

**REQUEST FOR QUALIFICATIONS (RFQ)
PROFESSIONAL ENGINEERING DESIGN SERVICES FOR
TxDOT TRANSPORTATION ALTERNATIVES PROGRAM PROJECT
City of Eden Downtown Sidewalk Renovation RFQ# 2017-001**

PROJECT DESCRIPTION

The City Of Eden (City) hereby solicits sealed *Requests for Qualifications (RFQ)* for professional engineering services. It is the intent of the City to have pedestrian facilities designed and constructed within the city limits of Eden, in accordance with a Transportation Alternatives Program Project entitled City of Eden Pedestrian Connect Ability and Accessibility Project. The intent is to select one firm that has the internal capabilities to fully perform the work contained in this RFQ or a prime firm (collectively, the "Respondent") who has assembled a team of specialized consultants to manage and perform all of the required services.

STATEMENT OF QUALIFICATIONS (SOQ) SUBMISSION INSTRUCTIONS & DEADLINE:

Respondent shall submit in a sealed package, clearly marked on the front of the package "*RFQ: ENGINEERING SERVICES FOR 2015 TRANSPORTATION ALTERNATIVES PROGRAM PROJECT, CITY OF EDEN PEDESTRIAN CONNECT ABILITY AND ACCESSIBILITY PROJECT*" a total of five (5) SOQ's which shall include one (1) original, marked "ORIGINAL", unbound SOQ containing original ink signature of partner, principle or officer of the Respondent who holds authority to bind the Respondent to the requirement of the this RFQ. All submittals must be received in the City Secretary's Office **NO LATER THAN 5:00 P.M. CST June 2, 2017** at the address indicated below. Any submittal received after this time shall not be considered. Submittals sent by facsimile or email will not be accepted. Any submittal received after the closing time will not be accepted and will be returned to the respondent unopened (if properly identified). It is the responsibility of the respondent to see that any submittal shall have sufficient time to be received by the City Secretary's Office prior to the SOQ opening date and time. The receiving time in the City Secretary's Office will be the governing time for acceptability of the SOQ.

Submittal of an SOQ in response to this solicitation constitutes an offer by the respondent. Once submitted, SOQ becomes the property of the City of Eden and as such the City reserves the right to use any ideas contained in any SOQ regardless of whether that respondent/firm is selected. Submission of a SOQ in response to this solicitation, by any respondent, shall indicate that the respondent(s) has/have accepted the conditions contained in the RFQ, unless clearly and specifically noted in the SOQ submitted and confirmed in the contract between the City and the successful respondent otherwise. SOQs which do not comply with these requirements may be rejected at the option of the City. Failure to meet SOQ requirements may be grounds for disqualification.

CITY CONTACT & MAILING/PHYSICAL ADDRESS:

Celina Hemmeter – City Secretary/Administrator

Cityadmin@edentexas.com

325-869-2211

Hand Delivered SOQ

120 Paint Rock St.
Eden, TX 76837

Land courier (Fedex, UPS)

City of Eden
C/O City Administrator
120 Paint Rock St.
Eden, TX 76837

If Mailing SOQ's

City of Eden
C/O City Administrator
P. O. Box 915
Eden, TX 76837

PROJECT SCOPE

The scope of services for the **City of Eden Pedestrian Connect Ability and Accessibility Project, TxDOT Transportation Alternatives Program ("TAP")**, includes the Plans Specifications & Estimate (PS&E) development for construction and or reconstruction of approximately 1,600 linear feet of reinforced concrete sidewalks, handrails, curb ramps, and driveways designed to meet Americans with Disabilities Act ("ADA") and Texas Accessibility Standards ("TAS"). Sidewalks will be placed adjacent to West Blanchard Street, South Main Street (also known as Highway 83), Jackson Street, and Paint Rock Street, as shown in Attachment B. In addition to standard construction activities, this project includes lighting, trash receptacles, and benches as outlined in the 2015 TAP Nomination Form.

Professional services required include, but are not limited to, the following:

- 1) Provide all necessary project NEPA and THC documentation and permitting services.
- 2) Provide all engineering, surveying, and construction expertise to design and prepare construction plans, specifications, and cost estimates.
- 3) Coordinate with and provide documentation to the public, property owners, agencies, and businesses as the project progresses.
- 4) Preparation of all preliminary, intermediate, and final design plans and specifications, including, if applicable, all pedestrian / bicycle improvements, street, drainage, bridge, utility, right of way and environmental coordination and clearance, and provide coordination with utilities and other regulatory entities to secure approval of final design.

SOQ SUBMISSION REQUIREMENTS:

Respondents are required to provide responses to the following outline of questions and requirements. Statements of qualification should be in the form of 8-1/2 x 11 reports with optional foldouts and attachments, when necessary. Each section (defined below) shall be separated by a tabbed divider. The proposal should be kept to the minimum number of pages necessary to fulfill the requirements of this RFQ.

Section 1: Transmittal letter

Indicate interest and commitment to perform services for the City of Eden, include contact information (physical address, telephone, fax, cell phone, and email address) for the primary person responsible for your SOQ who will be the point of contact for the City on all correspondence and communications pertaining to the RFQ. State whether any addendums to this RFQ have been received by your firm and whether consideration of their content has been included in your SOQ. The letter must be signed by an officer of the firm who is authorized to bind the firm to contract and shall contain a statement to this effect;

Section 2: Firm Qualification and Experience

- 1) An organizational chart that explains team member responsibilities.
- 2) Resumes of personnel that would be assigned to the project, with their prospective roles identified.
- 3) Discuss the firm's experience and history in performing engineering services in a timely manner, particularly for other governmental agencies in the past five (5) years. Discuss the firm's uniqueness to best perform these services for the City. Identify the office location that will be providing the services and the approach to handling part-time staffing needs for smaller assignments. (No more than 2 pages)

Section 3: Project Experience and References

Discussion of firm(s) experience in working with governmental agencies within the State of Texas, including a tabular list of firm(s) comparable projects in the State of Texas and whether such projects are ongoing or

completed. Provide a synopsis of a minimum of three (3) of the listed projects. Each synopsis shall include, at a minimum, the following information:

- 1) Project name and location.
- 2) Statement describing whether or not the firm was the project's lead, sole service provider, or subconsultant to another firm.
- 3) Year project completed.
- 4) Short description of the project.
- 5) Name and telephone number of the governmental agency's contact person.
- 6) Name of the firm's project manager or lead engineer on the project.
- 7) Other project information the firm may want to include.

Section 4: Project Management and Organizational Approach

- 1) Describe the firm(s) understanding of providing professional engineering services for public infrastructure projects - TXDOT, municipal, state or federal.
- 2) Describe the firm(s) approach to delivering the services.
- 3) Describe the firm(s) procedures and methods associated with scheduling, coordination, analysis, quality assurance and control, documentation, and reporting.

Section 5: Insurance and Legal Status

- 1) List any actions taken by any regulatory agency or government against or involving the firm(s), its agents, or employees with respect to any work performed.
- 2) Jurisdictions, disciplines, and trade categories in which your organization(s) is legally qualified to do business within the State of Texas. (Indicate registration or license numbers, if applicable)
- 3) Proof of Insurance – Worker's Compensation; Commercial General Liability insurance of \$1,000,000 per occurrence; Professional Liability Insurance; and Business Automobile Liability of at least \$1,000,000 per occurrence.

CLARIFICATION OF RFQ REQUIREMENTS:

If additional information is necessary to assist the Respondent in interpreting these requirements, questions must be in writing and will be accepted by:

Name: Celina Hemmeter

Email: cityadmin@edentexas.com

Subject: 2015 Transportation Alternatives Program Project

Questions must be received by email by June 1, 2017 by 3:00 p.m. CST to receive a response.

SELECTION PROCESS:

The City reserves the right to reject any and all SOQ's. The City may waive informalities or irregularities in the SOQ's received where such is merely a matter of form and not substance, and the correction or waiver thereof is deemed by the City not prejudicial to other SOQ's. After the selection of the most qualified firm(s), scope of services and billing rates will be negotiated and used as attachments to the City's Professional Services Agreement. This Agreement will then be submitted to the City Council for approval. If the City and the selected firm cannot successfully negotiate an agreement, then the City will enter into negotiations with the next best qualified firm on the evaluation rating list. This procedure may be repeated until one (1) or more firms has been selected and approved by the City council.

EVALUATION, SELECTION AND AWARD PROCESS:

A review panel composed of representatives from the City staff will make the selection. The panel will review and rank all proposals received. Selected Respondents will be based on evaluation of the written proposals and may be requested to interview with the review panel. Responding to this RFQ constitutes understanding and agreement to methods of evaluation and selection.

Experience of the Firm - The submittal should state the experience the firm has in the type of work stated in the RFQ. List the projects with a brief description including a synopsis of the work performed. Identify the principal supervisory and management staff, including partners, managers, other supervisors and specialists, who would be assigned tasks to perform on this project. Indicate whether each person is registered or licensed to practice in Texas. Provide a brief history for the experience of each person.

Past Work Performance – The submittal should include the last 5 relatable projects completed over the last 5 years with a brief description of the project, the project manager consultant, construction budget, client information, and time frame to complete the design. Include name and contact information of the principal client contact.

Capacity to perform- Include the location of the office from which the work for this project is to be performed and the number and nature of the professional staff to be assigned to this project. The firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three years with state regulatory bodies or professional organizations.

Project Management and Organizational Approach - Describe the firm(s) understanding of providing professional engineering services for public infrastructure projects including state DOTs, municipal, state or federal entities. Describe the firm(s) approach to delivering the services. Describe the firm(s) procedures and methods associated with scheduling, coordination, analysis, quality assurance and control, documentation, and reporting.

TxDOT Project Experience- The submittal shall include any Texas Department of Transportation, projects your firm has been associated with in the last five years. Provide a brief synopsis of the project along with names and contact information for the principal client contact.

Experience of the Firm	20 points
Past Work Performance	20 points
Capacity to Perform	20 points
Project Management Approach	20 points
TxDOT Project Experience	<u>20 Points</u>
Total	100 points

The City will only evaluate SOQ’s submitted prior to the RFQ deadline. Selection of the most highly qualified Respondent will be made on the basis of demonstrated competence and qualifications, as solely determined by the City. Appropriate professional fees will be negotiated between the City and selected Respondent following a successful qualification-based selection process. It is expected at that time that a fee schedule for deliverables will be established. Professional services are procured in accordance with the Texas Professional Services Procurement Act.

RFQ TIMELINE:

The City currently anticipates conducting the selection process proceeding in accordance with the following list of

milestones. This schedule is subject to revision and the City reserves the right to modify this schedule as necessary, in its sole discretion.

RFQ issued 5/17/2017
Publish RFQ to Website 5/17/2017
SOQ Submission Date 6/2/2017
SOQ Review 6/2/2017 – 6/12/2017
City Council Approval 6/13/2017

PRIME PROVIDER CERTIFICATION STATEMENTS:

The prime provider must certify that they meet the following requirements:

- 1) The prime firm is registered or licensed with the Texas Board of Professional Engineers, and if proposing as a joint venture, the requirement applies to each joint venture member.
- 2) The prime provider firm certifies that it is registered with the Texas Secretary of State Office to do business in the State of Texas with the legal firm name as indicated on this form. If proposing as a joint venture, the requirement applies to each joint venture member.
- 3) Individuals on the project team are currently employed by either the prime provider or a sub provider firm that has been identified on the team.
- 4) A Professional Engineer registered or licensed in Texas will sign and seal the work to be performed on the contract.
- 5) The prime provider shall perform at least 30 percent of the contracted work with its own work force.
- 6) Project Manager Requirement: The prime provider's project manager, as proposed in the SOQ, is required to be a registered Professional Engineer licensed in Texas by the SOQ deadline specified in this Solicitation. The project manager must be an employee of the prime provider.

Administrative Qualification Requirements:

Administrative qualification is not required to compete for solicitations using this process. When applicable, administrative qualification is a process used by the Texas Department of Transportation to verify that a provider has an indirect cost rate that meets department requirements. Administrative Qualification is governed by Section 9.34(b) of Title 43 in the Texas Administrative Code (TAC). The TAC exempts non-engineering firms and certain service types from administrative qualification. For such firms and service types, an indirect cost rate is not required.

If selected, an indirect cost rate is necessary for rate schedule development. These firms have two options:

- 1) Be administratively qualified by selection notification, or
- 2) Accept the TxDOT developed indirect cost rate of 120%.
 - a. To accept the TxDOT developed rate, a *Certification of No Indirect Cost Rate Audit* form must be completed and submitted by selection notification.
 - b. The instruction are part of the form that can be found at: http://ftp.dot.state.tx.us/pub/txdot-info/des/cco/professional_services/certification_no_indirect.doc

EQUAL EMPLOYMENT OPPORTUNITY:

The City of Eden, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252,42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal regulations, Department of Transportation Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act,

hereby notifies all bidders that it will affirmatively insure that in any contact entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

STANDARD TERMS AND CONDITIONS:

- 1) All Information True - Respondent represents and warrants to the City that all information provided in the response shall be true, correct and complete. Respondents who provide false, misleading, or incomplete information, whether intentional or not, shall be subject to exclusion from the selection process.
- 2) Cost of Responses - Any and all costs incurred by the Respondents in the preparation and delivery of the proposal are the responsibility of the Respondent and will not be reimbursed by the City.
- 3) Insurance - By submission of this RFQ, it is assumed the Respondent is affirming its ability to bond and insure the project to the limits provided herein.
- 4) The services to be provided under this Request for Qualifications (RFQ) shall be in accordance with and shall meet all specifications and/or requirements as shown in this solicitation for RFQ. There is no intention to disqualify any respondent who can meet the requirements.
- 5) Right to Reject/Award- The decision to accept or reject is a function of quality, reliability, capability, reputation, and expertise of the Respondents submitting SOQ's. The City reserves the right to accept the SOQ that is, in its judgment, the best and most favorable to the interests of the City or reject any and all SOQ's. The City reserves the right to reject any or all SOQs, to waive any or all formalities or technicalities, and to make such awards of contract as may be deemed to be the best and most advantageous to the City of Eden. Any rejection or waiver proposed must be approved by TxDot.
- 6) Time Allowed for Action Taken- The city of Eden reserves the right to hold the SOQ's for a period of **60 days** without taking action. Respondents are required to hold their SOQ firm for same period of time.
- 7) Assignment- Respondents are advised that the City of Eden shall not allow the successful respondent to sell, assign, transfer, or convey any part of any contract resulting from this SOQ in whole or in part, to a third party without the written approval of the City of Eden.
- 8) Number of Contracts- The City reserves the right to award one, more than one, or no contracts(s) in response to this RFQ.
- 9) Statutory Requirements- It shall be the responsibility of the successful respondent to comply with all applicable State & Federal laws, Executive Orders and Municipal Ordinances, and the Rules and Regulations of all authorities having jurisdiction over the work to be performed hereunder and such shall apply to the contract throughout, and that they will be deemed to be included in the contract as though written out in full in the contract documents.
- 10) Alterations/Amendments to SOQ- SOQ **CANNOT** be altered or amended after opening time. Alterations made before opening time must be initialed by respondent guaranteeing authenticity. No SOQ may be withdrawn after

opening time without acceptable reason in writing and only after approval by the City of Eden.

- 11) Interpretations- Any questions concerning the project and/or specifications/requirements with regard to this solicitation for statement(s) of qualifications shall be directed to the designated individuals as outlined in the RFQ. Such interpretations, which may affect the eventual outcome of this request for statements of qualifications, shall be furnished in writing to all prospective Respondents via Addendum.
- 12) Conflict of Interest- CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE: Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of Eden not later than the 7th business day after the date the person becomes aware of facts that require the statement be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. For more information or to obtain Questionnaire CIQ visit the Texas Ethics Commission web page at www.ethics.state.tx.us/forms/CIQ.pdf.
- 13) Please be advised that in compliance with State of Texas Government Code, Section 2252.908, the successful Respondent awarded a contract by the City must complete Form 1295 – "Certificate of Interested Parties" – and must provide a signed and notarized printed copy of the form and a separate certification of filing. The form can be found at: www.ethics.state.tx.us.
- 14) Right to Audit information – The City of Eden, or TXDOT, reserves the right to audit the vendor's books and records relating to the performance of this contract. The City of Eden, or TXDOT, at its own expense, shall have the right at all reasonable times during normal business hours and upon at least twenty-four (24) hours' advance notice, to audit, to examine, and to make copies of or extracts from the books of account and records maintained by the vendor(s) with respect to the Supply/Service and/or Purchase Contract. If such audit shall disclose overpayment by City to vendor, written notice of such overpayment shall be provided to the vendor and the amount of overpayment shall be promptly reimbursed by vendor to the City. In the event any such overpayment is not paid within ten (10) business days after receipt of such notice, the unpaid amount of such overpayment shall bear interest at the rate of one percent (1%) per month from the date of such notice until paid.
- 15) Venue information-The parties agree that venue for purposes of any and all lawsuits, cause of action, arbitration, and/or any other dispute(s) shall be in Concho County, Texas.
- 16) DBE- Based on the project's Federal funding, type of work, location, overall and item cost estimate values, subcontracting opportunities, certified DBE firms in vicinity of the project location, and size of the project, the Civil Rights Division of TxDOT assigns a race-conscious DBE goal of **0%** percent for this project proposal.

Race-neutral DBE participation is encouraged and suggested. Race-neutral participation is achievable through various opportunities such as DBE material supplier, subcontracting, etc. The contract may include a race-neutral DBE (no assigned DBE goal) provision to provide for the reporting of DBE utilization, if used, to satisfy TxDOT DBE utilization reporting requirements.

It is the policy of the City of Eden to ensure that DBEs as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in Federally-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of all contracts;
2. To create a level playing field on which DBEs can compete fairly for all contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in all contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Eden in its financial assistance agreements with the Texas and Department of Transportation.

- 17) Precertification-The prime team must be pre-certified by TxDOT as provided at <http://txdot.gov/business/consultants/architectural-engineering-surveying/list-of-firms.html> under the following categories: 2.14.1 Environmental Document Preparation, 4.1.1 and 4.2.1 Minor and Major Roadway design and 9.1.1 Bicycle and Pedestrian Facility Development
- 18) Texas Ethics Commission Requirement Notification-In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016. A signed and notarized Form 1295 shall be tendered to City of Eden by providers selected to receive a contract prior to contract execution. The City of Eden will not evaluate the information provided, or respond to any questions on how to interpret the Texas Ethics Commission's rules. For additional information, please reference the Texas Ethics Commission webpage at: <https://www.ethics.state.tx.us/tec/1295-Info.htm>
- 19) Addenda & Modifications- Any changes, additions, or clarifications to the RFQ are made by amendments (addenda). Any respondent in doubt as to the true meaning of any part of the RFQ or other documents may request an interpretation from the City Secretary. At the request of the respondent, or in the event the City Secretary deems the interpretation to be substantive, the interpretation will be made by written addendum. Said Addenda shall be e-mailed to all prospective respondents. All Addenda issued in respect to this RFQ shall be considered official changes to the original documents. Verbal statements in response to inquiries and/or requests for explanations shall not be authoritative or binding. It shall be the respondent's responsibility to ensure that they have received all Addenda in respect to this project. Furthermore, respondents are advised that they must recognize, comply with, and attach a signed copy of each Addendum which shall be made part of their RFQ Submittal. Respondent(s) signature on Addenda shall be interpreted as the respondent's "recognition and compliance to" official changes as outlined by the City of Eden and as such are made part of the original solicitation documents. Failure of any respondent to receive any such addendum or interpretation shall not relieve such respondent from its terms and requirements. Addendums are available online at www.edentexas.com or by contacting City Secretary, Celina Hemmeter at 325-869-2211.

Sample Professional Services Contract

Contract Date:
CITY OF EDEN
Project Name:
Project Number:

This CONTRACT is made and entered into on the ___ day of _____ 2017, by and between the CITY OF EDEN, TEXAS, whose address is 120 Paint Rock St. EDEN, Texas 76837 hereinafter called CITY OF EDEN, and FIRM XXXXXX, whose address is XXXXXXXXXXXXXX hereinafter called FIRM XXXXXX. The CITY OF EDEN engages FIRM XXXXXX to perform professional services for the Project described above.

SECTION I – SERVICES

- A. FIRM XXXXXX shall provide professional services as described in ATTACHMENT “A”.
- B. FIRM XXXXXX has assigned XXXXXXXXXX as the Project Manager for this CONTRACT described above.
- C. FIRM XXXXXX will serve as CITY OF EDEN’S professional engineering representative in those phases of the Project to which this CONTRACT applies and will give consultation and advice to CITY OF EDEN during the performance of FIRM XXXXXX’s services

SECTION II – COMPENSATION

- A. The method of payment by CITY OF EDEN TO FIRM XXXXXX for services provided under this contract shall be as follows:

X Lump Sum Engineering, Surveying, and Testing

If any hourly work is requested by the owner, hourly rates shall be as described in ATTACHMENT “B”. The FIRM XXXXXX Hourly Rate Schedule in effect at the time the work is performed shall be used and when a new FIRM XXXXXX Hourly Rate Schedule is published, a copy of the new schedule will be furnished to the City of Eden and shall supersede the previous FIRM XXXXXX Hourly Rate Schedule as ATTACHMENT “B” – revised. For multiple project services or phases, a breakdown of individual costs and associated scope will be provided in ATTACHMENT “B”.

- B. For and in consideration of the Basic

Services to be rendered by FIRM XXXXXX, the CITY OF EDEN shall pay, and FIRM XXXXXX shall receive compensation hereinafter set forth for the Design and Construction Phases of the project. All remittances by the CITY OF EDEN of such compensation shall either be mailed or delivered to FIRM XXXXXX’s office in _____.

1. DESIGN AND CONSTRUCTION PHASES: Payment for Engineering, Surveying, etc. under the Design and Construction Phases of the Project listed in the Attachment A "Scope of Services" of this Agreement and as set forth herein shall be paid at a lump sum fee of:

(DOLLAR FIGURES ONLY USED FOR EXAMPLES)

\$40,000.00.

2. The periodic engineering payments shall be made as follows:

Approval of plans & specs by City of Eden

$\$40,000.00 \times 50\% = \$20,000.00$

Construction contract Award

$\$40,000.00 \times 25\% = \$10,000.00$

Construction Completion

$\$40,000.00 \times 15\% = \$6,000.00$

Final Inspection & City of Eden Acceptance

$\$40,000.00 \times 10\% = \$4,000.00$

- C. Any extra services requested by the City of Eden shall be paid by the Hour and Expense per Attachment

SECTION III – CITY OF EDEN RESPONSIBILITIES

- A. The CITY OF EDEN shall designate a Project Manager during the term of this CONTRACT. The CITY OF EDEN's project manager has the authority to administer this CONTRACT and shall monitor compliance with all terms and conditions stated herein. All requests for information from or a decision by the CITY OF EDEN on any aspect of the work shall be directed to the CITY OF EDEN's project manager.
- B. The CITY OF EDEN shall review submittals by FIRM XXXXXX and provide prompt response to questions and rendering of decisions pertaining thereto to minimize delay in the progress of FIRM XXXXXX's work. The CITY OF EDEN will keep FIRM XXXXXX advised concerning the progress of the CITY OF EDEN's review of the work.
- C. The CITY OF EDEN shall provide full requirements for the Project.
- D. CITY OF EDEN shall assist FIRM XXXXXX by placing at FIRM XXXXXX's disposal all available information pertinent to the Project, including previous reports and my other data relative to the Project's design and construction.
- E. CITY OF EDEN shall furnish FIRM XXXXXX property, boundary, right-of-way, topographic and utility surveys; core borings, probing and subsurface exploration; hydrographic surveys, laboratory test and inspections of samples and materials in THE CITY OF EDEN's possession or to which CITY OF EDEN has reasonable access, all of which FIRM XXXXXX may rely on in providing the services described on ATTACHMENT "A".
- F. CITY OF EDEN will guarantee access and make all provisions for FIRM XXXXXX to enter on public and private lands as required for RIM XXXXXX to perform work under this CONTRACT.

- G. City OF EDEN will examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by FIRM XXXXXX and render pertinent decisions in writing within reasonable time, so as not to delay the work of FIRM XXXXXX.
- H. Unless included in FIRM XXXXXX's services as described on ATTACHMENT "A", CITY OF EDEN shall advertise for proposals from bidders, open the proposals at the appointed time and place, and pay for all incidental costs.
- I. CITY OF EDEN will provide any legal, accounting and insurance counseling services required for the Project.
- J. CITY OF EDEN will designate in writing its Project Manager as a person to act as CITY OF EDEN's representative with respect to the work to be performed under this CONTRACT who will have complete authority to transmit instructions, receive information and interpret and define CITY OF EDEN's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services provided by FIRM XXXXXX pursuant to this CONTRACT.
- K. CITY OF EDEN shall give prompt written notice to FIRM XXXXXX whenever CITY OF EDEN observes or otherwise becomes aware of any defect in the Project.
- L. Unless included in FIRM XXXXXX's services as described in ATTACHMENT "A", CITY OF EDEN shall obtain approval of all governmental authorities having jurisdiction over the Project and obtain approvals and consents from other individuals or bodies as may be necessary for completion of the Project.
- M. If the Project involves more than one general contract, or separate construction contracts for different building trades or separate equipment contracts, CITY OF EDEN will ensure that the general conditions of all contracts are substantially identical.
- N. When required, CITY OF EDEN shall provide title searches, legal descriptions, detailed ALTA surveys and environmental assessments to be extent necessary for CITY OF EDEN to proceed with right-of-way acquisition.

SECTION IV – FIRM XXXXXX'S RESPONSIBILITY

- A. FIRM XXXXXX shall diligently and competently render engineering services which shall be reasonably necessary or advisable for the expeditious, economical and sound design of that portion of the Project included in ATTACHMENT "A" hereto and for such other preparatory work as is necessary to place such portion of the Project in service, except where such duties are excluded from the terms of this CONTRACT.
- B. FIRM XXXXXX shall take out and maintain through the contract period minimum insurance as set forth on ATTACHMENT "C".
- C. FIRM XXXXXX shall prepare in collaboration with CITY OF EDEN, a work in progress report schedule.
- D. FIRM XXXXXX shall prepare, pursuant to the attachments to this CONTRACT, complete and detailed plans and specifications, drawings, maps and other documents as required for the construction of the Project (all of the foregoing being herein sometimes collectively called the "Plans and Specifications")
- E. All Plans and Specifications and other documents required to be prepared or submitted by FIRM XXXXXX under this CONTRACT shall conform to industry standards generally acceptable on the date of this CONTRACT.

SECTION V – TERMS AND CONDITIONS

- A. This CONTRACT shall be governed by the laws of the State of Texas, Texas Government Code, Chapter 2254, subchapter A (Professional Services).

- B. All reports, plans, specifications, computer files and other documents prepared by FIRM XXXXXX as instruments of service shall remain the property of FIRM XXXXXX. FIRM XXXXXX shall retain all common law, statutory and other reserved rights including copyrights.
- C. The obligations and duties to be performed by FIRM XXXXXX under this CONTRACT shall be performed by persons qualified to perform such duties efficiently. FIRM XXXXXX may, at its option, replace any resident engineer or other person employed by FIRM XXXXXX in connection with the Project. The term "engineer" or "resident engineer" as used in this CONTRACT shall mean a person properly trained and experienced to perform the services required under the terms of the CONTRACT, and does not mean that the person performing those duties must be a licensed or a registered professional engineer.
- D. FIRM XXXXXX shall comply with all applicable statutes pertaining to engineering and warrants that the Project Engineer possesses a license issued to him or her by the State of Texas, and that such license has not been revoked or suspended and is in full force and effect on the date of this CONTRACT.
- E. Prior to the time when any payment shall be made to FIRM XXXXXX pursuant to this CONTRACT, FIRM XXXXXX, if requested by the CITY OF EDEN, shall furnish to the CITY OF EDEN, as a condition precedent to such payment, a certificate to the effect that all salaries or wages earned by the employees of FIRM XXXXXX up to and including a date not more than thirty (30) days prior to the date of such invoice. Before the time when the final payment provided to be made pursuant to this CONTRACT shall be made to FIRM XXXXXX by CITY OF EDEN, FIRM XXXXXX shall also furnish to CITY OF EDEN as a condition precedent to such payment, a certificate that all of the employees of FIRM XXXXXX have been paid by it for services rendered by them in connection with the Project and that all other obligations which might become a lien upon the Project have been paid.
- F. CITY OF EDEN shall have the right, upon reasonable notice, to inspect and audit all payrolls, records and accounts of FIRM XXXXXX relevant to the work for the purposes of the CONTRACT and FIRM XXXXXX agrees to provide all reasonable facilities necessary for such inspection and audit.
- G. Compensation payable to FIRM XXXXXX under any of the attachments to this CONTRACT shall be in addition to taxes or levies (excluding federal, state and local income taxes), which may be assessed against FIRM XXXXXX by the state of political subdivision directly on services performed or payments for services performed by FIRM XXXXXX pursuant to this CONTRACT. Such taxes or levies, which FIRM XXXXXX may be required to collect or pay, shall in turn, be added by FIRM XXXXXX to invoices submitted to CITY OF EDEN pursuant to this CONTRACT.
- H. Interest at the rate of the five percent (5%) per annum shall be paid by CITY OF EDEN to FIRM XXXXXX on any unpaid balance due FIRM XXXXXX commencing thirty (30) days after the due date. Such compensation shall be paid ten (10) days after the amount of the interest has been determined. All amounts received by FIRM XXXXXX shall be applied first to accrue unpaid interest and then to outstanding invoices for services and associated expenses.
- I. The obligations of FIRM XXXXXX under this CONTRACT shall not be assigned without the approval in writing of CITY OF EDEN.
- J. If, after execution of this CONTRACT, a service not listed on ATTACHMENT "A" is added to this CONTRACT, an amendment to this CONTRACT IS REQUIRED.
- K. Indemnification provisions with respect to this CONTRACT are set out in ATTACHMENT "D".
- L. If the performance of the CONTRACT, or of any obligation hereunder is prevented, restricted or interfered with by reason of fires, breakdown of plant, labor disputes, embargoes, government

ordinances or requirements, civil or military authorities, acts of God or the public enemy, acts or omissions of carriers, or other causes beyond the reasonable control of the party whose performance is affected, then the party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-for-day basis to the extent of such prevention, restriction or interference (and the other party shall likewise be excused from performance of its obligations on the day-for-day basis to the extent such party's obligations relate to the performance so prevented, restricted or interfered with); provided that the party so affected shall use its best efforts to avoid or remove such causes.

- M. CITY OF EDEN and FIRM XXXXXX agree to submit to finding arbitration as a required resolution of any disputes arising under this CONTRACT, FIRM XXXXXX and CITY OF EDEN agree that, prior to submission to binding arbitration, any disputes arising under this CONTRACT shall first be submitted to mediation.
- N. CITY OF EDEN and FIRM XXXXXX acknowledge and agree that each party has invested significant time and resources in the recruitment and training of its employees. Therefore, to the extent permitted by applicable law, both parties agree that during the term of this CONTRACT, and for one (1) year thereafter, neither party will directly or indirectly solicit or seek to employ the employees of the other party except by mutual agreement of CITY OF EDEN and FIRM XXXXXX.

SECTION VI – TESTS AND INSPECTIONS

It shall be CITY OF EDEN's responsibility to arrange for all required tests and site inspections necessary to insure that work and materials performed by FIRM XXXXXX and/or other contractors are properly performed in a timely manner in accordance with the plans, specifications, contract documents and FIRM XXXXXX's recommendations.

SECTION VII – RESPONSIBILITIES

Except as expressly provided elsewhere in this CONTRACT, FIRM XXXXXX's work shall not include determining, supervising or implementing the means, methods, techniques, sequences or procedures of construction. FIRM XXXXXX shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare unless the scope of work set out on ATTACHMENT "A" hereto includes construction site inspection services. FIRM XXXXXX's work or failure to perform same shall not in any way excuse any contractor, subcontractor or supplier from performance of its work in accordance with the CONTRACT documents.

SECTION VIII – WARRANTY

FIRM XXXXXX's services will be performed, its findings obtained and its reports prepared in accordance with the scope of work as described in ATTACHMENT "A" hereto. In performing its professional services, FIRM XXXXXX will use that degree of care and skill ordinarily exercised under the same or similar circumstances by members of the engineering profession. CITY OF EDEN recognizes that conditions may vary from those observed at specific locations where borings, surveys or other site explorations are made, and that site conditions may change over time. This warranty is in lieu of all other warranties or representations, either express or implied.

If FIRM XXXXXX or any of its employees, officers or agents be found to have been negligent in the performance of its work or to have made and breached any express or implied warranty, representation or contract, CITY OF

EDEN, all parties claiming through CITY OF EDEN and all parties claiming to have in any way relied upon FIRM XXXXXX's work must bring any actions arising from the same in the State of Texas in a court of competent jurisdiction. Venue for any action brought pursuant to this paragraph shall lie in Concho County, Texas.

The foregoing notwithstanding, FIRM XXXXXX shall not be liable for consequential and/or exemplary damages. No action or claim, whether in tort, contract or otherwise, may be brought against FIRM XXXXXX, arising from or related to this CONTRACT after the expiration date under the statute of limitations provided for such action under Texas law.

SECTION IX – TERMINATION

Either party to this CONTRACT may terminate the CONTRACT by giving to the other party ten (10) days written notice. Upon delivery of this notice by the CITY OF EDEN to FIRM XXXXXX, and upon expiration of the ten (10) day period, FIRM XXXXXX shall discontinue all services in connection with the performance of this CONTRACT and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to this CONTRACT. As soon as practical after the receipt of a notice of termination, FIRM XXXXXX shall submit a statement showing in detail the services performed under this CONTRACT to the date of termination. CITY OF EDEN shall then pay FIRM XXXXXX to the date of termination. CITY OF EDEN shall then pay FIRM XXXXXX promptly that proportion of the prescribed charges which the services actually performed bear to the total services called for under this CONTRACT, less payments on account which have been previously made. Copies of all completed or partially completed designs, plans and specifications prepared under this CONTRACT shall be delivered to CITY OF EDEN when and if this CONTRACT is terminated.

SECTION X – NOTICES

All notices required by this CONTRACT shall be sent by United States Postal Service, Federal Express or hand delivery to the addresses on Page 1 of this CONTRACT.

SECTION XI – CONFLICT OF INTEREST

FIRM XXXXXX agrees to disclose any financial or economic interest in or with the Project Property, or any property affected by the Project, existing prior to the execution of this CONTRACT. Further, FIRM XXXXXX agrees to disclose any financial or economic interest in or with the Project Property, or any property affected by the Project, if FIRM XXXXXX gains such interest during the course of this CONTRACT. If FIRM XXXXXX gains financial or economic interest in the Project Property during the course of this CONTRACT, CITY OF EDEN may in its sole discretion, terminate this CONTRACT. FIRM XXXXXX shall not engage the services of any present or former employee of CITY OF EDEN who was involved as a decision –maker in the selection or approval processes, or who negotiated or approved billings or contract modifications for this CONTRACT. FIRM XXXXXX agrees that it will not perform services on this Project for the general contractor, any subcontractor or any supplier of or for this Project. FIRM XXXXXX will not negotiate or make any agreement with the contractor, any subcontractor or any supplier with regard to any of the work under this Project or any services, equipment or facilities to be used on this Project.

SECTION XII – COVENANT AGAINST CONTINGENT FEES

FIRM XXXXXX affirms that it has not employed or retained any company or person, other than a bona fide employee working for FIRM XXXXXX, to solicit or secure this CONTRACT, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this CONTRACT. For a breach or violation of this section, CITY OF EDEN may terminate this CONTRACT without liability, or in its discretion may deduct from the CONTRACT a price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

SECTION XIII – ADDITIONAL SERVICES

Additional services which are outside the scope of ATTACHMENT ‘a’ to this CONTRACT shall not be performed by FIRM XXXXXX without prior written authorization from CITY OF EDEN. Additional services, when authorized by and additional contract or an amendment to this CONTRACT shall be compensated for by a fee mutually agreed upon in writing between CITY OF EDEN and FRIM XXXXXX.

SECTION XIV – SUCCESSORS AND ASSIGNS

This CONTRACT SHALL NOT BE ASSIGNABLE EXCEPT PURSUANT TO THE WRITTEN CONSENT OF CITY OF EDEN and FIRM XXXXXX. If assigned, this CONTRACT shall extend to and be binding upon the heirs, executors, administrator, successors and assigns of the parties hereto. This contract shall end the same day that the City of Eden declares the project to be complete and all work is completed.

IN WITNESS WHEREOF, the parties hereto have caused this CONTRACT to be duly executed and agree that this CONTRACT will be effective on the date first shown, said date being the day of _____20_____.

SIGNED:

CITY OF EDEN

Eddy Markham, Mayor

FIRM XXXXXX

FIRM