provide services as authorized by Owner during the bid phase as described in Attachment "C" and submit **three copies** of all addenda to the Owner for appropriate action within **2 consecutive calendar days.**

PHASE V - CONSTRUCTION PHASE
Provide services as authorized by Owner during construction phase as described in Attachment "C" and submit one set of Mylar and one set of electronic media format copies of all record drawings to the Owner within sixty days from the date of substantial completion.

Attachment E

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/6/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
McLaughlin Brunson Insurance Agency, LLP
6600 LBJ Freeway, Suite 220
Dallas TX 75240

CONTACT NAME: Patrick P McLaughlin
PHONE (A/C, No, Ext): (214) 503-1212 FAX (A/C, No): (214) 503-8899
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Hudson Insurance Company	25054
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Huitt-Zollars, Inc.
1717 McKinney Avenue
Dallas TX 75202

COVERAGES **CERTIFICATE NUMBER:** Cert ID 15990 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	CLAIMS-MADE / OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY / PRO-JECT / LOC						PRODUCTS - COMP/OP AGG	$
								$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N	N/A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Professional Liability	N	Y	AEE72488-02	1/23/2012	1/23/2013	Per Claim/ Annual Aggregate	$ 1,000,000
								$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
The claims made professional liability coverage is the total aggregate limit for all claims presented within the annual policy period and is subject to a deductible. Thirty (30) day notice of cancellation is in favor of the certificate holder. RE: Dyer Rapid Transit System

CERTIFICATE HOLDER

City of El Paso - Attn: Benjamin Ortega
- Engineering & Construction Management
2 Civic Center Plaza
4th Floor
El Paso TX 79901

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Patrick P McLaughlin

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/6/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
McLaughlin Brunson Insurance Agency, LLP
6600 LBJ Freeway, Suite 220
Dallas TX 75240

CONTACT NAME: Patrick P McLaughlin
PHONE (A/C, No, Ext): (214) 503-1212 FAX (A/C, No): (214) 503-8899
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Hudson Insurance Company	25054
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Huitt-Zollars, Inc.
1717 McKinney Avenue
Dallas TX 75202

COVERAGES **CERTIFICATE NUMBER:** Cert ID 15990 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	CLAIMS-MADE / OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY / PRO-JECT / LOC						PRODUCTS - COMP/OP AGG	$
								$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N	N/A					E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$
A	Professional Liability	N	Y	AEE72488-02	1/23/2012	1/23/2013	Per Claim/ Annual Aggregate	$ 1,000,000
								$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
The claims made professional liability coverage is the total aggregate limit for all claims presented within the annual policy period and is subject to a deductible. Thirty (30) day notice of cancellation is in favor of the certificate holder. RE: Dyer Rapid Transit System

CERTIFICATE HOLDER

City of El Paso - Attn: Benjamin Ortega
- Engineering & Construction Management
2 Civic Center Plaza
4th Floor
El Paso TX 79901

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Patrick P McLaughlin

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/7/2012

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IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
MHBT Inc.
8144 Walnut Hill Lane, 16th Fl
Dallas TX 75231

CONTACT NAME: Judy Hays
PHONE (A/C, No, Ext): 972-770-1638 FAX (A/C, No): 972-376-8194
E-MAIL ADDRESS: judy_hays@mhbt.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Twin City Fire Insurance Co.	29459
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED HUITTZOL
Huitt-Zollars, Inc.
1717 McKinney Ave., Ste. 1400
Dallas TX 75202-1236

COVERAGES CERTIFICATE NUMBER: 1440791423 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			46UUNLJ3272	6/1/2012	6/1/2013	EACH OCCURRENCE	$1,000,000
	X COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$1,000,000
	CLAIMS-MADE X OCCUR						MED EXP (Any one person)	$10,000
	X Blkt Contractual						PERSONAL & ADV INJURY	$1,000,000
							GENERAL AGGREGATE	$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$2,000,000
	POLICY X PRO-JECT LOC							$
A	AUTOMOBILE LIABILITY			46UENKN1126	6/1/2012	6/1/2013	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS / X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB X OCCUR			46XHURJ8271	6/1/2012	6/1/2013	EACH OCCURRENCE	$2,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$2,000,000
	DED X RETENTION $ 10,000							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			46WEZU9569	6/1/2012	6/1/2013	X WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: N	N/A					E.L. EACH ACCIDENT	$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000
A	Valuable Papers			46UUNLJ3272	6/1/2012	6/1/2013	$100,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Additional Insured form #HG001 edition 06/05 applies to the General & Auto Liability policies.
Waiver of subrogation form #HG001 edition 06/05 applies to the General & Auto Liability policies.
Waiver of subrogation form #WC000313 edition 3/06 applies to the Workers Compensation policy.
Primary & Non-Contributory General Liability form #HG001 edition 06/05.

Certificate Holder, and any entities required by written contract, are named as an Additional Insureds per the above form(s) on the General
See Attached...

CERTIFICATE HOLDER

City of El Paso - Engineering & Construction Management
RE: Dyer Rapid Transit System
2 Civic Center Plaza, 4th Floor
El Paso TX 79901

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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The ACORD name and logo are registered marks of ACORD

AGENCY CUSTOMER ID: HUITTZOL

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
MHBT Inc.	Huitt-Zollars, Inc. 1717 McKinney Ave., Ste. 1400 Dallas TX 75202-1236
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

Liability, Automobile Liability and Excess Liability policies of insured with Primary and Non Contributory status per the above General Liability form and Waiver of Subrogation per the above form(s) on the General Liability, Automobile Liability, Workers Compensation and Excess Liability policies of insured, but only to the extent that the limits and forms are required to satisfy the terms of a written contract.
RE: Dyer Rapid Transit System

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COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **II** – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **V** –Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C.**

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B.**

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph **1.** of Section **II** – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of Section **II** – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

(1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:

(a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and

(b) You are not engaged in the business or occupation of providing such services.

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(2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. **Exclusions**

This insurance does not apply to:

a. **Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

b. **Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) That the insured would have in the absence of the contract or agreement; or

(2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

(a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. **Liquor Liability**

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. **Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. **Employer's Liability**

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. **Pollution**

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible;

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

(2) A watercraft you do not own that is:

(a) Less than 51 feet long; and

(b) Not being used to carry persons for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

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(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;

(5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or

(6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section **III** – Limits Of Insurance.

Paragraph **(2)** of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs **(3)** and **(4)** of this exclusion do not apply to "property damage" arising from the use of elevators.

Paragraphs **(3)**, **(4)**, **(5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs **(3)** and **(4)** of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at the job site.

Paragraph **(6)** of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. **Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

If such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. **Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

p. **Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. **Employment-Related Practices**

"Bodily injury" to:

(1) A person arising out of any "employment-related practices"; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

r. **Asbestos**

(1) "Bodily injury" or "property damage" arising out of the "asbestos hazard".

(2) Any damages, judgments, settlements, loss, costs or expenses that:

(a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

(b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

(c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning Or Explosion

Exclusions **c.** through **h.** and **j.** through **n.** do not apply to damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III** – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. **Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

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2. **Exclusions**

This insurance does not apply to:

a. **Knowing Violation Of Rights Of Another**

"Personal and advertising injury" arising out of an offense committed by, at the direction or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. **Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. **Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period.

d. **Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. **Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. **Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement".

g. **Quality Or Performance Of Goods – Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. **Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services.

i. **Infringement Of Intellectual Property Rights**

"Personal and advertising injury" arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of:

(1) Copyright;

(2) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(3) Title of any literary or artistic work.

j. **Insureds In Media And Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

(1) Advertising, broadcasting, publishing or telecasting;

(2) Designing or determining content of web sites for others; or

(3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **17.a.**, **b.** and **c.** of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting.

k. **Electronic Chatrooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. **Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers.

m. **Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. **Pollution-Related**

Any loss, cost or expense arising out of any:

(1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. **War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. **Internet Advertisements And Content Of Others**

"Personal and advertising injury" arising out of:

(1) An "advertisement" for others on your web site;

(2) Placing a link to a web site of others on your web site;

(3) Content, including information, sounds, text, graphics, or images from a web site of others displayed within a frame or border on your web site; or

(4) Computer code, software or programming used to enable:

(a) Your web site; or

(b) The presentation or functionality of an "advertisement" or other content on your web site.

q. **Right Of Privacy Created By Statute**

"Personal and advertising injury" arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act.

r. **Violation Of Anti-Trust law**

"Personal and advertising injury" arising out of a violation of any anti-trust law.

s. **Securities**

"Personal and advertising injury" arising out of the fluctuation in price or value of any stocks, bonds or other securities.

t. **Discrimination Or Humiliation**

"Personal and advertising injury" arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

u. **Employment-Related Practices**

"Personal and advertising injury" to:

(1) A person arising out of any "employment–related practices"; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

v. **Asbestos**

(1) "Personal and advertising injury" arising out of the "asbestos hazard".

(2) Any damages, judgments, settlements, loss, costs or expenses that:

(a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

(b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

(c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

COVERAGE C MEDICAL PAYMENTS

1. **Insuring Agreement**

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

(1) On premises you own or rent;

(2) On ways next to premises you own or rent; or

(3) Because of your operations;

provided that:

(1) The accident takes place in the "coverage territory" and during the policy period;

(2) The expenses are incurred and reported to us within three years of the date of the accident; and

(3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

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b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

(1) First aid administered at the time of an accident;

(2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

2. **Exclusions**

We will not pay expenses for "bodily injury":

a. **Any Insured**

To any insured, except "volunteer workers".

b. **Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. **Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

d. **Workers Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. **Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. **Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

g. **Coverage A Exclusions**

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

a. All expenses we incur.

b. Up to $1,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

c. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $500 a day because of time off from work.

e. All costs taxed against the insured in the "suit".

f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

b. This insurance applies to such liability assumed by the insured;

c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

f. The indemnitee:

(1) Agrees in writing to:

(a) Cooperate with us in the investigation, settlement or defense of the "suit";

(b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

(c) Notify any other insurer whose coverage is available to the indemnitee; and

(d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

(a) Obtain records and other information related to the "suit"; and

(b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee,

necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or

b. The conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees and Volunteer workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

(a) Owned, occupied or used by,

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will

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have all your rights and duties under this Coverage Part.

e. **Unnamed Subsidiary**

Any subsidiary, and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part.

The insurance afforded herein for any subsidiary not named in this Coverage Part as a named insured does not apply to injury or damage with respect to which an insured under this Coverage Part is also an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its limits of insurance.

3. **Newly Acquired or Formed Organization**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. **Mobile Equipment**

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person driving the equipment; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. **Nonowned Watercraft**

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. **Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

a. **Vendors**

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded the vendor is subject to the following additional exclusions:

This insurance does not apply to:

(a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Sub-paragraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors of Equipment

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

(2) With respect to the insurance afforded to these additional insureds this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

c. Lessors of Land or Premises

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

With respect to the insurance afforded these additional insureds the following additional exclusions apply:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to lease that land; or
2. Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers or Surveyors

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In connection with your premises; or

(2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

(2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

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f. Any Other Party

Any other person or organization who is not an insured under Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In the performance of your ongoing operations;

(2) In connection with your premises owned by or rented to you; or

(3) In connection with "your work" and included within the "products-completed operations hazard", but only if

(a) The written contract or agreement requires you to provide such coverage to such additional insured; and

(b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds under this provision is described in Section **III** – Limits Of Insurance.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in Section **IV** – Commercial General Liability Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Most We will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. General Aggregate Limit

The General Aggregate Limit is the most we will pay for the sum of:

a. Medical expenses under Coverage **C;**

b. Damages under Coverage **A,** except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

c. Damages under Coverage **B.**

3. Products-Completed Operations Aggregate Limit

The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Personal and Advertising Injury Limit

Subject to **2.** above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Each Occurrence Limit

Subject to **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

a. Damages under Coverage **A;** and

b. Medical expenses under Coverage **C**

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Damage To Premises Rented To You Limit

Subject to **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

7. Medical Expense Limit

Subject to **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

8. How Limits Apply To Additional Insureds

If you have agreed in a written contract or written agreement that another person or organization be

added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

a. The limits of insurance specified in the written contract or written agreement; or

b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

(1) How, when and where the "occurrence" or offense took place;

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insureds Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

(1) You or any additional insured that is an individual;

(2) Any partner, if you or an additional insured is a partnership;

(3) Any manager, if you or an additional insured is a limited liability company;

(4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;

(5) Any trustee, if you or an additional insured is a trust; or

(6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This duty applies separately to you and any additional insured.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or

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that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage A – Bodily Injury And Property Damage Liability;

(5) Property Damage to Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **j.** of Section **I** - Coverage **A** - Bodily Injury And Property Damage Liability;

(6) When You Are Added As An Additional Insured To Other Insurance

Any other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

Any other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this coverage part.

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement, or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. **Premium Audit**

   a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

   b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

   c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. **Representations**

   a. **When You Accept This Policy**

   By accepting this policy, you agree:

   (1) The statements in the Declarations are accurate and complete;

   (2) Those statements are based upon representations you made to us; and

   (3) We have issued this policy in reliance upon your representations.

   b. **Unintentional Failure To Disclose Hazards**

   If unintentionally you should fail to disclose all hazards relating to the conduct of your business that exist at the inception date of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

7. **Separation Of Insureds**

   Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

   a. As if each Named Insured were the only Named Insured; and

   b. Separately to each insured against whom claim is made or "suit" is brought.

8. **Transfer Of Rights Of Recovery Against Others To Us**

   a. **Transfer of Rights Of Recovery**

   If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

   b. **Waiver Of Rights Of Recovery (Waiver Of Subrogation)**

   If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

9. **When We Do Not Renew**

   If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

   If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

   a. (1) Radio;

   (2) Television;

   (3) Billboard;

   (4) Magazine;

   (5) Newspaper; or

   b. Any other publication that is given widespread public distribution.

   However, "advertisement" does not include:

   a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

   b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

   a. Injury;

   b. Sickness; or

   c. Disease

   sustained by a person and, if arising out of the above, mental anguish or death at any time.

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6. "Coverage territory" means:
   a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
   b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in **a.** above; or
   c. All other parts of the world if the injury or damage arises out of:
      (1) Goods or products made or sold by you in the territory described in **a.** above;
      (2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; or
      (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

   provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory or in a settlement we agree to.
7. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
8. "Employment-Related Practices" means:
   a. Refusal to employ a person;
   b. Termination of a person's employment; or
   c. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at a person.
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
   a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
   b. You have failed to fulfill the terms of a contract or agreement;

   if such property can be restored to use by:
   a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
   b. Your fulfilling the terms of the contract or agreement.
12. "Insured contract" means:
   a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage to Premises Rented To You Limit described in Section III – Limits of Insurance;
   b. A sidetrack agreement;
   c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
   d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
   e. An elevator maintenance agreement;
   f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

   Paragraph **f.** includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

   However, Paragraph **f.** does not include that part of any contract or agreement:
   (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
      (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
      (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
   (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(1)** above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
   a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

b. While it is in or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in **a., b., c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in **a., b., c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral, written or electronic publication of material that violates a person's right of privacy;

f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";

g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or

h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

18. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

19. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

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b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

(3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

20. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

As used in this definition, computerized or electronically stored data, programs or software are not tangible property. Electronic data means information, facts or programs:

a. Stored as or on;

b. Created or used on; or

c. Transmitted to or from;

computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

23. "Volunteer worker" means a person who

a. Is not your "employee";

b. Donates his or her work;

c. Acts at the direction of and within the scope of duties determined by you; and

d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and

(2) The providing of or failure to provide warnings or instructions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

*0100046ZU95690101 35637

Policy Number: 46 WE ZU9569 **Endorsement Number:**

Effective Date: 06/01/2012 Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: HUITT-ZOLLARS, INC

1717 MCKINNEY AVE STE 1400
DALLAS, TX 75202

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE

ANY PERSON OR ORGANIZATION
FROM WHOM YOU ARE REQUIRED BY
WRITTEN CONTRACT OR AGREEMENT
TO OBTAIN THIS WAIVER OF RIGHT
FROM US.

Countersigned by _____
Authorized Representative

Form WC 00 03 13 Printed in U.S.A.
Process Date: 06/01/2012

Policy Expiration Date: 06/01/2013

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO CERTIFICATE HOLDER(S)

This policy is subject to the following additional Conditions:

A. If this policy is cancelled by the Company, other than for nonpayment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

B. If this policy is cancelled by the Company for nonpayment of premium, or by the insured, notice of such cancellation will be provided within (10) days of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

If notice is mailed, proof of mailing to the last known mailing address of the certificate holder(s) on file with the agent of record or the Company will be sufficient proof of notice.

Any notification rights provided by this endorsement apply only to active certificate holder(s) who were issued a certificate of insurance applicable to this policy's term.

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A/E SELECTION SUMMARY

Project Name: Dyer Corridor - Rapid Transit System

Department Requesting Service: Sun Metro

District/ Representative: District #4

SHORTLIST

RFQ Notification Date: 8/2/2012

RFQ Due Date: 8/20/2012

SHORTLIST COMMITTEE

Sam Rodriguez, Engineering & Construction Management

Margaret Schroeder, Engineering & Construction Management

Everett Esparza, Sun Metro

Kyle Ibarra, Sun Metro

Sergio Reyes, Department of Transportation

SCORING SHEETS ISSUED: 8/21/2012

SCORING SHEETS DUE: 8/27/2012

FINAL RANKING DATE: 8/28/2012

FIRMS NOTIFIED DATE: 8/28/2012

A/E FIRMS THAT SUBMITTED RFQ PACKAGE

4 AIA

2 Huitt-Zollars, Inc.

1 Moreno-Cardenas, Inc.

3 Parkhill, Smith & Cooper

FINAL SELECTION

PRESENTATION COMMITTEE

Alan Shubert, Engineering & Construction Management

Irene Ramirez, Engineering & Construction Management

Jay Banasiak, Sun Metro

Matthew McElroy, City Development

Ted Marquez, Department of Transportation

PRESENTATION DATE: 9/19/2012

FIRMS NOTIFIED DATE: 9/19/2012

FINALISTS

Moreno-Cardenas, Inc.

Parkhill, Smith & Cooper

Huitt-Zollars, Inc.

SELECTED CONSULTANT: Huitt-Zollars, Inc.

SCOPING MEETING: TBD

FEE PROPOSAL DUE: TBD