
MERCEDES CITY COMMISSION
REGULAR MEETING
JULY 1, 2025 – 6:30 PM
MERCEDES CITY HALL – COMMISSION CHAMBERS
400 S. OHIO AVE., MERCEDES, TX 78570

“At any time during the course of this meeting, the City Commission may retire to Executive Session under Texas Government Code 551.071(2) to confer with its legal counsel on any subject matter on this agenda in which the duty of the attorney to the City Commission under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code. Further, at any time during the course of this meeting, the City Commission may retire to Executive Session to deliberate on any subject slated for discussion at this meeting, as may be permitted under one or more of the exceptions to the Open Meetings Act set forth in Title 5, Subtitle A, Chapter 551, Subchapter D of the Texas Government Code.”

1. **Call Meeting to Order**
2. **Establish Quorum**
3. **Invocation by Mayor Montoya**
4. **Pledge of Allegiance by Mayor Pro-Tem Saldana**
5. **Open Forum**
6. **Presentation**
 - a. Lighting Project Update by Marco Arredondo, Inc. and AEP
 - b. Proclamation for Fair Housing Month
7. **Management Items:** Present, discuss, consider and possibly take action regarding:
 - a. Approval of the Fair Housing Policy
8. **Consent Agenda**
 - a. Approval of Minutes for Meeting(s) held June 17, 2025
9. **Ordinances/Resolutions:** Present, discuss, consider and possibly take action regarding:
 - a. Approval of First Reading of Ordinance 2025-13 amending the Mobile Food Vendor Ordinance
 - b. Second and Final Public Hearing for the Voluntary Annexation of Arturo Palacios
 - 1) Approval of First Reading of Ordinance 2025-15 regarding the voluntary annexation for Arturo Palacios
 - c. Approval of Ordinance 2025-16 designating 3rd Street as a One-Way Street between Texas Ave. and Ohio Ave.
10. **Bids/Contracts:** Present, discuss, consider and possibly take action regarding:
 - a. Discussion and Possible Action on the review of Contracts for Engineering Services
 - 1) Rio Delta Engineering
 - 2) SDI Engineering
 - 3) Freese & Nichols Engineering
 - 4) Supreme Engineering

- b. Contract Review between the City of Mercedes and Perdue, Brandon, Fielder, Collins, & Mott, LLC and possibly go out for RFP's
 - c. Discussion and Possible Action to Approve The Interlocal Agreement For Police Services Between The City of Mercedes And The Mercedes Independent School District
- 11. Executive Session: Chapter 551, Texas Government Code, Section 551.071 (Consultation with Attorney), Section 551.072 (Deliberation regarding Real Property), Section 551.074 (Personnel Matters) and Section 551.087 (Economic Development)**
- a. Discussion with City Manager regarding personnel matters - Section 551.074
 - b. Consultation with Attorney regarding update on litigation - Section 551.071
 - c. Consultation with Attorney regarding Project Updates - Section 551.087
- 12. Open Session**
- a. Possible Action pertaining to executive session item A
 - b. Possible Action pertaining to executive session item B
 - c. Possible Action pertaining to executive session item C
- 13. Adjournment**

Notice is hereby given that the City Commissioners of the City of Mercedes, Texas will meet in a Regular Meeting on Tuesday, July 1, 2025 at 6:30 PM. Said meeting will be conducted in the Commission Chambers of the City Hall located at 400 S. Ohio, Mercedes, Texas for the purpose of considering and taking formal action regarding the items listed above. This notice is given in accordance with Vernon's Texas Codes Annotated, Texas Government Code, Section 551.001 et. Seq.

WITNESS MY HAND AND SEAL OF THE CITY THIS 27TH DAY OF JUNE, 2025.

ATTEST:



Joselynn Castillo, City Secretary
Time of Posting: 6:30 P.M.

ACCESSIBILITY STATEMENT

The City of Mercedes recognizes its obligations under the Americans with Disabilities Act of 1990 to provide equal access to individuals with disabilities. Please contact the City Manager's Office at (956) 565-3114 at least 48 hours in advance of the meeting with requests for reasonable accommodations, including requests for a sign language interpreter.



Office of the MAYOR CITY OF MERCEDES



Proclamation

FAIR HOUSING MONTH – APRIL 2025

WHEREAS, the Fair Housing Act, enacted on April 11, 1968, seeks to eliminate discrimination in housing opportunities and to affirmatively further housing choices for all Americans; and

WHEREAS, the City of Mercedes is committed to the principle of fair housing for all and values the right of every individual to obtain equal housing opportunities, regardless of race, color, religion, sex, disability, familial status, national origin, or other protected categories; and

WHEREAS, ongoing education, outreach, and enforcement efforts are vital to ensuring that the benefits of the Fair Housing Act are realized in every community; and

WHEREAS, fostering inclusive, diverse neighborhoods strengthens the social and economic fabric of the City of Mercedes and enhances the quality of life for all its residents; and

WHEREAS, this month provides an opportunity to recognize the achievements of fair housing advocates, to reflect upon the progress made, and to renew our collective commitment to fair housing goals;

NOW, THEREFORE, I, Oscar D. Montoya Sr., Mayor of the City of Mercedes, Texas by virtue of the authority vested in me and on behalf of the City Commissioners Dr. Ruben J. Saldana, Dr. Jacob C. Howell, Joe Martinez and Armando Garcia do hereby proclaim April 2025 as “**FAIR HOUSING MONTH**” in the City of Mercedes, Texas, and encourage all residents, businesses, and community organizations to support efforts to promote and protect fair housing rights.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Mercedes to be affixed this 1st day of July, 2025.

CITY OF MERCEDES

ATTEST:

**OSCAR D. MONTOYA SR.,
MAYOR**

**JOSELYNN CASTILLO,
CITY SECRETARY**

City of Mercedes Fair Housing Policy

Adopted: July 1, 2025

Policy Statement

It is the policy of the City of Mercedes to ensure equal opportunity in housing for all persons regardless of race, color, religion, sex, disability, familial status, national origin, or other protected categories as defined by federal and state law. The City is committed to creating an inclusive and welcoming community that provides fair and equal housing choices for all residents.

Purpose

This policy is adopted in support of the federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended) and the Texas Fair Housing Act. The purpose of this policy is to:

- Prohibit discrimination in housing and housing-related activities;
- Affirmatively further fair housing opportunities throughout the City;
- Promote equal access to housing programs, services, and opportunities;
- Educate citizens, businesses, and housing providers about their rights and responsibilities under fair housing laws.

Scope

This policy applies to all housing-related activities, including but not limited to:

- The sale or rental of housing;
- The advertising of housing opportunities;
- The provision of municipal services and facilities;
- The administration of housing assistance and community development programs;
- Land use, zoning, and permitting decisions.

Prohibited Practices

It is unlawful to discriminate in housing based on any protected characteristic. Prohibited practices include but are not limited to:

- Refusing to sell, rent, or negotiate for housing;
- Setting different terms or conditions for sale or rental;
- Providing different housing services or facilities;
- Falsely denying that housing is available;
- Using discriminatory statements or advertisements;
- Harassing tenants or applicants based on protected characteristics;
- Retaliating against individuals for exercising fair housing rights.

Affirmative Action

The City of Mercedes will take meaningful steps to affirmatively further fair housing, including:

- Conducting public outreach and education on fair housing rights and responsibilities;
- Supporting community development activities that foster inclusive neighborhoods;
- Reviewing zoning, land use, and housing policies for barriers to fair housing choice;
- Cooperating with state and federal agencies in enforcing fair housing laws.

Complaints and Enforcement

Residents who believe they have been subjected to housing discrimination are encouraged to file complaints with the following agencies:

- **Texas Workforce Commission Civil Rights Division**
- **U.S. Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity (FHEO)**

The City will assist residents by providing information about filing complaints and referring inquiries to the appropriate enforcement agencies.

Policy Review

This policy shall be reviewed periodically by the City Manager and the City Secretary to ensure continued compliance with applicable federal and state laws and to address emerging fair housing issues in the community.

Adopted by the City Commission of the City of Mercedes, Texas
on this 1st day of July, 2025.

Oscar D. Montoya Sr.
Mayor, City of Mercedes

ATTEST:

Joselynn Castillo, City Secretary

**MERCEDES CITY COMMISSION
REGULAR MEETING
JUNE 17, 2025 – 6:30 PM
MERCEDES CITY HALL – COMMISSION CHAMBERS
400 S. OHIO AVE., MERCEDES, TX 78570**

MEMBERS PRESENT: Mayor Oscar Montoya
Commissioner Joe Martinez
Commissioner Jacob Howell
Commissioner Armando Garcia
Mayor Pro-Tem Ruben Saldana

MEMBERS ABSENT:

STAFF PRESENT: Alberto Perez, City Manager
Joselynn Castillo, City Secretary
Martie Garcia Vela, City Attorney
Patricio Avila, Asst. City Manager
Kristine Longoria, Human Resources
Denisse Hernandez, Interim Planning Director
Francisco Sanchez, Police Chief
Michael Rocha, I.T Director
Armando Villela, Parks Director
Marisol Vidales, Library Director
Javier Campos, Fire Chief/EMC
Richard Morin, Recreation Director

OTHERS PRESENT: Juan Vasquez, Orlando Diaz, Jesus Rodriguez, Juan Cuba, Salvador Gonzalez, Alejandro Bocanegra

1. Call Meeting to Order

Mayor Montoya welcomed everyone and called the meeting to order at 6:30 p.m.

2. Establish Quorum

All members of the Commission were present, which constitutes a full quorum.

3. Invocation by Commissioner Garcia

4. Pledge of Allegiance by Mayor Montoya

5. Open Forum

There were no residents signed up for open forum.

6. Presentation

- a. Presentation of the FBI-LEEDA Agency Trilogy Award to the Mercedes Police Department Command Staff

Police Chief Sanchez addressed the City Commission regarding the FBI-LEEDA Agency Trilogy Award recently presented to the Mercedes Police Department. He explained that this award is given in recognition of the completion of leadership development training through the FBI Law Enforcement Executive Development Association. Chief Sanchez acknowledged and recognized the members of the command staff who successfully completed the training: himself, Lieutenant Diaz, Lieutenant Rodriguez, Sergeant Cuba, Sergeant Gonzalez, and Sergeant Bocanegra. The City Commission congratulated Chief Sanchez and the entire command staff on receiving this distinguished award and commended their continued dedication to professional development and public service.

b. Status update from Melden and Hunt Engineers on the Water Well Project

Mr. Mike Hernandez of Melden and Hunt Engineering provided the City Commission with a status update on the Water Well Project under the WaterSmart Program, which is funded by the Bureau of Reclamation. He reported that initial correspondence letters have been sent to the relevant agencies, with responses due within the next 15 days. Following that, a 30-day public notice period will commence, after which a public hearing will be held to gather community input. Comments from the hearing will then be submitted to the Bureau. Mr. Hernandez explained that a test well will be constructed and evaluated prior to developing a permanent production well. The proposed well site is located at Chapman and 5th Street. The test will determine water quality, specifically salinity levels, and whether outside treatment services will be needed. The goal is to produce approximately 2,000 gallons per minute, or about 2.5 million gallons per day. The current estimate for production capacity is around 1.7 million gallons.

He also noted the proximity of a 150-foot drainage ditch to the well site and emphasized the importance of completing the environmental report, which is expected within 30 days. Once finalized, the project will proceed through the notice and review process leading to the permanent well.

Mayor Montoya highlighted the strategic importance of the project, stating that the objective is not only to build a well but also to reduce the city's dependency on the Rio Grande as a sole water source. He noted that in the event of a break in the irrigation ditch, which could take months to repair, the well would serve as a critical backup water supply for residents, especially since the city does not currently have a water reservoir.

This item was for informational purposes only; no action was required.

7. Consent Agenda

a. Approval of Minutes for Meeting(s) held June 3, 2025 and June 6, 2025

Commissioner Martinez motioned to approve the minutes listed under the Consent Agenda. Commissioner Garcia seconded the motion. Upon a called vote, the motion passed unanimously.

8. Management Items: Present, discuss, consider and possibly take action regarding:

a. Discussion and possible action on appointment and reappointment to the Library Board.

Ms. Vidales addressed the Commission regarding upcoming reappointments and one new appointment to the Library Board. Four current members were up for reappointment. Mrs. Deborah Benedict, Mrs. Lorri Marchant, Mrs. Diane Roman-Goldsberry and Ms. Yolanda

Cruz. Ms. San Juana Palacios submitted applications to fill a vacancy left by a member who had missed three consecutive meetings. Commissioner Martinez motioned to approve both the reappointments and the new appointment. Commissioner Saldana seconded. Upon a called vote, the motion passed unanimously.

9. Ordinances/Resolutions

- a. Approval of Resolution 2025-15 regarding Civil Rights for the 2019 Floods HMID Competiton grant

Commissioner Martinez motioned to approve Resolution 2025-15 and to forego the formal reading. Commissioner Saldana seconded. Upon a called vote, the motion passed unanimously.

10. Bids/Contracts

- a. Approval to award a contractor for Bid No. 2025-002 - Dacota Ave. Roadway Improvement project

Assistant City Manager Avila presented the Commission with bid results for the Dacota Avenue Roadway Improvement Project. A total of nine bids were received, ranging from lowest to highest. Bids were submitted by: Rene Guerra & Sons Hauling, LLC; Eberle Materials Inc.; Econ Enriquez Construction; Jimmy Closner & Sons; D7J Site Construction; 2GS LLC dba Earthworks; Fuerza Construction; and Bluesteel Construction. Supreme Engineering reviewed the submissions and recommended awarding the contract to Eberle Materials Inc., the second lowest bidder, in the amount of \$375,800.00. The lowest bidder, Rene Guerra & Sons Hauling, LLC, was disqualified due to a calculation error. Additionally, staff recommended including Alternate 1 for a 6" caliche base at an additional cost of \$62,055.00 to provide a more stable foundation.

Commissioner Howell motioned to approve the recommendation made by Supreme Engineering. Commissioner Garcia seconded. Upon a called vote, the motion passed unanimously.

11. Monthly Departmental Reports

- a. Planning, City Sec/HR, IT, Library, PIO, Rec Center, Finance, Fire, Parks
Commissioner Martinez commended Mr. Villela for improvements to the basketball courts and expressed appreciation to all department heads for their ongoing efforts. Mr. Villela noted that the baseball season was scheduled to conclude this month and that field maintenance would follow. He stated that a scope of work for field upgrades would be provided to the Commission, which may include adjustments such as grass or red dirt on the infield. Work is also underway to improve lighting; a vendor is still needed for installation. He further reported that 10 miles of mountain bike trails have been completed and are ready for public use.

Mr. Morin reported that children's swim classes are full and noted growing interest in adult swimming programs. He also discussed the current status of lifeguard training. Mayor Montoya recommended the city consider offering preparatory classes to help local youth qualify for lifeguard positions when eligible.

The Commission recommended contacting the City's energy consultant regarding lighting issues in the parks and other areas around town. They also requested the consultant, along with a representative from AEP, be invited to the next Commission meeting.

12. Executive Session: Chapter 551, Texas Government Code, Section 551.071 (Consultation with Attorney), Section 551.072 (Deliberation regarding Real Property), Section 551.074 (Personnel Matters) and Section 551.087 (Economic Development)

Commissioner Martinez motioned to go into executive session. Commissioner Garcia seconded. Upon a called vote, the motion passed unanimously. The meeting went into executive session at 7:34 p.m.

- a. Discussion with City Manager regarding personnel matters - Section 551.074
- b. Consultation with Attorney regarding update on litigation - Section 551.071
- c. Consultation with Attorney regarding Project Updates - Section 551.087
- d. Discussion regarding Project HBM - Section 551.087

13. Open Session

Mayor Montoya called the meeting back to order at 8:34 p.m.

- a. Possible Action pertaining to executive session item A
No action was taken on this item.
- b. Possible Action pertaining to executive session item B
No action was taken on this item.
- c. Possible Action pertaining to executive session item C
No action was taken on this item.
- d. Possible Action pertaining to executive session item D
No action was taken on this item.

14. Adjournment

Commissioner Garcia motioned to adjourn the meeting. Commissioner Howell seconded the motion. Upon a called vote, the motion passed unanimously. The meeting adjourned at 8:34 p.m.

[MIN_SIGNATURES]

ORDINANCE NO. 2025-13

AN ORDINANCE OF THE CITY OF MERCEDES, TEXAS, AMENDING ORDINANCE NO. 2020-09; AMENDING THE CITY OF MERCEDES CODE OF ORDINANCES, CHAPTER 6, HEALTH AND SANITATION, ARTICLE 6.04 FOOD ESTABLISHMENTS, DIVISION 2. MOBILE FOOD VENDORS, TO ADD NEW DESIGN REQUIREMENTS FOR MOBILE FOOD VENDORS AND TO ADD A NEW SECTION REGULATING ICE CREAM TRUCKS; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Mercedes finds it in the best interest of the health, safety, and welfare of its residents and visitors to adopt reasonable regulations concerning the operation of mobile food vendors within the city; and

WHEREAS, the City Commission seeks to ensure mobile food vendors operate in a manner that is safe, sanitary, and compatible with surrounding uses and neighborhoods; and

WHEREAS, the City Commission wishes to amend Ordinance No. 2020-09 to include updated regulations for the permitting, operation, location, and enforcement of mobile food vendors;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MERCEDES, TEXAS:

That Ordinance No. 2020-09 is hereby amended, and the regulations hereto be titled “**Mobile Food Vendor Regulations**” are hereby adopted and incorporated into the Code of Ordinances of the City of Mercedes, Texas.

SECTION I. DEFINITIONS.

Edible goods may include, but are not limited to:

- (1) Prepackaged food including, but not limited to, candy, beverages, chips, popsicles and ice cream.
- (2) Prepared food including, but not limited to, hot dogs, desserts, sandwiches and pizza.
- (3) On-site prepared food including, but not limited to, shaved ice, sandwiches and tacos.

Mobile food vendors shall mean any business which sells edible goods from a non-stationary vehicle within the city. The terms shall include mobile food trucks: a self-contained, motorized unit selling items defined as “edible goods.”

Non-refrigerated shall mean edible goods that are not required to be kept at a temperature below 41 degrees Fahrenheit according to the Federal Food and Drug Administration and the Texas Food Establishment Rules.

SECTION II. PERMIT AND APPLICATION.

- (a) Permit. Every mobile food vendor shall have a permit issued by the city to conduct business in the city. There is a limit of eight mobile food vendor permits.
- (b) Application. Every mobile food vendor shall apply for a permit on a form promulgated by the city. Each vending unit requires the processing of a separate permit. Applications for permits

meeting the requirements for mobile vendors shall be processed within ten (10) business days.

(c) Permit form. A complete application shall require the following information from the applicant to be considered:

1. Full name of applicant.
2. Legal name of business or entity.
3. State of incorporation or filing of a partnership or articles of association.
4. If applicable, copy of charter or articles of incorporation, and current listing of the directors, partners, or principles.
5. Sales tax number with a copy of sales tax permit.
6. Signed permission from or provide notarized affidavit from the private property owner(s) granting permission for unit placement.
7. Name, phone number, and driver's license number of (vending) business owner and all employees operating within the mobile food vendor unit.
8. Proposed itinerary with route, vending locations, and times of operation.
9. Contact name and phone number for mobile food vending unit while in route.
10. Description of product(s) being sold.
11. If applicable, detailed site plan where mobile food vending unit will be located on the property; to show entry/exit points, dimensions of paved parking allotted for the vending use, location of trash/dumpster to be used, restrooms, signage/flag(s), etc.
12. Dependent on a health-care emergency being officially declared, the provision of a Work Safe Plan that would include, but not necessarily be limited to, the inclusion and application of safe hygiene practices, social distancing, gloves, and/or other prevailing safety standards as expressed by the Center for Disease Control (CDC) authorities, and/or from county/city authorities.
13. Vehicle identification number, description of mobile food vending unit, and photos of unit, and photos of unit [sic].
14. Description of attached signage, (all signs must be related to business and attached to food unit),
15. A valid Texas Driver's License, proof of valid vehicle liability insurance and proof of valid general liability insurance not less than \$50,000.00 for food business.
16. Signed affidavit with photo identification that each individual applicant:
17. Has no unpaid civil judgments against him or her in any state of U.S. possession which arise from a business activity which would have been covered by this section if in effect at the time in the jurisdiction where such judgments are of record.
18. A statement of all convictions in any state, the United States, or U.S. possession within the last ten (10) years

SECTION III. PERMIT FEE.

- (a) The application fee for a mobile food vendor permit shall be in the amount provided in the fee schedule in appendix A of this code. Each mobile food vendor unit shall be permitted separately. It is noted that the city hereby establishes that there shall be an approved ratio of mobile food truck vendors of 1 for each 6,000 population.
- (b) Mobile food vendor permits shall be valid for one (1) year from the date of permit issuance.
- (c) Upon renewal the applicant shall pay a renewal fee in the amount provided in the fee schedule in appendix A of this code. The applicant must submit the application and the renewal fee within 30 business days before expiration of the permit; if not, he/she must reapply as a new applicant.

SECTION IV. PERMIT DENIAL AND DISPLAY.

- (a) Denial. A permit may be denied where:
 - 1. An applicant is found to have an unpaid civil judgment(s) against him which relates to the duties and responsibilities of the permitted occupation which shall be determined by the nature and amount of the judgment, the relationship of the judgment to the purpose of the permit, and the extent that the permit would allow someone to engage in further activity that would lead to unsatisfied civil judgments;
 - 2. An applicant has been convicted of a crime which directly relates to the duties and responsibilities of the licensed occupation which shall be determined by the nature and seriousness of the crime, the relationship of the crime to the purpose of the permit, and/ or the extent that the permit would allow someone to engage in further criminal activity;
 - 3. The required information is incomplete or incorrect or shows that a person is not otherwise entitled to conduct business as a mobile food vendor; or
 - 4. The subject applicant has had frequent and previous violations as described in this section.
- (b) Display of permit. Every permit, including those from the city, shall be displayed at all times in a conspicuous place where it can be read by the general public on the mobile food vendor's truck.

SECTION V. PERMIT REVOCATION OR SUSPENSION.

- (a) A permit may be revoked upon conviction of any offense by an individual operating as a mobile food vendor in the city while engaged in the permitted business, or if a final conviction occurs, or is found to have existed at the time of application, or if civil judgments, as set forth above, are placed or found of record against an applicant. A permit may be suspended in the event of pending charges of a crime, as set forth above, upon a magistrate's determination of probable cause in connection with such charges.
- (b) A permit may be revoked for non-conformity to the application, location, specifications, or requirements as well as to non-conformity to an approved location plan or diagram.
- (c) An employee working for an applicant permitted as an employer under this section above may be denied the right to solicit under such permit, or such rights may be suspended or terminated, under the same circumstances and procedures which apply to the holder of the permit. Revocation or suspension of an employer's permit terminates all employee permit(s) that function under said permit(s).
- (d) A permit may be suspended or revoked for not complying with the requirements of this section, or any other ordinance, or laws, inclusive of health regulations. This provision to suspend or revoke may include any 'new' driver replacing the driver previously 'approved' during the permitting vetting process.
- (e) Continued failure to pay outstanding parking meter fees and/or fines owed to the city.
- (f) 1st violation. A warning may be issued, or the permit may be revoked or suspended and the vendor may become ineligible for a new or reissued permit for 90 consecutive days.
- (g) 2nd violation. Permit will be revoked and the vendor may become ineligible for a new or reissued permit for six (6) months.
- (h) 3rd violation. Permit will be revoked and the vendor will become ineligible for a new or reissued permit for one year.

- (i) A fine of not less than \$100.00 or more than \$1,000.00 per day per violation may be imposed. Each day will be a separate violation.

SECTION VI. APPEAL OF PERMIT REVOCATION, SUSPENSION, OR DENIAL.

- (a) The notice of revocation, suspension, or denial of a permit shall include the procedure for appealing the suspension, revocation, or denial.
- (b) If a city official with applicable jurisdiction revokes, suspends, or denies a mobile food vendor permit, the holder or applicant of the permit which has been revoked, suspended, or denied, shall have the right of appeal to the city manager, or designee, by submitting an appeal in writing to the city manager within ten (10) business days of the revocation, suspension, or denial; the appeal shall include the detailed justification as to why the permit should be issued or reinstated.
- (c) Pending action on the appeal, a permit which has been revoked or suspended shall be considered revoked or suspended; thus, no food sales shall be permitted to be sold during this tenure.
- (d) If a written appeal is not submitted within the ten (10) business days of revocation, suspension, or denial, or if appeal is denied, the permit shall hence be considered revoked, suspended or denied.

SECTION VII. REAPPLICATION AFTER REVOCATION, SUSPENSION, OR DENIAL OF PERMIT.

- (a) If a mobile food vendor or applicant is not in compliance with this section or any other ordinance, law or the approved terms of the vendor's application, the following action will be taken:
 - 1. 1st violation. A warning may be issued, or the permit may be revoked or suspended and the vendor may become ineligible for a new or reissued permit for 90 consecutive days.
 - 2. 2nd violation. Permit will be revoked and the vendor may become ineligible for a new or reissued permit for six (6) months.
 - 3. 3rd violation. Permit will be revoked and the vendor will become ineligible for a new or reissued permit for one year.
- (b) If any applicant's permit has been denied and the appeal is denied, the applicant may not reapply until 180 consecutive days have elapsed.

SECTION VIII. ZONING AND LOCATION RESTRICTIONS.

- (a) Distance regulations.
 - 1. No mobile food trucks shall conduct business within any single-family residential or non-business zoning district unless a city permit has been issued. If such is 'permitted', there shall be a 30-day probationary tenure for assessment at which time, the planning director may suspend or extend the mobile food truck's privileges of presence in approved residential neighborhoods.
 - 2. A mobile food vendor may not be located within 100 feet of the primary entrance of an operating (fixed-location) food service or eating establishment except during city- sponsored or other community events.
 - 3. A mobile food vendor shall not be located within 300 feet from another mobile food

vendor except during city-sponsored or other community events.

(b) A mobile food truck vendor shall not conduct sales at a stationary location:

1. For vending duration exceeding eight (8) hours per location on private property, and four (4) hours on public (street) property per day. Allowances may be granted by the city for additional time depending on type of activity or event.
2. For a duration exceeding ten hours in any 24-hour period
3. Mobile vendors using public streets for sales may not move to a new location not originally 'approved' during the application process, without prior approval from the city.
4. On any public street designated on the city's thoroughfare plan as a collector or greater.
5. In congested areas where the operation impedes vehicular or pedestrian traffic.
6. Before dawn or after dusk. Between the hours of 2:00 a.m. and 6:00 a.m.
7. On any driveway or fire lanes.
8. In a designated bike lane.
9. For a duration exceeding 45 minutes on any commercial street.

(c) Location regulations.

1. No mobile food vendor shall be located on any private property without written permission to do so and must immediately comply if asked to leave by the property owner, owners' agent, or city official. A copy of the written permission to operate in a specific location signed by the private property owner shall be kept within the mobile vending unit at all times.
2. No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill.
3. No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill upon any premises if requested by the property owner or city not to do so; or if there is placed near or at the entrance thereof a sign bearing the words "No Advertisement."
4. No person shall sell or offer for sale any item upon any premises if requested by the property owner or city official not to do so, or if there is placed at or near the entrance thereof a sign bearing the words "No Peddlers or Vendors," "No Trespassing," or "No Solicitors," or signage that substantially reflects the same message.
5. The intent of mobile food vendors is to allow for walk-up sales to pedestrians for food to go only. Vendors may not set-up tents, tables, chairs or any other displays within the selling areas.

SECTION IX. DESIGN REQUIREMENTS.

- (a) Floors of the food truck or concession trailer must be durable non-absorbent, easily cleanable material, including, but not limited to, anodized aluminum, stainless steel, or tile. All junctures must be properly sealed. All service lines and pipes must be installed off the floor to allow for easy cleaning.
- (b) Walls must be durable, easily cleanable, non-absorbent and light in color. Minimum wall materials include, but are not limited to aluminum or fiberglass reinforced plastic (FRP). Walls at vent hood and grill areas must be covered with stainless steel or aluminum panels. Wall covering must be installed to cover the entire height of each wall. Stud and utility lines may not be unnecessarily exposed on the wall or prevent cleaning.

- (c) Ceilings must be light in color, non-absorbent, and easily cleanable. Joints and rafters may not be exposed.
- (d) The cab of the vehicle must be physically separated from the food preparation area, with seats designated for the cook and any passengers located outside of the food preparation area.
- (e) An extinguishing vent hood, Type 1 or other if approved by the City of Mercedes Fire Marshal, shall be required when cooking process produces grease laden particles within the mobile unit. Said hood shall require testing in the presence of a City of Mercedes Fire Marshal designee.
- (f) Hand washing lavatories shall be located convenient to all food preparation and utensil washing areas. Each lavatory must be provided with hot and cold water under pressure with at least 15 seconds flow of water without reactivation. Soap and sanitary towels must be available at each hand sink.
- (g) Liquid waste connection is of different size than water connection. Potable water inlet is equipped with transition connections of type and size to prevent its use for other service.
- (h) The potable water tank must be permanently installed and of sufficient capacity for food preparation, dishwashing and general cleaning.
- (i) The retention tank must be permanently installed and of at least 15 percent larger capacity than the potable water supply tank. Potable water tanks must be located to prevent contamination from the wastewater retention tank or other sources of contamination.
- (j) A three compartment sink with a minimum of 110-degree water shall be provided for washing, rinsing, and sanitizing of utensils and equipment during food preparation on the vehicle. The sinks must be provided with hot and cold water under pressure and be equipped with drain boards. Large equipment and utensils may be washed in the three-compartment sink provided at the commissary. A minimum of six gallons of hot water or on demand water heater is required.
- (k) Enough refrigeration and hot food holding units must be provided to maintain the required temperature of potentially hazardous foods. Units should meet standards for commercial use such as NSF and UL standards or equivalent. Numerically scaled thermometers must be provided for each unit. Ice used for drinks located in a drink holding well must be drained into a liquid waste retention tank to be disposed of at the designated commissary. Cold hold is 41 degrees or less and Hot hold is 135 degrees or more.
- (l) Food and single service articles must be properly protected and stored at least six inches above the floor.
- (m) Adequate lighting must be provided and properly shielded.
- (n) Outer opening including pop-up vents and sunroof must be insect and rodent proof. Screens must be tight fitting and in good repair. (Duct tape is not acceptable). Service windows must be properly protected with screening of a size no larger than 16 mesh to the inch; must be tight fitting and free of breaks. The windows must be kept closed when not in service.
- (o) The vehicle must be clean, inside and out, painted, and in good condition. Only one servicing window is allowed on the curbside of the vehicle.

SECTION X. MOBILE FOOD VENDOR REQUIREMENTS.

The following regulations shall apply to mobile food vendors within any zoning district:

1. Mobile food establishments shall operate from a central preparation facility or other permitted fixed food establishment and shall report to such location for supplies and for cleaning and servicing operations. All operations equipment and/or display must be entirely removed at the end of each day's operation.
2. Each unit shall be equipped with a portable trash receptacle and shall be responsible for proper disposal of solid waste and wastewater in the sanitation facility legally accessed by the food service establishment. All disturbed areas must be cleaned following each stop to a minimum 20 feet of the sales location.
3. Mobile food vendor may not have a drive through.
4. Mobile food vendor may not exceed eight (8) hours of operations per location. A list of the locations must be submitted to and approved by the planning department during the permitting process.
5. Loud continuous music or repetitive sounds shall not project from the mobile unit to a degree that it would be annoying or disturbing the peace for people of a reasonable demeanor.
6. The use of mechanical loudspeakers or sound amplifiers on trucks or other moving vehicles for the purpose of advertising any show, sale or display of merchandise is prohibited. Vehicles will not be permitted with a sound generating device attached.
7. A five-foot clear space will be maintained around the mobile food vending unit while on a public street and 15 feet within private property.
8. No sales are allowed within public park facilities.
9. The mobile unit will be subject to inspection upon permit application through the code enforcement, health department and the fire marshal, and may be subject to random inspection, and upon reissuance of the permit.
10. No sales are allowed within public park facilities while park concession units are operating. Mobile units operating in public parks and on streets adjacent to public parks or recreational facilities require pre-approval by the director of planning.
11. A "No Smoking" sign must be posted next to the order window area.
12. An approved portable type ABC fire extinguisher tagged by a licensed company shall be kept accessible as directed by the city fire marshal or designee. A portable type K fire extinguisher is also required in the kitchen for cooking operation.
13. A kitchen fire suppression system and kitchen ventilation system is required to be NFPA 17A and NFPA 96 compliant and shall be required when the cooking process produces grease laden particles within the mobile unit. Said systems shall require testing in the presence of a city fire marshal or designee.
14. All cooking appliances shall be UL-approved appliances.
15. If cooking and using propane, a gas test must be performed by a licensed plumber.
16. Mobile food vendors shall provide the city with a copy of written permission from the property owner on an annual basis to allow the operation of a mobile vendor and to allow the mobile vendor and their customers' access to a commercially plumbed public restroom on-site. This public restroom shall be located within 100 feet of the mobile food unit.
17. Mobile food vendors shall be setback a minimum of 30 feet from a major thoroughfare if parked on private property, as identified on the city's thoroughfare plan.

18. Temporary connections to potable water are prohibited. Water shall be from an internal tank, and electricity shall be from a generator.
19. Mobile food vendors may operate only during the business hours of the primary business on the property.
20. No cooking may be done while the unit is in motion.
21. An itinerary must be provided for each truck prior to the first working day of each month. The health division must be advised of any changes immediately. Schedules must be accurate to within 30 minutes. A description of the food to be sold or served at each premise must accompany the itinerary.
22. All operators of mobile food trucks and concession trailers must have a current driver's license issued by the State of Texas, proof of vehicle liability insurance and proof of general liability insurance for the business.
23. The person in charge must have a current food protection manager certification recognized by the Texas Department of Health. All other operators must have a current food handler permit.
24. Adequate hair restraints are required in the food prep area.
25. Eating, drinking, chewing gum or the use of any tobacco product is prohibited in the food preparation/service area.
26. Foods, food containers, and single service items are to be covered and stored in a way to prevent contamination.
27. Open, unprotected displays of foods are not allowed.
28. All mobile units must be returned to commissary or food establishment daily for cleaning.
29. The vehicle must have firm name on both sides of the vehicle in three-inch letters and permit number on the front bottom right hand side window within 24 hours of the permitting inspection.
30. The vehicle must be returned to the commissary daily for servicing and loading of food products.

SECTION XI. ICE CREAM TRUCKS.

- (a) The vehicle must be clean, inside and out, painted, and in good condition. Only one servicing window is allowed on the curbside of the vehicle.
- (b) The vehicle must be equipped with left and right outside rear-view mirrors and two wide-angle mirrors; one located in the front and one located in the back of the vehicle.
- (c) The vehicle must be equipped with signs reading WATCH FOR CHILDREN and/or STOP FOR CHILDREN in five-inch letters on both the front and the back of the vehicle. It is recommended that signs be present on all four sides of the vehicle.
- (d) The vehicle must have firm name on both sides of the vehicle in three-inch letters and permit number on the front bottom right hand side window within 24 hours of the permitting inspection.
- (e) All vehicles must be equipped with operable four-way hazard lights and at least one permanently affixed amber light on the top of the vehicle. Lights must be turned on at all sales stops.

- (f) The use of mechanical loudspeakers or sound amplifiers on trucks or other moving vehicles for the purpose of advertising any show, sale or display of merchandise is prohibited. Vehicles will not be permitted with a sound generating device attached.
- (g) Floors and floor coverings must be constructed of a smooth and durable material, such as linoleum or metal, and must be easily cleanable. Carpeting of any type is strictly prohibited. The use of anti-slip floor covering will be allowed.
- (h) Walls and ceilings must be smooth, easily cleanable and non-absorbent. No carpet or exposed raw wood is allowed.
- (i) All equipment must be mounted and properly secured to eliminate unsafe conditions.
- (j) Food storage units must be clean, in good repair, and properly designed to maintain the food product at 10 degrees Fahrenheit or below. A visible thermometer must be provided.
- (k) All ice cream must be pre-wrapped, sealed, labeled and obtained from an approved source.
- (l) Pre-packaged candy, chips and soft drinks must be sold in single portion units. No hot foods such as nachos, hot dogs, cheese Cheetos, etc.
- (m) If soft drinks are cooled on wet ice, a retention tank must be provided for drainage purposes and must be disposed of at a designated commissary or food establishment.
- (n) A trash receptacle must be available to the customer from the outside of the vehicle.
- (o) A commissary or food establishment is required for a mobile food vendor to operate in the City of Mercedes.
- (p) Copies of the mobile food vendor permit must be retained on the vehicle at all times.
- (q) All drivers must possess a current Texas Driver's License, Texas License Plate and a Texas Safety Inspection Sticker.
- (r) Vendors shall not sell, distribute, or offer for sale, any products or services within two city blocks or 600 feet, whichever is greater, of the grounds of any public, private, parochial, elementary or secondary school between the hours of 7:30 a.m. and 4:30 p.m. on days when school is in session.
- (s) Vendors shall limit their hours to true daylight, which is defined as 30 minutes before sunrise to 30 minutes after sunset.

SECTION XII. OFFENSES AND REGULATIONS.

- (a) It shall be unlawful for any individual under this article to sell edible goods in the city unless its principal or employers has received a permit under this article.
- (b) A permit issued under this article is not transferable.
- (c) It shall be unlawful for an individual to sell edible food while displaying a valid permit issued by the city in the name of another individual, organization or entity.
- (d) Its shall be unlawful for any individual directly or through any agent or employee, to sell food within the corporate limits of the city after the expiration of the permit issued by the city under this article. If discovered and verified, the subject vendor shall not be eligible to re-apply until six (6) months have elapsed.

2. SEVERABILITY PROVISION

By the adoption of this ordinance, should there be any word, sentence, phrase, and/or expression that may be deemed by a court of competent jurisdiction to be invalid, or legally deleted from the content of his ordinance, it is declared that the remaining portion or portions of this ordinance shall remain fully enabled, active and in full force.

3. CUMULATIVE PROVISION

Should there be any existing ordinance, regulation, policy, and/or guideline that may be in conflict with the established regulations of this zoning ordinance, whether in whole or in part, the terms of this ordinance shall be controlling and override any such existing conflict.

4. PUBLICATION DATE

Once adopted, the City secretary shall as soon as practicable, forward the caption of this coning ordinance to be published in a newspaper of local circulation.

READ, DISCUSSED, AND APPROVED ON THIS THE 1ST DAY OF JULY, IN THE YEAR OF OUR LORD, 2025.

1st Reading: July 1, 2025

2nd Reading: July 15, 2025

CITY OF MERCEDES:

Oscar D. Montoya, Mayor

ATTEST:

Joselynn Castillo
City Secretary

APPROVED AS TO FORM:

Martie Garcia Vela
City Attorney

ARTICLE 6.04
FOOD ESTABLISHMENTS

DIVISION 1
Generally

§ 6.04.001. Texas Food Establishment Rules adopted.

- (a) Adoption. The Texas Food Establishment Rules (TFER), 2006 edition, is hereby adopted by reference as though copied herein fully.
- (b) Future updates. Whenever new updates to the code shall become available and fully assessed by the city, they shall then be deemed as “adopted” and enforceable. However, should there be a specific restriction on any of the updates that is incidentally discovered that may not be in the city’s best interests to enforce, the planning director and/or the city manager’s office shall assess and bring forth that restriction to the city commission for final disposition on whether to suspend that provision from enforcement.
- (c) References to duties of officials. Within said code, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of said code is concerned.
- (d) Penalty. Anyone who violates this section shall upon conviction thereof be fined in accordance with the general penalty provided in section 1.01.009 of this code. Each day the violation continues to exist shall constitute a separate offense.
(Ordinance 2012-01, secs. 1, 3, 7, adopted 2/21/12; Ordinance adopting 2022 Code)

§ 6.04.002. through § 6.04.030. (Reserved)

DIVISION 2
Mobile Food Vendors

§ 6.04.031. Definitions.

Edible goods may include, but are not limited to:

- (1) Prepackaged food including, but not limited to, candy, beverages, chips, popsicles and ice cream.
- (2) Prepared food including, but not limited to, hot dogs, desserts, sandwiches and pizza.
- (3) On-site prepared food including, but not limited to, shaved ice, sandwiches and tacos.

Mobile food vendors shall mean any business which sells edible goods from a non-stationery vehicle within the city. The terms shall include mobile food trucks: a self-contained, motorized unit selling items defined as “edible goods.”

Non-refrigerated shall mean edible goods that are not required to be kept at a temperature below 41 degrees Fahrenheit according to the Federal Food and Drug Administration and the Texas Food Establishment Rules.

(Ordinance 2020-09, sec. I(A), adopted 6/26/20)

§ 6.04.032. Permit and application.

- (a) Permit. Every mobile food vendor shall have a permit issued by the city to conduct business in the city.
- (b) Application. Every mobile food vendor shall apply for a permit on a form promulgated by the city. Each vending unit requires the processing of a separate permit. Applications for permits meeting the requirements for mobile vendors shall be processed within ten (10) business days.
- (c) Permit form. A complete application shall require the following information from the applicant to be considered:
 - (1) Full name of applicant.
 - (2) Legal name of business or entity.
 - (3) State of incorporation or filing of a partnership or articles of association.
 - (4) If applicable, copy of charter or articles of incorporation, and current listing of the directors, partners, or principles.
 - (5) Sales tax number with a copy of sales tax permit.
 - (6) Signed permission from or provide notarized affidavit from the private property owner(s) granting permission for unit placement.
 - (7) Name, phone number, and driver’s license number of (vending) business owner and all employees operating within the mobile food vendor unit.

- (8) Proposed itinerary with route, vending locations, and times of operation.
- (9) Contact name and phone number for mobile food vending unit while in route.
- (10) Description of product(s) being sold.
- (11) If applicable, detailed site plan where mobile food vending unit will be located on the property; to show entry/exit points, dimensions of paved parking allotted for the vending use, location of trash/dumpster to be used, restrooms, signage/flag(s), etc.
- (12) Dependent on a health-care emergency being officially declared, the provision of a Work Safe Plan that would include, but not necessarily be limited to, the inclusion and application of safe hygiene practices, social distancing, gloves, and/or other prevailing safety standards as expressed by the Center for Disease Control (CDC) authorities, and/or from county/city authorities.
- (13) Vehicle identification number, description of mobile food vending unit, and photos of unit, and photos of unit [sic].
- (14) Signed affidavit with photo identification that each individual applicant:
 - (A) Has no unpaid civil judgments against him or her in any state of U.S. possession which arise from a business activity which would have been covered by this section if in effect at the time in the jurisdiction where such judgments are of record.
 - (B) A statement of all convictions in any state, the United States, or U.S. possession within the last ten (10) years.

(Ordinance 2020-09, sec. I(B), adopted 6/26/20)

§ 6.04.033. Permit fee.

- (a) The application fee for a mobile food vendor permit shall be in the amount provided in the fee schedule in appendix A of this code. Each mobile food vendor unit shall be permitted separately. It is noted that the city hereby establishes that there shall be an approved ratio of mobile food truck vendors of 1 for each 6,000 population.
- (b) Mobile food vendor permits shall be valid for six (6) months from the date of permit issuance.
- (c) Upon renewal the applicant shall pay a renewal fee in the amount provided in the fee schedule in appendix A of this code. The applicant must submit the application and the renewal fee within 30 business days before expiration of the permit; if not, he/she must reapply as a new applicant.

(Ordinance 2020-09, sec. I(C), adopted 6/26/20; Ordinance adopting 2022 Code)

§ 6.04.034. Permit denial and display.

- (a) Denial. A permit may be denied where:
 - (1) An applicant is found to have an unpaid civil judgment(s) against him which relates to the duties and responsibilities of the permitted occupation which shall be determined by

the nature and amount of the judgment, the relationship of the judgment to the purpose of the permit, and the extent that the permit would allow someone to engage in further activity that would lead to unsatisfied civil judgments;

- (2) An applicant has been convicted of a crime which directly relates to the duties and responsibilities of the licensed occupation which shall be determined by the nature and seriousness of the crime, the relationship of the crime to the purpose of the permit, and/or the extent that the permit would allow someone to engage in further criminal activity;
 - (3) The required information is incomplete or incorrect or shows that a person is not otherwise entitled to conduct business as a mobile food vendor; or
 - (4) The subject applicant has had frequent and previous violations as described in this section.
- (b) Display of permit. Every permit, including those from the city, shall be displayed at all times in a conspicuous place where it can be read by the general public on the mobile food vendor's truck.

(Ordinance 2020-09, sec. I(D), adopted 6/26/20)

§ 6.04.035. Permit revocation or suspension.

- (a) A permit may be revoked upon conviction of any offense by an individual operating as a mobile food vendor in the city while engaged in the permitted business, or if a final conviction occurs, or is found to have existed at the time of application, or if civil judgments, as set forth above, are placed or found of record against an applicant. A permit may be suspended in the event of pending charges of a crime, as set forth above, upon a magistrate's determination of probable cause in connection with such charges.
 - (b) A permit may be revoked for non-conformity to the application, location, specifications, or requirements as well as to non-conformity to an approved location plan or diagram.
 - (c) An employee working for an applicant permitted as an employer under this section above may be denied the right to solicit under such permit, or such rights may be suspended or terminated, under the same circumstances and procedures which apply to the holder of the permit. Revocation or suspension of an employer's permit terminates all employee permit(s) that function under said permit(s).
 - (d) A permit may be suspended or revoked for not complying with the requirements of this section, or any other ordinance, or laws, inclusive of health regulations. This provision to suspend or revoke may include any 'new' driver replacing the driver previously 'approved' during the permitting vetting process.
 - (e) Continued failure to pay outstanding parking meter fees and/or fines owed to the city.
- (Ordinance 2020-09, sec. I(E), adopted 6/26/20)

§ 6.04.036. Appeal of permit revocation, suspension, or denial.

- (a) The notice of revocation, suspension, or denial of a permit shall include the procedure for appealing the suspension, revocation, or denial.

- (b) If a city official with applicable jurisdiction revokes, suspends, or denies a mobile food vendor permit, the holder or applicant of the permit which has been revoked, suspended, or denied, shall have the right of appeal to the city manager, or designee, by submitting an appeal in writing to the city manager within ten (10) business days of the revocation, suspension, or denial; the appeal shall include the detailed justification as to why the permit should be issued or reinstated.
- (c) Pending action on the appeal, a permit which has been revoked or suspended shall be considered revoked or suspended; thus, no food sales shall be permitted to be sold during this tenure.
- (d) If a written appeal is not submitted within the ten (10) business days of revocation, suspension, or denial, or if appeal is denied, the permit shall hence be considered revoked, suspended or denied.

(Ordinance 2020-09, sec. I(F), adopted 6/26/20)

§ 6.04.037. Reapplication after revocation, suspension, or denial of permit.

- (a) If a mobile food vendor or applicant is not in compliance with this section or any other ordinance, law or the approved terms of the vendor's application, the following action will be taken:
 - (1) 1st violation. A warning may be issued, or the permit may be revoked or suspended and the vendor may become ineligible for a new or reissued permit for 90 consecutive days.
 - (2) 2nd violation. Permit will be revoked and the vendor may become ineligible for a new or reissued permit for six (6) months.
 - (3) 3rd violation. Permit will be revoked and the vendor will become ineligible for a new or reissued permit for one year.
- (b) If any applicant's permit has been denied and the appeal is denied, the applicant may not reapply until 180 consecutive days have elapsed.

(Ordinance 2020-09, sec. I(G), adopted 6/26/20)

§ 6.04.038. Zoning and location restrictions.

- (a) Distance regulations.
 - (1) No mobile food trucks shall conduct business within any single-family residential or non-business zoning district unless a city permit has been issued. If such is 'permitted', there shall be a 30-day probationary tenure for assessment at which time, the planning director may suspend or extend the mobile food truck's privileges of presence in approved residential neighborhoods.
 - (2) A mobile food vendor may not be located within 100 feet of the primary entrance of an operating (fixed-location) food service or eating establishment except during city-sponsored or other community events.

- (3) A mobile food vendor shall not be located within 300 feet from another mobile food vendor except during city-sponsored or other community events.
- (b) A mobile food truck vendor shall not conduct sales at a stationary location:
 - (1) For vending duration exceeding eight (8) hours per location on private property, and four (4) hours on public (street) property per day. Allowances may be granted by the city for additional time depending on type of activity or event.
 - (2) Mobile vendors using public streets for sales may not move to a new location not originally 'approved' during the application process, without prior approval from the city.
 - (3) On any public street designated on the city's thoroughfare plan as a collector or greater.
 - (4) In congested areas where the operation impedes vehicular or pedestrian traffic.
 - (5) Before dawn or after dusk.
- (c) Location regulations.
 - (1) No mobile food vendor shall be located on any private property without written permission to do so and must immediately comply if asked to leave by the property owner, owners' agent, or city official. A copy of the written permission to operate in a specific location signed by the private property owner shall be kept within the mobile vending unit at all times.
 - (2) No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill.
 - (3) No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill upon any premises if requested by the property owner or city not to do so; or if there is placed near or at the entrance thereof a sign bearing the words "No Advertisement."
 - (4) No person shall sell or offer for sale any item upon any premises if requested by the property owner or city official not to do so, or if there is placed at or near the entrance thereof a sign bearing the words "No Peddlers or Vendors," "No Trespassing," or "No Solicitors," or signage that substantially reflects the same message.

(Ordinance 2020-09, sec. I(H), adopted 6/26/20)

§ 6.04.039. Mobile food vendor requirements.

The following regulations shall apply to mobile food vendors within any zoning district:

- (1) Mobile food establishments shall operate from a central preparation facility or other permitted fixed food establishment and shall report to such location for supplies and for cleaning and servicing operations. All operations equipment and/or display must be entirely removed at the end of each day's operation.
- (2) Each unit shall be equipped with a portable trash receptacle and shall be responsible for proper disposal of solid waste and wastewater in the sanitation facility legally accessed by

the food service establishment. All disturbed areas must be cleaned following each stop to a minimum 20 feet of the sales location.

- (3) Mobile food vendor may not have a drive through.
 - (4) Mobile food vendor may not exceed eight (8) hours of operations per location. A list of the locations must be submitted to and approved by the planning department during the permitting process.
 - (5) Loud continuous music or repetitive sounds shall not project from the mobile unit to a degree that it would be annoying or disturbing the peace for people of a reasonable demeanor.
 - (6) A five-foot clear space can be maintained around the mobile food vending unit.
 - (7) The mobile unit will be subject to inspection upon permit application through the code enforcement, health department and the fire marshal, and may be subject to random inspection, and upon reissuance of the permit.
 - (8) No sales are allowed within public park facilities while park concession units are operating. Mobile units operating in public parks and on streets adjacent to public parks or recreational facilities require pre-approval by the director of planning.
 - (9) A “No Smoking” sign must be posted next to the order window area.
 - (10) An approved portable type ABC fire extinguisher tagged by a licensed company shall be kept accessible as directed by the city fire marshal or designee. A portable type K fire extinguisher is also required in the kitchen for cooking operation.
 - (11) A kitchen fire suppression system and kitchen ventilation system is required to be NFPA 17A and NFPA 96 compliant and shall be required when the cooking process produces grease laden particles within the mobile unit. Said systems shall require testing in the presence of a city fire marshal or designee.
 - (12) All cooking appliances shall be UL-approved appliances.
 - (13) If cooking and using propane, a gas test must be performed by a licensed plumber.
- (Ordinance 2020-09, sec. I(I), adopted 6/26/20)

§ 6.04.040. Offenses and regulations.

- (a) It shall be unlawful for any individual under this article to sell edible goods in the city unless its principal or employers has received a permit under this article.
- (b) A permit issued under this article is not transferable.
- (c) It shall be unlawful for an individual to sell edible food while displaying a valid permit issued by the city in the name of another individual, organization or entity.
- (d) Its shall be unlawful for any individual directly or through any agent or employee, to sell food within the corporate limits of the city after the expiration of the permit issued by the city under this article. If discovered and verified, the subject vendor shall not be eligible to re-apply until six (6) months have elapsed.

- (e) It shall be unlawful for an individual directly or through an agent or employee, to misrepresent on the permit affidavit any acts that are regulated under this article.
 - (f) It shall be unlawful for any individual directly or through his agents or employees, to represent that the issuance of a permit by the city constitutes the city's endorsement or approval of the product for sale.
 - (g) It shall be unlawful to operate a mobile food vendor operation that is not in compliance with the Texas Food Establishment Rules as amended from time to time.
- (Ordinance 2020-09, sec. I(J), adopted 6/26/20)

§ 6.04.041. Penalty.

Each violation of any of the provisions of this division shall constitute a separate offense and shall, upon conviction thereof, be punishable by a fine in accordance with the general penalty provided in section 1.01.009 of this code.

(Ordinance 2020-09, sec. IV, adopted 6/26/20; Ordinance adopting 2022 Code)



city of

mercedes*It Starts Here!*

Planning Department
400 S Ohio Ave
Mercedes, TX 78570
(956) 565-3114

Voluntary Annexation Petition

CASE #

To the Mayor and City Commission:

Arturo Palacios Medina is the sole owner of the tract of land, which is more particularly described by metes and bounds in Exhibit A to this petition, hereby petitions the City Commission of the City of Mercedes to annex the following area(s):

2311 E Business 83 mercedes TX 78570
T&R USA Construction LLC.

Arturo Palacios Medina
Owner's Name (Print)

[Signature]
Owner (Signature)

3/11/25
Date

STATE OF TEXAS
COUNTY OF HIDALGO

Before me, the undersigned authority, a Notary Public in and for Hidalgo County, Texas, on this day personally appeared Arturo Palacios Medina, whom stated upon his oath the following;

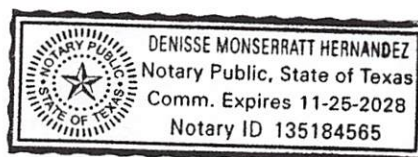
My name is Arturo Palacios Medina and I am the owner of the land or representative of the majority of the landowners. There are no residents nor are there any qualified voters in the area to be annexed.

I, Arturo Palacios Medina hereby certify under penalty of perjury that to the best of my knowledge and belief, the property mentioned above currently does not owe any property taxes to the relevant tax authority.

Further affiant sayeth not.

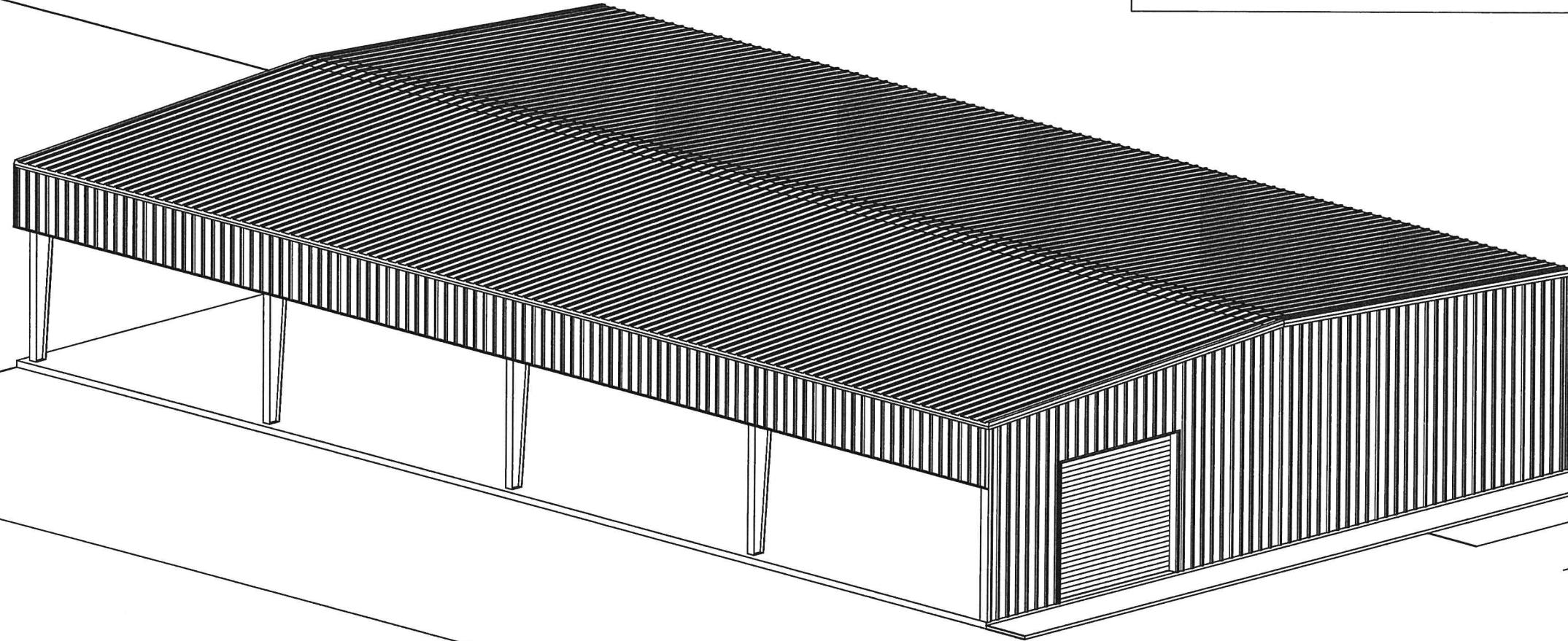
SWORN TO and subscribed before me on this the 11 day of March, 2025.

[Signature]
Notary Public in and for the State of Texas



DRAWING INDEX

8. **ENDWALL FRAMING**
9. **SEAWALL FRAMING**
10. **TYP. FRAMING DETAILS**
11. **FOUNDATION PLAN**
12. **FOUNDATION DETAILS**
13. **ANCHOR BOLT PLAN**
14. **ANCHOR BOLT DETAILS**
15. **SEPTIC SYSTEM PLAN**

[illegible]

**LONGORIA & SON'S
WELDING, INC.**

- Metal Component Sales
- Panels •Insulation
- Trims •Fasteners
- Purlins

Cell: (956)343-3175 Sam
Cell: (956)498-6583 Sam Jr.
Cell: (956)650-5280 Amancio
30 Years Business Experience

**PROPOSED 60'x100' PALLET FACTORY
LOT 7, BLOCK 41, CAPITALLO DISTRICT SUBDIVISION
MERCEDES, TX 78570**

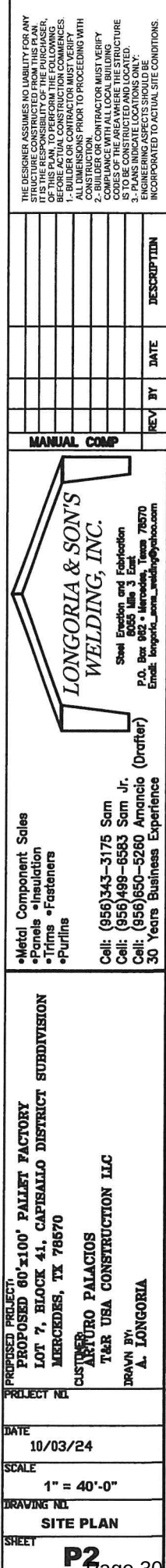
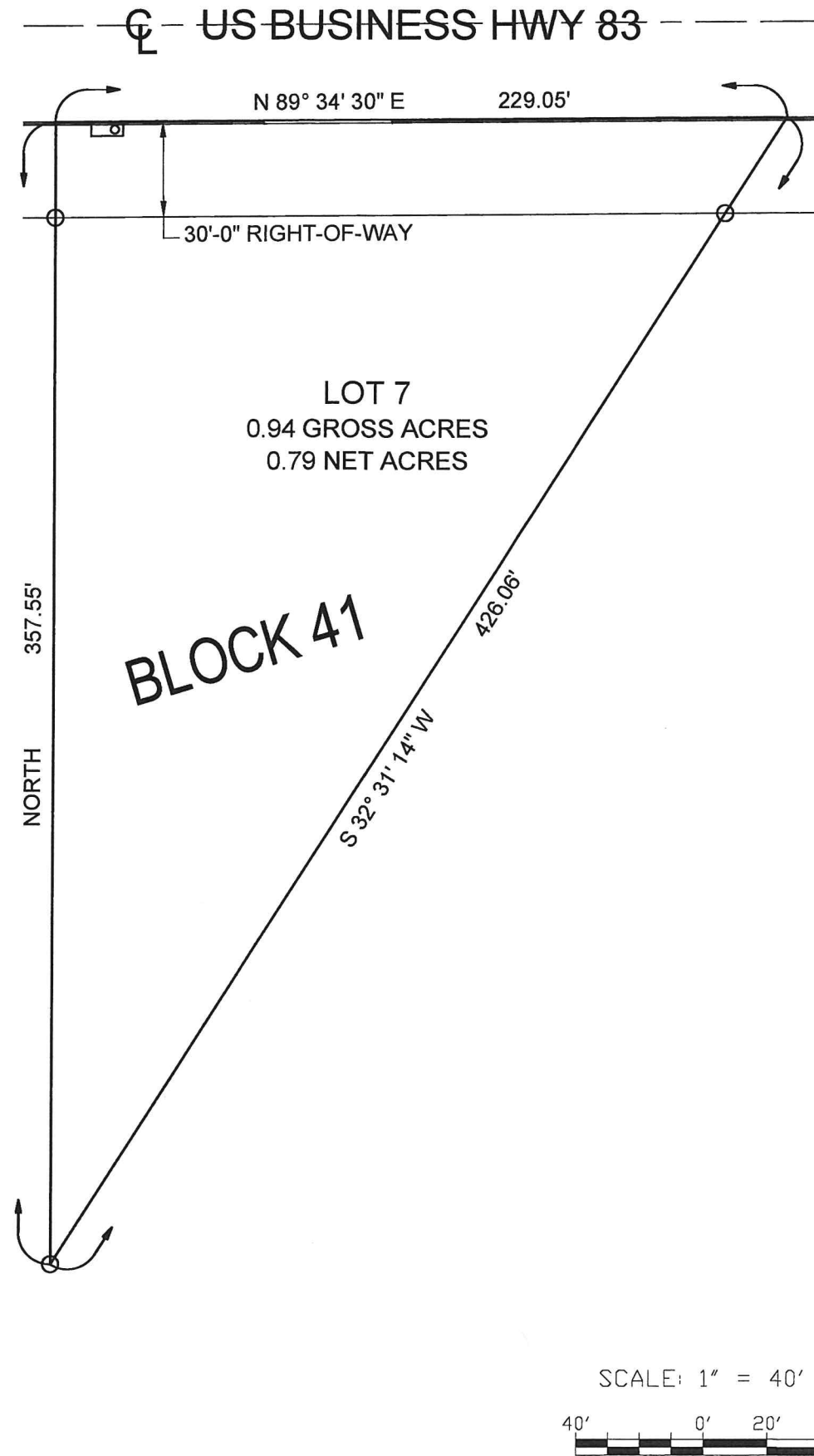
**CUSTOMER:
ARTURO PALACIOS
T&R USA CONSTRUCTION LLC**

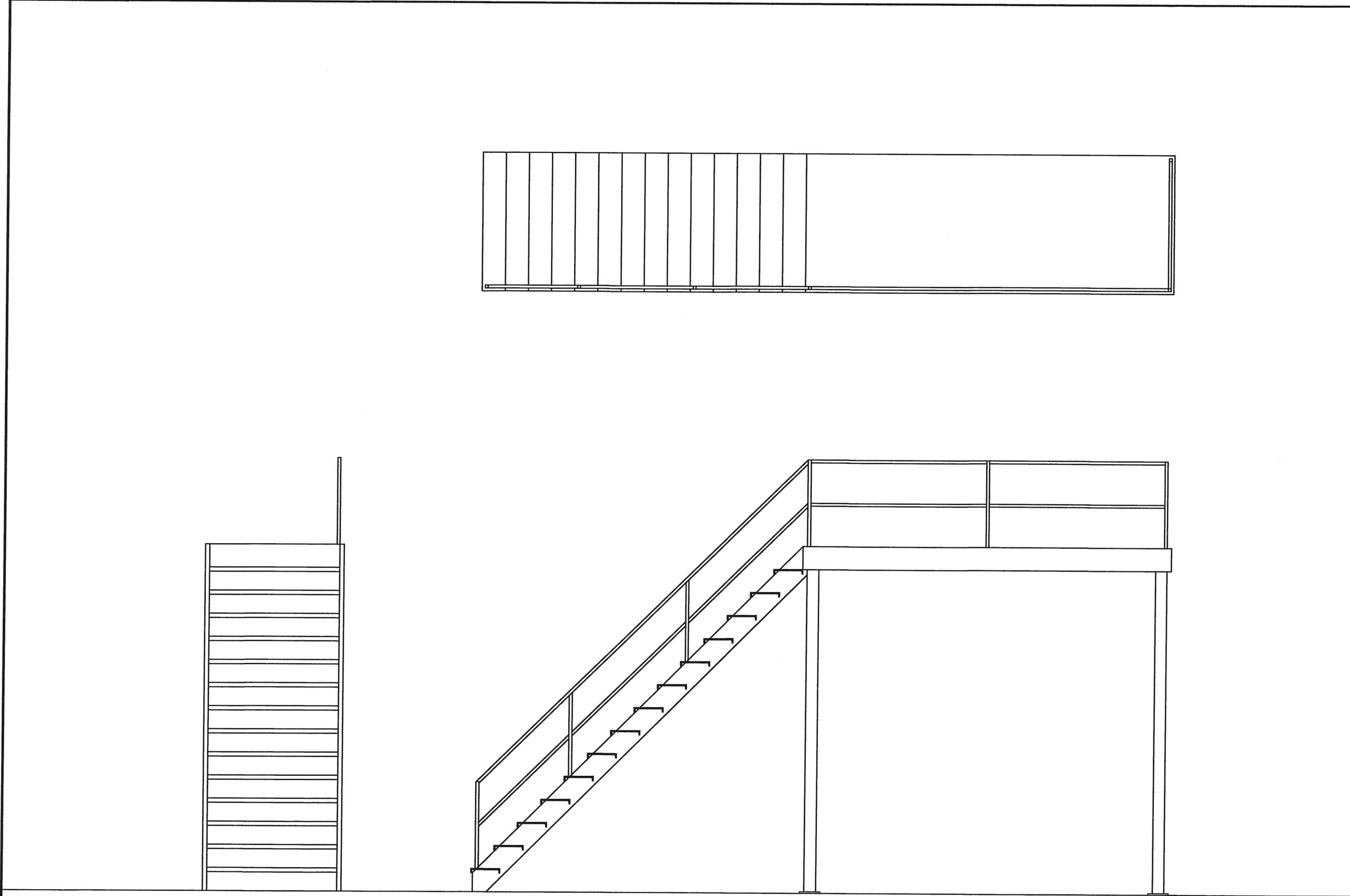
DATE
10/03/24

SCALE N.T.S.

AWING NL
COVER

COVER
SHEET
D1





PROPOSED PROJECT:
PROPOSED 60'x100' PALLET FACTORY
LOT 7, BLOCK 41, CAPISALLO DISTRICT SUBDIVISION
MERCEDDES, TX 78570

CUSTOMER:
ARTURO PALACIOS
T&R USA CONSTRUCTION LLC

DRAWN BY:
A. LONGORIA

DATE
10/03/24

SCALE
1/8" = 1'-0"

DRAWING NO.
STAIRS FRAMING

SHEET
P4

PROJECT NO.

DATE

BY

REV

MANUAL COMP

LONGORIA & SON'S
WELDING, INC.

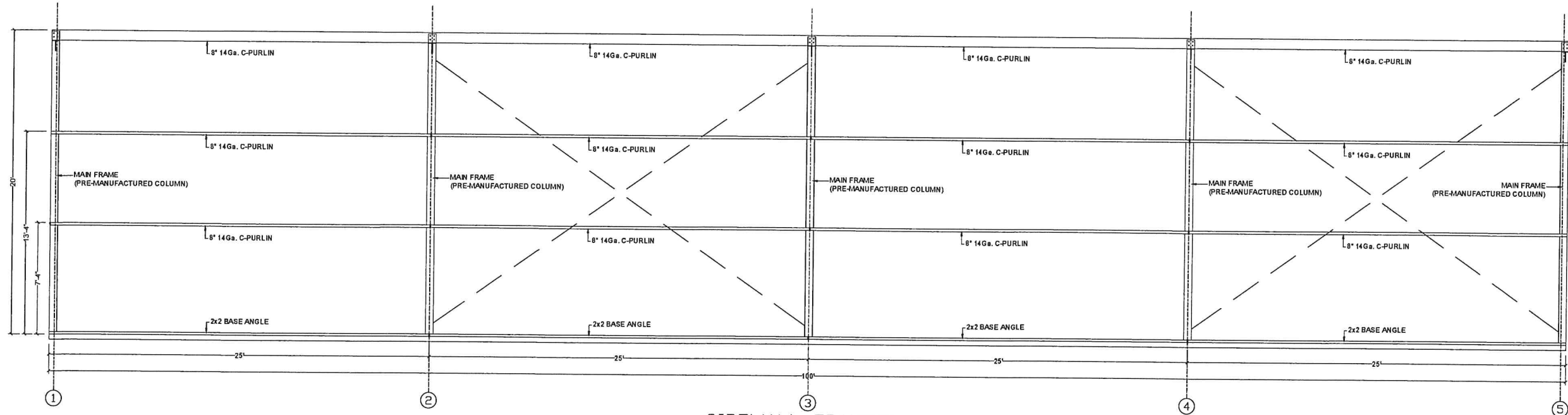
Steel Erection and Fabrication
8055 Mls 3 East
P.O. Box 982 • Merceddes, Texas 78570
Email: longoria_sons_welding@yahoo.com

Cell: (956)343-3175 Sam
Cell: (956)499-6583 Sam Jr.
Cell: (956)650-5260 Amancio
30 Years Business Experience

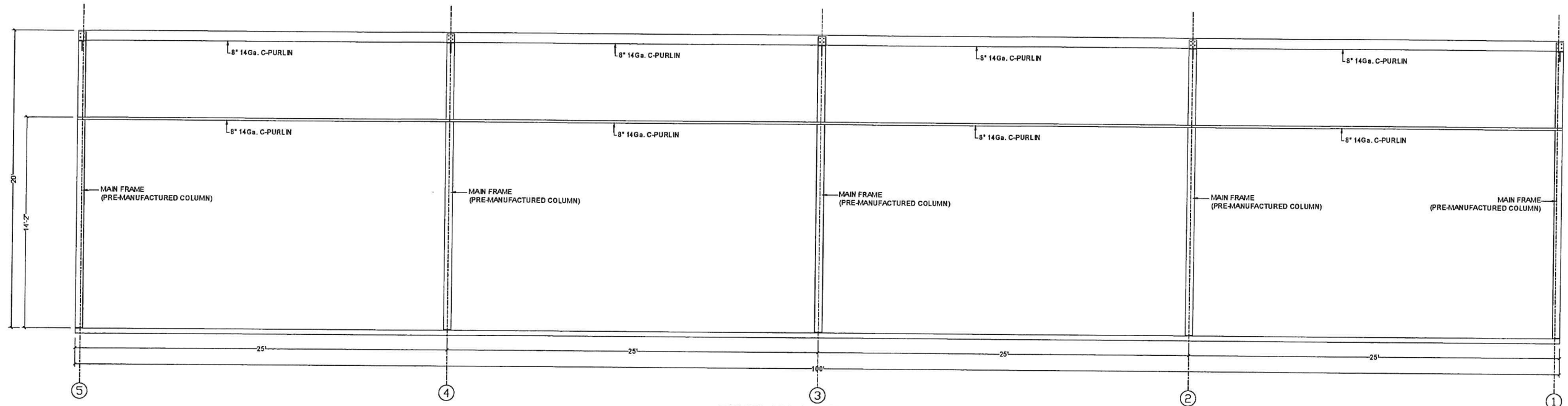
•Metal Component Sales
•Panels •Insulation
•Trims •Fasteners
•Purlins

THE DESIGNER ASSUMES NO LIABILITY FOR ANY STRUCTURE CONSTRUCTED FROM THIS PLAN. THE DESIGNER'S RESPONSIBILITY IS LIMITED TO THE DESIGN OF THIS PLAN TO PERFORM THE FOLLOWING:

1. DESIGN OF THE STRUCTURE.
2. BUILDING OR CONTRACTOR MUST VERIFY THE STRUCTURE IS TO BE CONSTRUCTED AND LOCATED IN THE AREA WHERE THE STRUCTURE IS TO BE CONSTRUCTED.
3. THE STRUCTURE MUST BE CONSTRUCTED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AISC STEEL CONSTRUCTION MANUAL AND THE AISC STEEL DESIGN GUIDE.
4. THE STRUCTURE MUST BE CONSTRUCTED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AISC STEEL CONSTRUCTION MANUAL AND THE AISC STEEL DESIGN GUIDE.
5. THE STRUCTURE MUST BE CONSTRUCTED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AISC STEEL CONSTRUCTION MANUAL AND THE AISC STEEL DESIGN GUIDE.
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12. THE STRUCTURE MUST BE CONSTRUCTED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AISC STEEL CONSTRUCTION MANUAL AND THE AISC STEEL DESIGN GUIDE.



SIDEWALL FRAMING
FOR FRAME LINE D

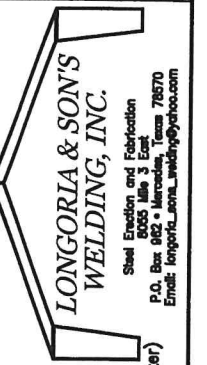


SIDEWALL FRAMING
FOR FRAME LINE A

THE DESIGNER ASSUMES NO LIABILITY FOR ANY STRUCTURE CONSTRUCTED FROM THIS PLAN. IT IS THE RESPONSIBILITY OF THE PURCHASER, CONTRACTOR, OR USER TO VERIFY THE ACCURACY OF THE INFORMATION PROVIDED HEREIN BEFORE ACTUAL CONSTRUCTION COMMENCES. 1- BUILDER OR CONTRACTOR MUST VERIFY CONSTRUCTION PRIOR TO PROCEEDING WITH CONSTRUCTION. 2- BUILDER OR CONTRACTOR MUST VERIFY COMPLIANCE WITH ALL LOCAL BUILDING CODES AND ORDINANCES. 3- PLANS INDICATE LOCATIONS ONLY. LOCATIONS SHOULD BE INCORPORATED TO ACTUAL SITE CONDITIONS.

REV	BY	DATE	DESCRIPTION

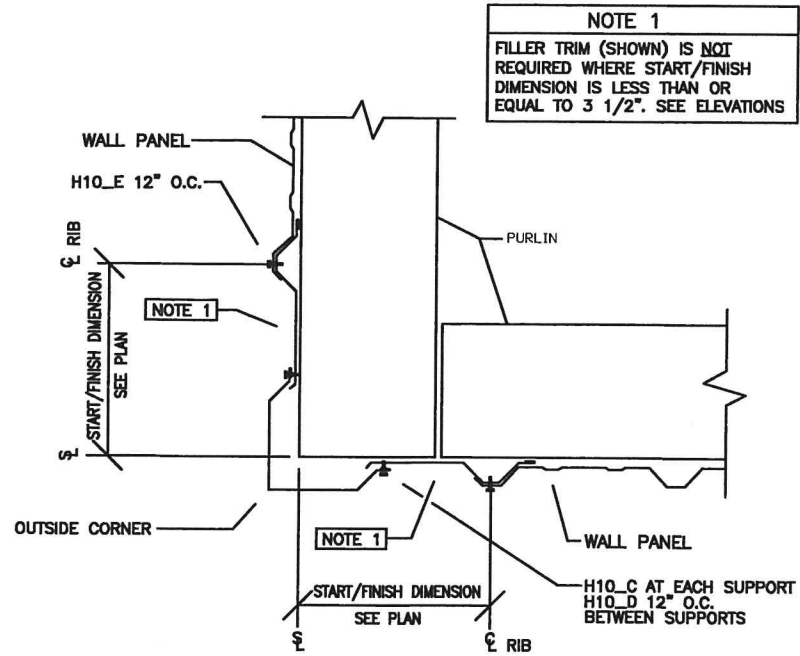
MANUAL COMP



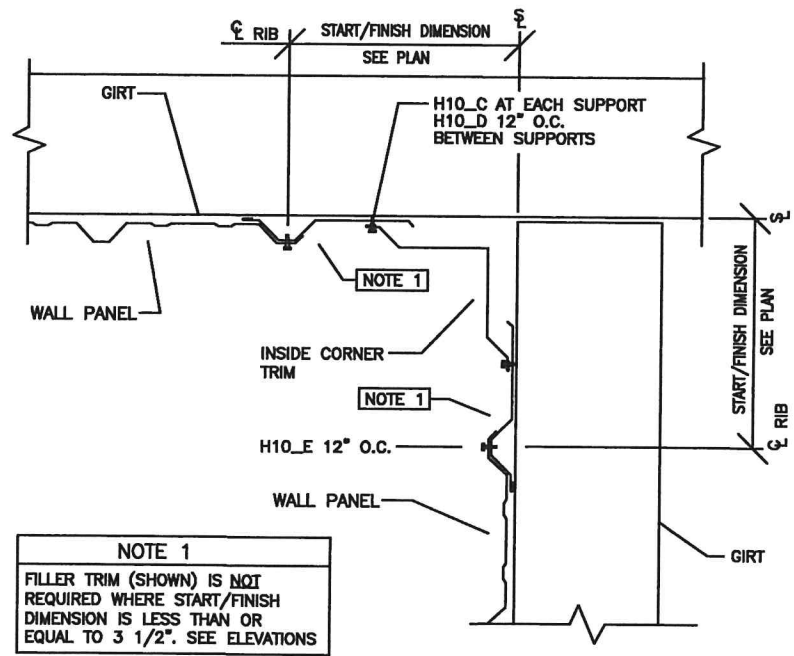
•Metal Component Sales
•Panels •Insulation
•Trims •Fasteners
•Purlins
Cell: (956)343-3175 Sam
Cell: (956)498-6583 Sam Jr.
Cell: (956)550-5260 Amancio (Drafter)
30 Years Business Experience

PROPOSED PROJECT:
PROPOSED 80'x100' PALLET FACTORY
LOT 7, BLOCK 41, CAPITALLO DISTRICT SUBDIVISION
MERCEDES, TX 78570
CUSTOMER:
ARTURO PALACIOS
T&R USA CONSTRUCTION LLC
DRAWN BY:
A. LONGORIA

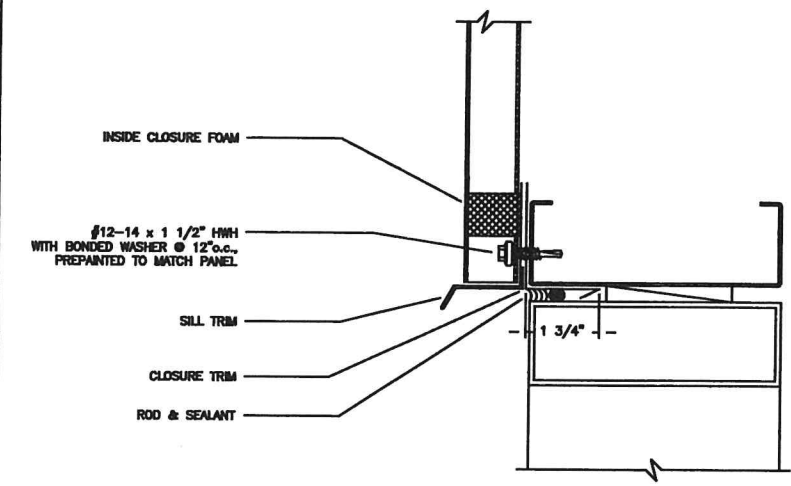
PROJECT NO.
DATE
10/03/24
SCALE
1/16" = 1'-0"
DRAWING NO.
SIDEWALL
FRAMING PLAN
SHEET



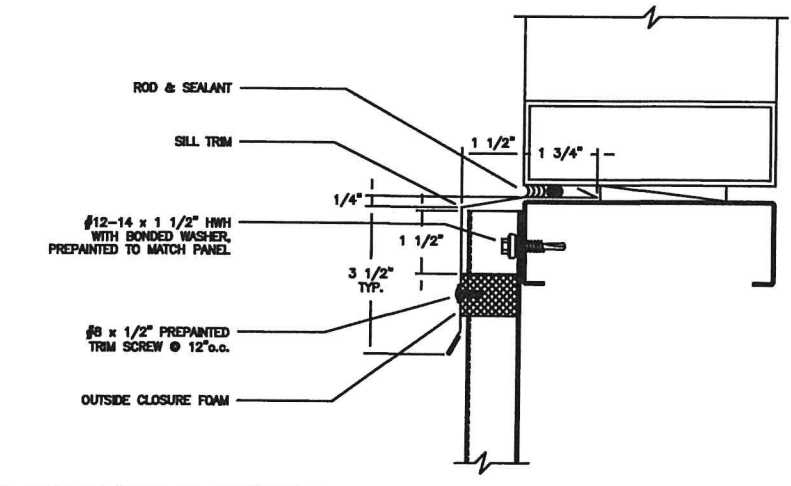
OUTSIDE CORNER @ STEEL WALL R- PANEL



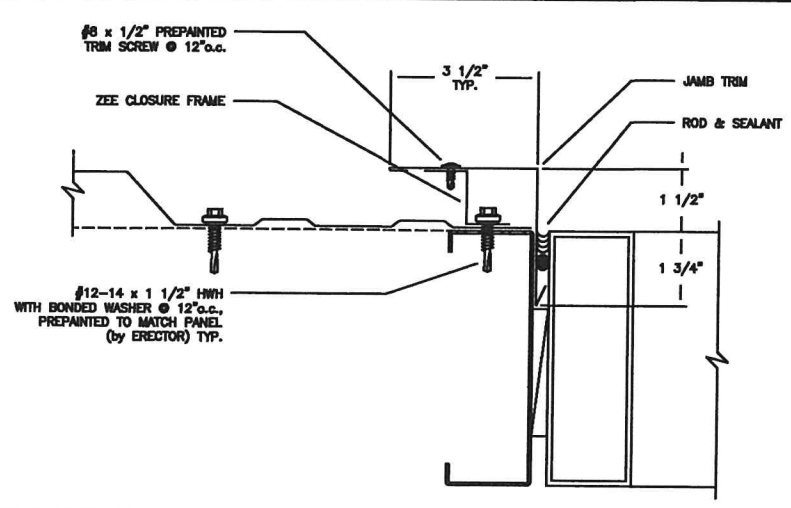
INSIDE CORNER @ STEEL WALL R- PANEL



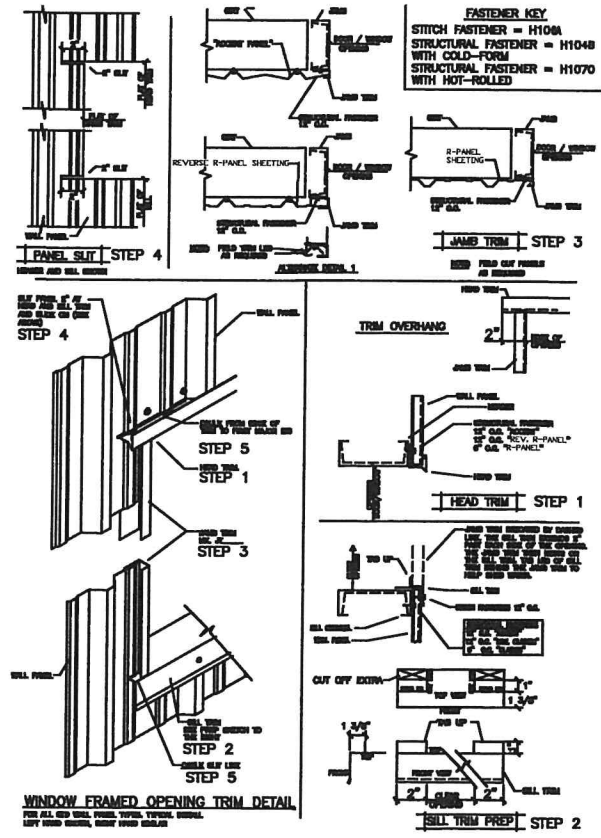
TYP. WINDOW HEAD



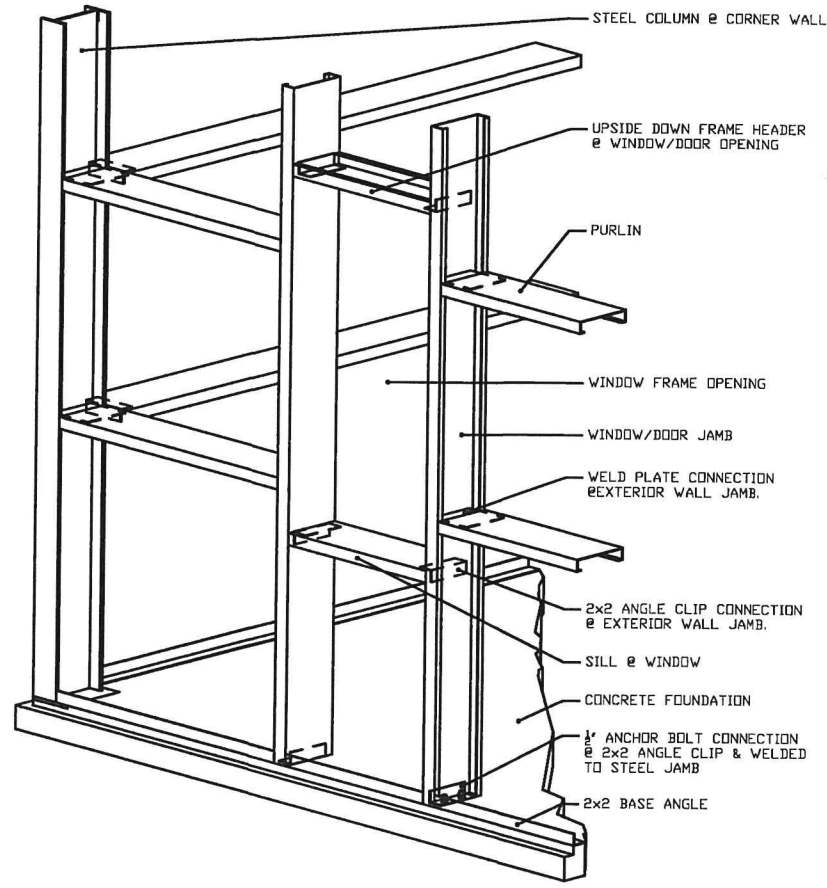
TYP. WINDOW SILL



TYP. WINDOW JAMB



TYP. DOOR & WINDOW FRAMED OPENING TRIM



TYP. STEEL FRAMING CONNECTION TYPES

THE DESIGNER ASSUMES NO LIABILITY FOR ANY STRUCTURE CONSTRUCTED FROM THIS PLAN. OF THIS PLAN, THE USER OF THE PLAN, BEFORE ACTUAL CONSTRUCTION COMMENCES, 1. BUILDER OR CONTRACTOR MUST VERIFY CONSTRUCTION PRIOR TO PROCEEDING WITH CONSTRUCTION. 2. BUILDER OR CONTRACTOR MUST VERIFY THE BUILDING IS TO BE CONSTRUCTED AND LOCATED. 3. PLANS INDICATE LOCATIONS ONLY. 4. PLANS ARE TO BE USED IN CONJUNCTION WITH INCORPORATED TO ACTUAL SITE CONDITIONS.

MANUAL COMP	REV	BY	DATE	DESCRIPTION

LONGORIA & SON'S WELDING, INC.
Steel Erection and Fabrication
8005 Mills 3 East
P.O. Box 982 • Mercedes, Texas 78570
Email: longoria_sons_welding@yahoo.com

Cell: (956)343-3175 Sam
Cell: (956)498-6583 Sam Jr.
Cell: (956)650-5260 Anancio (Drafter)
30 Years Business Experience

PROPOSED PROJECT:
PROPOSED 80'x100' PALLET FACTORY
LOT 7, BLOCK 41, CAPITALLO DISTRICT SUBDIVISION
MERCEDDES, TX 78570

CUSTOMER:
ARTURO PALACIOS
T&R USA CONSTRUCTION LLC

DRAWN BY:
A. LONGORIA

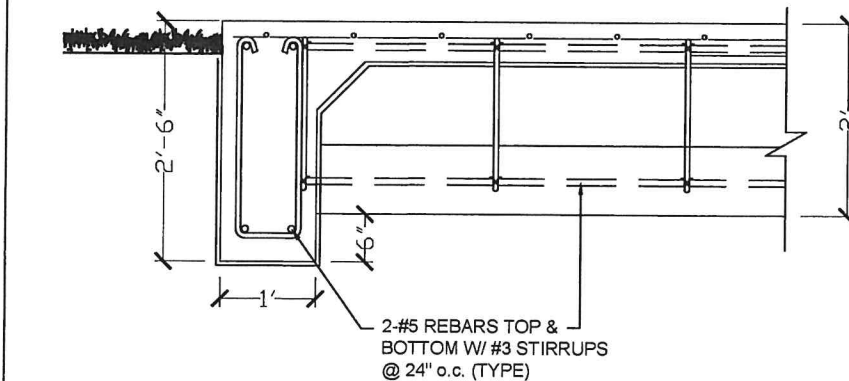
PROJECT NO:

DATE:
10/03/24

SCALE:
N.T.S.

DRAWING NO:
ENDWALL FRAMING PLAN

SHEET:

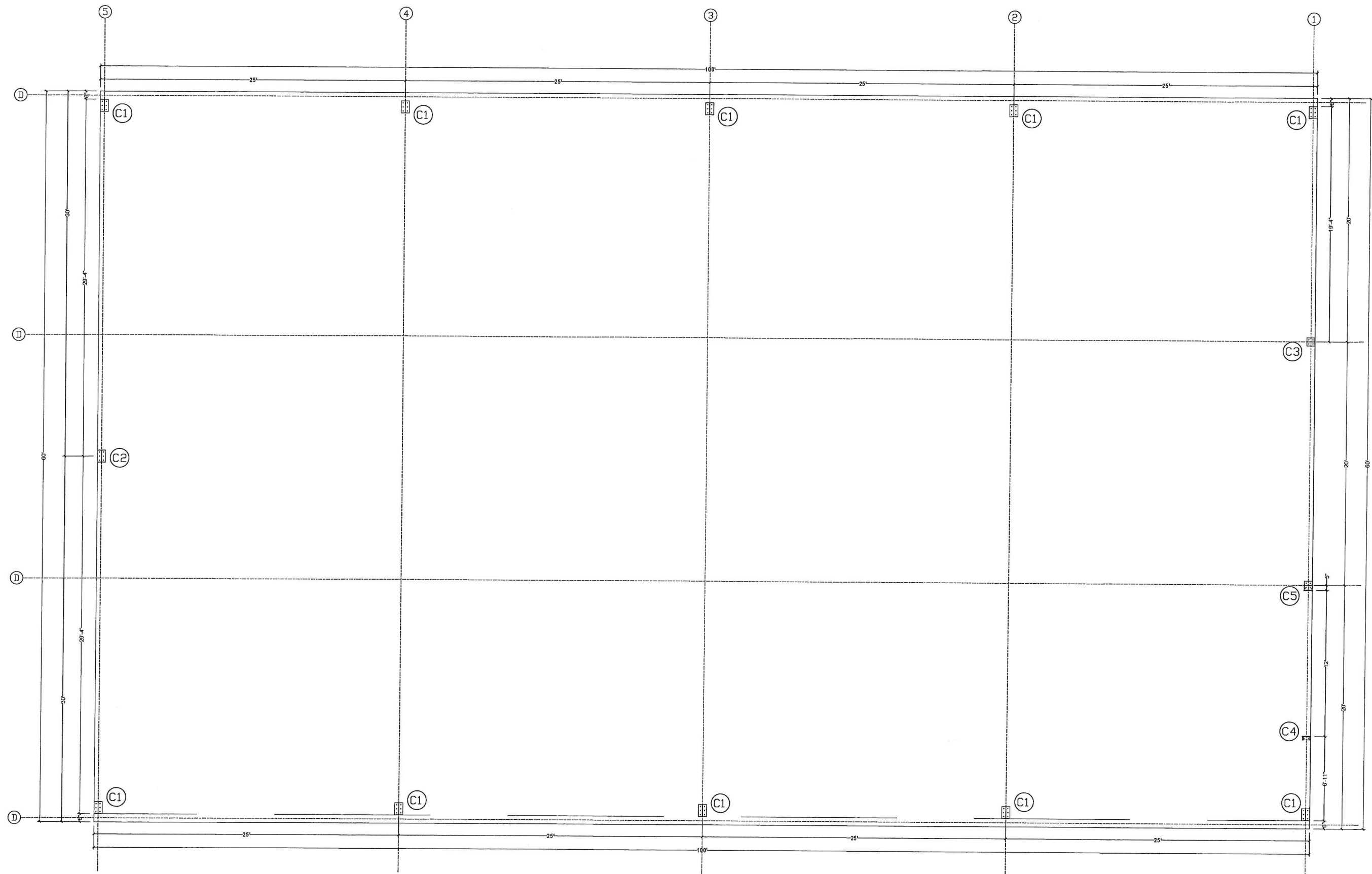


	EXTERIOR CONCRETE BEAM @ INTERIOR BEAM CONNECTION
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DATE	10/03/24
SCALE	1/2" = 1'-0"
DRAWING NO.	FOUNDATION
SHEET	DETAILS

P12 Page 40 of 40



ANCHOR BOLT PLACEMENT PLAN

THE DESIGNER ASSUMES NO LIABILITY FOR ANY STRUCTURE CONSTRUCTED FROM THIS PLAN. IT IS THE RESPONSIBILITY OF THE PURCHASER OF THIS PLAN, TO PERFORM THE FOLLOWING, BEFORE ACTUAL CONSTRUCTION COMMENCES:

1. VERIFY ALL DIMENSIONS PRIOR TO PROCEEDING WITH CONSTRUCTION.
2. OWNER OR CONTRACTOR MUST VERIFY COMPLIANCE WITH ALL LOCAL BUILDING CODES OF THE AREA WHERE THE STRUCTURE IS TO BE CONSTRUCTED AND LOCATED.

THESE PLANS ARE FOR INFORMATION ONLY. NO ENGINEERING ASPECTS HAVE BEEN INCORPORATED TO ACTUAL SITE CONDITIONS.

[illegible]

MANUAL COMP



P.O. Box 982 • Mercedes, Texas 78357
Email: longoria_sona_welding@yahoo.com

(ter)

Cell: (956)650-5260 Amancio
30 Years Business Experience

- Metal Component Sales
- Panels •Insulation
- Trims •Fasteners

•Purlins

PROPOSED 60'x100' PALLET FACTORY
LOT 7, BLOCK 41, CAPISALLO DISTRICT SUBDIVISION
MERCEDES, TX 78570

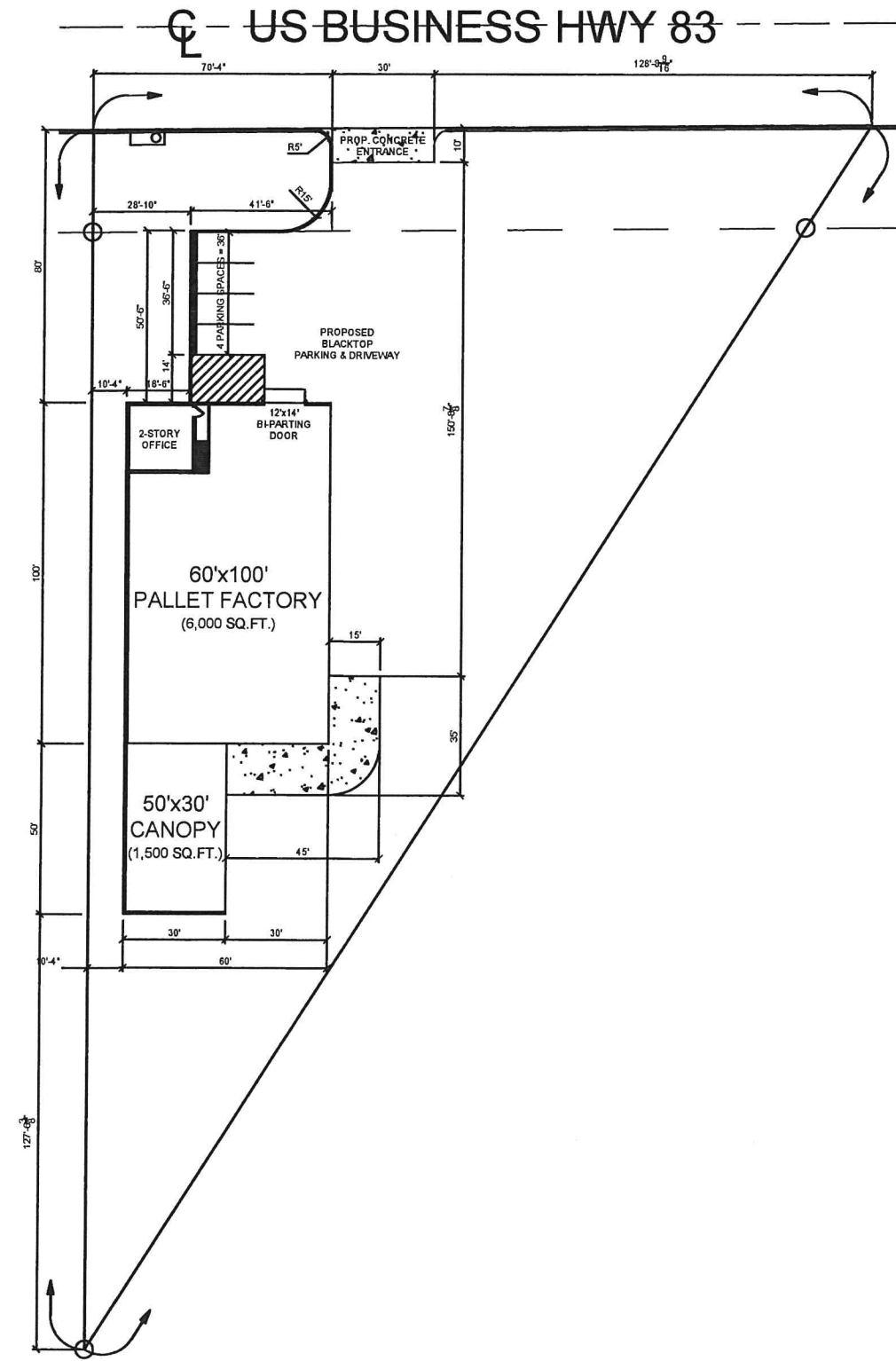
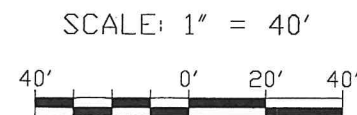
ARTURO PALACIOS
T&R USA CONSTRUCTION LLC
BY: _____
A TORONTO

A. LONGORIA

DATE 10/03/24

SCALE
1/8" = 1'-0"

**ANCHOR BOLT
PLACEMENT PLAN**



THE DESIGNER ASSUMES NO LIABILITY FOR ANY STRUCTURE CONSTRUCTED FROM THIS PLAN. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE FOLLOWING BEFORE ACTUAL CONSTRUCTION COMMENCES:

1. BUILDER OR CONTRACTOR MUST VERIFY ALL DIMENSIONS PRIOR TO PROCEEDING WITH CONSTRUCTION.
2. BUILDER OR CONTRACTOR MUST VERIFY COMPLIANCE WITH ALL LOCAL BUILDING CODES OF THE AREA WHERE THE STRUCTURE IS TO BE CONSTRUCTED.
3. PLANS INDICATE LOCAL TOWNSHIPS. ENGINEERING ASPECTS SHOULD BE INCORPORATED TO ACTUAL SITE CONDITIONS.

[illegible]

MANUAL COMP



P.O. Box 982 • Mercedes, Texas 78570
Email: longoria_sona_welding@yahoo.com

- Metal Component Sales
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Cell: (956)343-3175 Sam
Cell: (956)499-6583 Sam Jr.
Cell: (956)850-5260 Amancio
30 Years Business Experience

**PROPOSED 60'x100' PALLET FACTORY
LOT 7, BLOCK 41, CAPISALLO DISTRICT SUBDIVISION
MERCED, TX 76870**

**CUSTOMER:
ARTURO PALACIOS
T&R USA CONSTRUCTION LLC**

A. LONGORIA

PROJECT NO.

DATE 10/03/24

SCALE
1" = 40'-0"

DRAWING NO. _____

SITE PLAN

ORDINANCE NO 2025-15

AN ORDINANCE PROVIDING FOR THE VOLUNTARY ANNEXATION OF 0.94 ACRES, MORE OR LESS, OUT OF LOT 7, BLOCK 41, CAPISALLO DISTRICT SUBDIVISION, VOLUME "P", PAGE 226, HIDALGO COUNTY MAP RECORDS, AS REQUESTED BY ARTURO PALACIOS MEDINA ON BEHALF OF T&R USA CONSTRUCTION LLC, SAID PROPERTY LYING ADJACENT TO AND ADJOINING THE PRESENT BOUNDARY LIMITS OF THE CITY OF MERCEDS, TEXAS; AND PROVIDING FOR THE EXTENSION OF THE CITY'S BOUNDARIES AND EXTRA-TERRITORIAL JURISDICTION, THEREBY; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, on May 27, 2025, the City Council accepted a petition from City of Mercedes, for voluntary annexation of the above described property and adjoining roadways of said property, more particularly described herein in Exhibits "A" proposed to be annexed by the City of Mercedes; and

WHEREAS, the City of Mercedes seeks to annex the above described property, more particularly described herein in Exhibits "A"; and

WHEREAS, the property hereinafter described adjoins, lies adjacent to, or is within the extraterritorial jurisdiction of the City of Mercedes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MERCEDS, TEXAS, THAT:

SECTION I: AUTHORITY OF LAW: All requirements of the law have been met in the passing of this Ordinance.

SECTION II: The land described in Exhibits "A", attached hereto and made a part hereof for all purposes, being territory adjacent to and adjoining the City of Mercedes, Texas, is hereby added and annexed to the City of Mercedes, Texas, and said property therein described shall be included within the boundary limits of such city, and the present boundary limits of such city, at the various points contiguous to the areas hereinafter described, are altered and amended so as to include said areas within the corporate limits.

SECTION III: The herein described property and the area to be annexed shall be a part of the City of Mercedes, Texas, and the property so added hereby shall bear its pro rata share of the taxes levied by the City of Mercedes, Texas. The inhabitants hereof shall be entitled to all of the rights and privileges of citizens of the City of Mercedes, Texas, in areas having similar characteristics of topography, land utilization and population density, and shall be bound by the acts, ordinances, resolutions, and regulations of the City of Mercedes, Texas.

SECTION IV: The extraterritorial jurisdiction of the City of Mercedes shall expand in conformity with this annexation and shall comprise an area around the new corporate limits of the City, consistent with state law.

SECTION V: Upon annexation of the herein described property, the acreage within the City limits of Mercedes will be increased by 0.94 acres, more or less, out of lot 7, block 41, Capisallo District Subdivision,

volume “P”, page 226, Hidalgo County Map Records, City of Mercedes, Texas, which does not exceed the statutory limitations as set out in Section 43.055, Tex. Local Gov't C. (Vernon 1988 and Vernon Supp. 1994).

SECTION VI: The requirement of three separate readings of this Ordinance is hereby dispensed with by a vote of not less than a majority of the members of the City Council present.

SECTION VII: Upon final passage, this Ordinance shall be published in the official newspaper of the City of Mercedes, Texas, as provided by law, and shall be and remain in full force and upon passage.

SECTION VIII: If any part, phrase or sentence of this Ordinance is held void or unconstitutional by a court of competent jurisdiction, or if any tract of land or portion of any tract of land hereby annexed shall be held to be ineligible for annexation or wrongfully annexed, the remaining portions of this Ordinance and the remaining tracts so annexed shall be considered severable and shall remain in full force and effect.

SECTION IX: In accomplishing the annexation of the property herein described the City of Mercedes has strictly followed the provisions of the Charter of the City of Mercedes, and the state statutes as they apply to annexations and any possible deviation from these provisions was unintentional and not material to the accomplishment of this annexation.

READ, CONSIDERED, PASSED AND APPROVED at a regular meeting of the City Commission of the City of Mercedes, Texas, at which a quorum was present and which was held in accordance with V.T.C.A., Government Code, Section 551.041, on the 1st day of July , 2025.

CITY OF MERCEDES

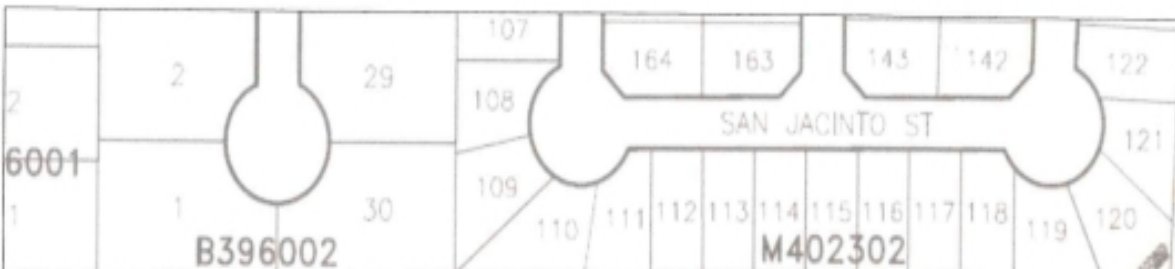
Oscar D. Montoya, Sr., Mayor

ATTEST:

APPROVED AS TO FORM:

Joselynn Castillo
City Secretary

Martie Garcia Vela
City Attorney



MERCEDES CITY LIMITS

PROJECT SITE

US BUS 83

SOLIS -13	HERNANDEZ -15	CONNOR -02	SEGOVIA -29
SALAS -07		-0007-25	
GARCIA -11	RAMIREZ -10	RODRIGUEZ -0007-18	
CAMPOS -22	MARTINEZ -09	BARMORE -0007-21	
CAMPOS -23	PINA -06	ESPINOZA -0007-17	
		ESPINOZA -0007-20	
		ROMAN -0007-12	

7

REYNOLDS EDGAR SAMUEL
C1400-00-041-0007-04

THEY ARE
INVESTMENT
PROPERTY

HIDALGO & CAMERON COUNTIES

ORDINANCE NO. 2025-16

AN ORDINANCE OF THE CITY OF MERCEDES, TEXAS, AMENDING THE CITY TRAFFIC REGULATIONS TO DESIGNATE 3RD STREET AS A ONE-WAY STREET BETWEEN TEXAS AVENUE AND OHIO AVENUE; PROVIDING FOR PUBLIC NOTICE, ACCESSIBILITY IMPROVEMENTS, AND PARKING DESIGNATIONS; PROVIDING FOR SEVERABILITY, PUBLICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Mercedes finds that the reconfiguration of 3rd Street to a one-way street will improve traffic flow, pedestrian safety, and accessibility within the city; and

WHEREAS, the City has determined that the direction of travel on 3rd Street shall be one-way from Texas Avenue (entrance) to Ohio Avenue (exit); and

WHEREAS, the City of Mercedes is committed to complying with the Americans with Disabilities Act (ADA) and ensuring accessible pathways and parking for all individuals; and

WHEREAS, the City shall provide public notice at least two weeks prior to the change taking effect, by way of signage, social media, and the City website;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MERCEDES, TEXAS, THAT:

SECTION 1. DESIGNATION OF ONE-WAY STREET

3rd Street in the City of Mercedes, Texas, from **Texas Avenue to Ohio Avenue**, is hereby designated as a **one-way street**, with **Texas Avenue serving as the entrance and Ohio Avenue serving as the exit**. All vehicular traffic shall travel in an eastbound direction only.

SECTION 2. PUBLIC NOTICE

The City shall provide public notice of the traffic pattern change **no less than fourteen (14) days prior** to the effective date. Notice shall be provided by:

- Posting of **temporary signs** at key intersections along 3rd Street,
- Announcements on the **City's official website** and **social media platforms**, and
- Any other method deemed effective by the City Manager or his/her designee.

SECTION 3. ACCESSIBILITY IMPROVEMENTS

The City of Mercedes Public Works Department shall construct or modify existing pathways to ensure ADA-compliant access in the area affected by this traffic reconfiguration. This shall include, but not be limited to:

- **Installation of ADA-compliant ramps** in the alleyway between Texas Avenue and Ohio Avenue to allow safe sidewalk access.

SECTION 4. PARKING DESIGNATION

Parking along 3rd Street between Texas Avenue and Ohio Avenue shall be designated as follows:

- **Handicapped Parking Spaces** shall be located:
 - At the **corner of Texas Avenue and 3rd Street**,
 - Adjacent to the **alley between Texas Avenue and Ohio Avenue**, and
 - At the **corner of Ohio Avenue and 3rd Street**.
- **General Public Parking** shall be available in all other marked spaces between these designated handicap spaces.

All parking signage and striping shall be updated accordingly by the Public Works Department.

SECTION 5. SEVERABILITY

If any section, clause, sentence, or phrase of this ordinance is held to be invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

SECTION 6. EFFECTIVE DATE AND PUBLICATION

This Ordinance shall take effect **upon its adoption and publication** as required by law. The traffic pattern change shall be implemented **on or after the fourteenth (14th) day following such publication**, to allow for proper notice and signage installation.

READ, DISCUSSED, AND APPROVED on this the 1st day of July, 2025.

1st Reading: July 1, 2025
2nd Reading: July 15, 2025

CITY OF MERCEDES

By: _____
Oscar D. Montoya, Mayor

ATTEST:

Joselynn Castillo, City Secretary

Martie Garcia-Vela, City Attorney

DATE: July 1, 2025
FROM: Joselynn Castillo, City Secretary
ITEM: **Discussion and possible action to Discussion and Possible Action on the review of Contracts for Engineering Services**

BACKGROUND INFORMATION: The City of Mercedes has an annual review of contracts and place the expiring contract on the agenda. The engineering firms contracts are up for renewal or to go out for RFP's. According to the standard contracts for the engineering firms, the term includes two optional annual renewals. All firms were contracted August 31, 2022 and two optional annual renewals were approved. The contracts will expire on August 31, 2025. There have been no complaints with any of the engineering firms and the City wishes to proceed for another year.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The Commission may vote to go out for RFP's and/or RFQ's

FISCAL IMPACT: (Total Costs)

Proposed Expenditure/(Revenue):

Account Number(s):

\$

Finance Review by: (Has finance reviewed it to make sure we have the funds Yes/No/Not Applicable)

LEGAL REVIEW: (Has the City Attorney reviewed it, if necessary Yes/No/ Not Applicable)

ATTACHMENTS:

None

STAFF RECOMMENDATION: Staff recommends approval to renew all contracts for engineering firms

CITY OF MERCEDES

ENGINEERING SERVICES CONTRACT

This Contract made and signed this 31st day of August, 2022 by and between the City of Mercedes, Texas ("City") and RIO DELTA ENGINEERING ("Consultant") whose place of business is in _____. The City and the Consultant for the consideration stated herein agree as follows:

Section 1. General Requirement:

The Consultant hereby agrees to provide a full variety of engineering and consulting services on an as-needed basis, described in the Request for Qualifications No. 2022-13, which is not attached hereto, but are incorporated by reference on to this Contract. Due to the nature of as-needed services, it is not feasible to define the exact scope of work in advance. Once the qualified pool of consultants is established, the City will assign projects based upon the consultant's specialized expertise, experience, and availability to perform and complete the services in a timely manner at a fair and reasonable price

Section 2. Scope of Work:

Engineering services to be provided may include:

- 21 Preparation of plans and specifications for construction projects varying in complexity. Services may include preliminary plans and cost estimates, necessary fieldwork, drafting, design, surveying, bid assistance, construction inspection, project management, preliminary reports, and identification of alternatives, the Engineer will also secure all necessary permits for the project.
- 22 Preparation of specialized engineering studies on a variety of subjects including, but not limited to structural design and structural analysis of buildings, bridges, drainage studies, master planning, water and wastewater, and construction feasibility studies.
- 23 Construction administration and engineering including, but not limited to, review and approval of material submittals, daily construction observation, as needed, and documentation, coordinating contractor's work.
- 24 Development and subdivision reviews that conform with City's approved zoning ordinances, design standards, and any applicable ordinances related developments, subdivisions, and building codes.
- 25 Surveying activities including, but are not limited to, topographic survey, title search, easement legal description preparation, construction staking, and cut-sheet preparation.
- 26 Engineering or project management services may include, but not limited to sanitary sewer, storm sewer, water mains, street paving, sidewalks, bridges,

drainage projects, building repairs, stormwater detention pond design, lift station design, plan reviews, geotechnical, mechanical, electrical, plumbing, and road design drainage studies, in accordance with city standards and procedures.

Possible projects could include:

- a. Site and utility plans at any City facilities and City parks;
- b. Detention ponds;
- c. Road engineering projects;
- d. Facility remodels;
- e. Subdivision and development reviews;
- f. Projects identified in the Parks Master Plan;
- g. Projects identified in the City of Mercedes Capital Improvement Plan; and
- h. Thoroughfare projects;
- i. Land Use Analysis;
- j. Feasibility studies;
- k. Water and Wastewater Master Planning
- l. Water and Wastewater Plants;
- m. Hydraulic modeling;
- n. Water wells;
- o. Owner's representative.

- 27 Consultants may perform various topographical surveying tasks as requested for the preparation of civil engineering construction plans. Services may include but not be limited to, the gathering of topographical survey data and providing digital submissions. It is understood that the final work product will be a complete survey that will contain all known site features and will be ready for use as a base drawing for final engineering plans.
- 28 Services may include construction supervision and full-time inspection services on all construction work on which this task is assigned to the consulting engineer. Sufficient personnel as agreed upon by the City shall be assigned to the construction project to assure that each element of the project is constructed in keeping with the plans and specifications approved by the City. Activities task will be dedicated to verifying that all materials provided and work performed is in conformance with the project plans and specifications.
- 29 Engineering Firm shall furnish its inspectors with equipment and materials and any incidentals necessary to properly perform their work.
- 210 The Engineering Firm, at its own expense, may enter contracts with joint contractors, sub-consultants, or employ additional personnel to the extent deemed necessary for the required work. The firm acknowledges that such contracts made with these sub-contractors are not contracted by the City.

Section 3.0 Terms:

- 3.1 This Contract shall be in force upon acceptance in accordance with the City's procurement policy for professional services and a start date of the notice to proceed with two (2) optional annual renewals. Annual renewals are predicated on sufficient budgetary allocation by the City Council for the renewal of the awarded Contract. City Council shall be under no obligation to make such budgetary allocation.
- 3.2 This Contract may be terminated at any time by the City or the Consultant upon receipt of thirty (30) days' prior written notice.
- 3.3 Any Work outside the scope of this Contract must be in writing and authorized, in advance, by the City.
- 3.4 Any variations from this Contract must be in writing and agreed upon by both the City and the Consultant.
- 3.5 In the event that additional or removed services from a particular group, Consultant may give the City a revised price in writing. The City shall have thirty (30) days to accept or reject the price revision.

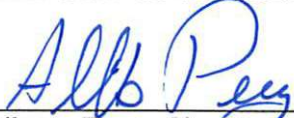
Section 4. Payment Terms:

- 4.1 City agrees to pay Consultant for the Work performed under this Contract, and Consultant agrees to accept, as his full and only compensation thereof, a sum mutually agreed upon and authorized by the City be paid for each authorization on the following terms: Each payment will be based on the receipt of a monthly invoice from the Consultant which details the exact location, date, and type of services rendered during the previous month.
- 4.2 If the Consultant fails to perform any of its obligations under this Contract or any other contract between the City and the Consultant, including its obligation to the City to pay any subcontractor or workmen or other person which arises out of or in connection with the performance of this Contract or any other contracts with the City, then the City shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the City Manager of the City may deem ample to protect the City against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the City Manager may deem proper to secure such protection or satisfy such claims.

Section 5. Miscellaneous:

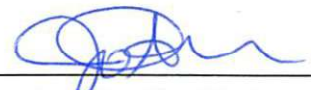
These Contract, together with the documents and attached Professional Services General Terms of the Agreement are fully a part of this agreement.

THE CITY OF MERCEDES:



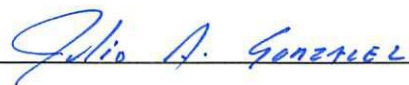
Alberto Perez, City Manager

ATTEST:



Joselynn Castillo, City Secretary

CONSULTANT:

Signature: _____

Printed Name: Julio Antonio Gonzalez, VICE PRESIDENT

Address: 921 S. 10th AVE, EDINBURG, TX

Phone Numbers:

Office: (956) 380-5152

Cell: (956) 208-1882

Fax: _____

Federal Taxpayer Identification Number: 83-0930819

CITY OF MERCEDES

ENGINEERING SERVICES CONTRACT

This Contract made and signed this 31 day of August, 2022 by and between the City of Mercedes, Texas ("City") and SDI Engineering, LLC ("Consultant") whose place of business is in Edinburg, Texas. The City and the Consultant for the consideration stated herein agree as follows:

Section 1. General Requirement:

The Consultant hereby agrees to provide a full variety of engineering and consulting services on an as-needed basis, described in the Request for Qualifications No. 2022-13, which is not attached hereto, but are incorporated by reference on to this Contract. Due to the nature of as-needed services, it is not feasible to define the exact scope of work in advance. Once the qualified pool of consultants is established, the City will assign projects based upon the consultant's specialized expertise, experience, and availability to perform and complete the services in a timely manner at a fair and reasonable price

Section 2. Scope of Work:

Engineering services to be provided may include:

- 21 Preparation of plans and specifications for construction projects varying in complexity. Services may include preliminary plans and cost estimates, necessary fieldwork, drafting, design, surveying, bid assistance, construction inspection, project management, preliminary reports, and identification of alternatives, the Engineer will also secure all necessary permits for the project.
- 22 Preparation of specialized engineering studies on a variety of subjects including, but not limited to structural design and structural analysis of buildings, bridges, drainage studies, master planning, water and wastewater, and construction feasibility studies.
- 23 Construction administration and engineering including, but not limited to, review and approval of material submittals, daily construction observation, as needed, and documentation, coordinating contractor's work.
- 24 Development and subdivision reviews that conform with City's approved zoning ordinances, design standards, and any applicable ordinances related developments, subdivisions, and building codes.
- 25 Surveying activities including, but are not limited to, topographic survey, title search, easement legal description preparation, construction staking, and cut-sheet preparation.
- 26 Engineering or project management services may include, but not limited to sanitary sewer, storm sewer, water mains, street paving, sidewalks, bridges,

drainage projects, building repairs, stormwater detention pond design, lift station design, plan reviews, geotechnical, mechanical, electrical, plumbing, and road design drainage studies, in accordance with city standards and procedures.

Possible projects could include:

- a. Site and utility plans at any City facilities and City parks;
- b. Detention ponds;
- c. Road engineering projects;
- d. Facility remodels;
- e. Subdivision and development reviews;
- f. Projects identified in the Parks Master Plan;
- g. Projects identified in the City of Mercedes Capital Improvement Plan; and
- h. Thoroughfare projects;
- i. Land Use Analysis;
- j. Feasibility studies;
- k. Water and Wastewater Master Planning
- l. Water and Wastewater Plants;
- m. Hydraulic modeling;
- n. Water wells;
- o. Owner's representative.

- 27 Consultants may perform various topographical surveying tasks as requested for the preparation of civil engineering construction plans. Services may include but not be limited to, the gathering of topographical survey data and providing digital submissions. It is understood that the final work product will be a complete survey that will contain all known site features and will be ready for use as a base drawing for final engineering plans.
- 28 Services may include construction supervision and full-time inspection services on all construction work on which this task is assigned to the consulting engineer. Sufficient personnel as agreed upon by the City shall be assigned to the construction project to assure that each element of the project is constructed in keeping with the plans and specifications approved by the City. Activities task will be dedicated to verifying that all materials provided and work performed is in conformance with the project plans and specifications.
- 29 Engineering Firm shall furnish its inspectors with equipment and materials and any incidentals necessary to properly perform their work.
- 210 The Engineering Firm, at its own expense, may enter contracts with joint contractors, sub-consultants, or employ additional personnel to the extent deemed necessary for the required work. The firm acknowledges that such contracts made with these sub-contractors are not contracted by the City.

Section 3.0 Terms:

- 3.1 This Contract shall be in force upon acceptance in accordance with the City's procurement policy for professional services and a start date of the notice to proceed with two (2) optional annual renewals. Annual renewals are predicated on sufficient budgetary allocation by the City Council for the renewal of the awarded Contract. City Council shall be under no obligation to make such budgetary allocation.
- 3.2 This Contract may be terminated at any time by the City or the Consultant upon receipt of thirty (30) days' prior written notice.
- 3.3 Any Work outside the scope of this Contract must be in writing and authorized, in advance, by the City.
- 3.4 Any variations from this Contract must be in writing and agreed upon by both the City and the Consultant.
- 3.5 In the event that additional or removed services from a particular group, Consultant may give the City a revised price in writing. The City shall have thirty (30) days to accept or reject the price revision.

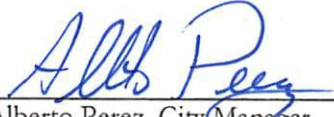
Section 4. Payment Terms:

- 4.1 City agrees to pay Consultant for the Work performed under this Contract, and Consultant agrees to accept, as his full and only compensation thereof, a sum mutually agreed upon and authorized by the City be paid for each authorization on the following terms: Each payment will be based on the receipt of a monthly invoice from the Consultant which details the exact location, date, and type of services rendered during the previous month.
- 4.2 If the Consultant fails to perform any of its obligations under this Contract or any other contract between the City and the Consultant, including its obligation to the City to pay any subcontractor or workmen or other person which arises out of or in connection with the performance of this Contract or any other contracts with the City, then the City shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the City Manager of the City may deem ample to protect the City against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the City Manager may deem proper to secure such protection or satisfy such claims.

Section 5. Miscellaneous:

These Contract, together with the documents and attached Professional Services General Terms of the Agreement are fully a part of this agreement.

THE CITY OF MERCEDES:



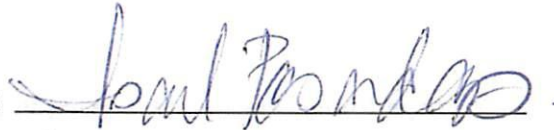
Alberto Perez, City Manager

ATTEST:



Joselynn Castillo, City Secretary

CONSULTANT:

Signature: 

Printed Name: Israel Posadas

Address: 2105 S. Jackson Rd.. Edinburg, TX 78539

Phone Numbers:

Office: (956) 287-1818

Cell: (956) 607-9081

Fax: _____

Federal Taxpayer Identification Number: 27-3681906

PROFESSIONAL SERVICES GENERAL TERMS OF THE AGREEMENT

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I. CONSULTANT'S RESPONSIBILITIES

A. General

The Consultant will perform engineering and consultant, as needed, in relation to the design of the identified projects. The Consultant will serve as the City's (City of Mercedes) professional consultant and will advise the City during the performance of the Consultant's services. The City agrees to compensate the Consultant for those services in accordance with Section V - Compensation. Consultant shall report to City's designated Project Manager which can and will vary depending on the nature of the identified project.

B. Performance of Services

The Consultant will perform services under this Agreement with the degree of skill and care ordinarily provided by competent professional engineers, architects, or consultants practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent, considering the ordinary professional skill and care of a competent engineer, architect, or other consultant.

The City is agreeing to contract with the Consultant on basis of its qualifications and proposal, including its proposed Key Personnel, who are the employees of the Consultant responsible for performing major aspects of the services to be provided under this Agreement, and its' designated Subconsultants, the other professional service providers, who will provide specialized services under this Agreement.

1. The Consultant's Key Personnel, including its Project Manager, and the Consultant's associated Subconsultants to be employed in the performance of the Project professional services shall not be changed except with the City's prior written approval.

2. The Consultant must disclose any potential conflict of interest relating to the Consultant, the Consultant's employees, a Subconsultant or supplier. Failure to disclose any such conflicts may be grounds for termination.

3. The Consultant agrees not to modify any Subconsultant's design after Subconsultant's seal has been affixed, except with the written consent of the Subconsultant. The Consultant is fully responsible for the Subconsultants' performance and obligations under this Agreement.

4. The Consultant shall obtain City's written approval prior to terminating, adding or substituting Subconsultants.

5. If the City notifies the Consultant that a member of the Consultant's team, including Subconsultants, is incompetent, disorderly, abusive, or disobedient, or has knowingly or repeatedly violated any federal, state, or local law, the Consultant shall immediately remove any such

person from performing work on the Project. The City's prior written consent and approval must be obtained before any such person may be reinstated. The City may report any breaches of professional codes of ethics to the appropriate licensing board.

6. The Consultant will attend and draft complete minutes of each Project design and construction meeting between Consultant, City and Construction Contractor and/or Consultant and other agencies, and submit them to City for approval within seven (7) calendar days after each Project conference.

7. The Consultant shall prepare and submit all appropriate permit applications and supporting drawings, specifications and other documents in the name of the City of Mercedes to utility companies and providers and governmental authorities having jurisdiction over the Project and shall obtain all approvals and all development and building permits necessary to complete the Project or as otherwise specified by City. Development and permitting fees due to the City of Mercedes will be waived.

8. Consultant agrees to attend and make presentations, as Basic Services, including (i) Council and Committee meetings, (ii) public meetings, and (iii) internal City of Mercedes meetings. Any other presentations required by City will be considered Additional Services.

9. The Scope of Services generally consists of all elements of work, material and equipment required for the professional development of the Project satisfactory to the City and in compliance with all applicable laws, rules, regulations, and ordinances and in accordance with the requirements, policies, and general practices of the City.

10. The Consultant shall not knowingly specify, request or approve for use any asbestos containing materials or lead-based paint without the City's prior written approval. For materials specified on the basis of performance criteria, the Consultant shall include a requirement in the specifications effectively stating that "Asbestos containing materials or lead-based paint are prohibited from being used in the Project." When a specific product is specified, the Consultant shall make best efforts to verify that the product does not include asbestos containing material. The Consultant agrees to execute a Statement of Non-Inclusion of Asbestos Containing Material, both prior to design and upon completion of the Construction Documents Phase.

11. If directed by City, Consultant shall update City provided record documents. If the City provided record documents to be updated have been sealed by another Engineer, the Consultant shall notify the Engineer of record of the agreement to update said documents. All updates and revisions to existing sealed documents shall be made as directed by City and in accordance with the Texas Board of Professional Engineers rules.

12. The Consultant agrees that record documents provided by the City are to be used only for the intended purpose and to meet this contract's obligations. Use of these record documents for any other purpose not explicitly authorized by the City is strictly prohibited.

13. The Consultant shall prohibit discrimination in employment based upon race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.

14. Confidentiality: In order to provide the Deliverables to the City, Consultant may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Consultant acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensor's and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Consultant (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Consultant promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Consultant agrees to use protective measures no less stringent than the Consultant uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

15. The Consultant shall assist the City with the selection of colors for finishes, furniture, equipment, etc. included in the Work. The Consultant shall prepare and submit a color board for the City's review and approval that clearly illustrates the Consultant's recommended color scheme.

16. The Consultant shall use an integrated design approach, where the evaluation of any Project element, material, or system is not viewed solely on the basis of its own isolated merit, but is designed and then appraised as an integrated part of the entire Project. This approach will require team members from all disciplines, during each stage of the design process, to investigate alternatives, question assumptions and research approaches to optimize performance.

17. Non-Infringement: The Consultant represents to the City that: (1) the Consultant shall provide the City good and indefeasible title to the Deliverables and (2) the Deliverables supplied by the Consultant in accordance with the specifications in the Contract will not infringe, directly or contributory, and patent, trademark, copyright, trade secret or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Consultant does not know of any valid basis for such claims. The Consultant shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (1) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of Deliverables infringes the intellectual property rights of any third party; or (2) the Consultant's breach of any of Consultant's representations stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Consultant agrees that the City's specifications regarding the Deliverables shall in no way diminish Consultant's obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact Consultant.

C. Laboratory Services

If laboratory services are provided for the Project by the Consultant or its Subconsultant(s) through this Agreement, those services must be performed by a properly accredited laboratory. The Consultant will provide evidence to the City of such accreditation on an annual basis for the duration of this Agreement.

D. Quality Control Plan (QCP)

1. The Consultant will develop a Quality Control Plan (QCP) form and agrees to perform quality assurance-quality control/ constructability reviews. The approved QCP will be incorporated by reference and will include any subsequent revisions approved by City. In addition to providing the reports required by the QCP, the Consultant agrees to address any QCP comments from the City and provide resolution to the City's satisfaction. In the event the City retains a separate consultant to perform additional QCP services for the City, the Consultant will provide all necessary information to the City, address any comments from the City's consultant, and provide resolution to the City's satisfaction. The Consultant shall include this language in all its Subconsultant contracts to ensure Subconsultants understand their responsibility for complying with the City's or City's consultant's QCP requirements.

2. The QCP reviews will be performed by a staff member of the Consultant not involved in day-to-day Project tasks. If the Consultant does not have the internal staff capacity to provide for this independent review, the Consultant must include a QCP Subconsultant on the Project team. The person performing the QCP reviews shall certify, seal and attest that the final construction bid documents have been drafted in full compliance with the QCP.

3. The Consultant will perform QCP reviews at intervals during the design phase, specified in the QCP, to ensure plans, specifications, and drawings satisfy accepted quality standards and meet the requirements of the Project scope. Based on the findings of the QCP reviews, the Consultant must reconcile the Project scope and budget as needed. Documentation will be included that verifies interdisciplinary coordination has occurred.

4. The Consultant will perform constructability reviews, using persons with construction experience, at appropriate intervals, during the design phase, specified in the QCP to ensure that the Project is buildable, as well as cost-effective, biddable, and maintainable. Based on the findings of the constructability reviews, the Consultant shall redesign the Project, as required, to conform to the Preliminary Construction Budget. The Consultant will provide interim construction estimates to verify that the Project is within the Preliminary Construction Budget as further described in the phase descriptions in this Agreement.

5. Acceptance and/or approval of the Consultant's QCP documentation by the City do not constitute a release of the responsibilities and liability of the Consultant for the accuracy and competency of its QCP reviews and final construction documents.

E. Basic Services:

The Consultant will perform the basic Scope of Services described in this Agreement. This Scope of Services shall be performed only as authorized by the City.

1. Phase A: Preliminary Phase Services

If authorized by City, the Consultant shall perform the Phase A: Preliminary Phase Services as described below and in Resource Allocation Plan (RAP) for each subsequent written authorization.

a. Attend and, if requested by the City, conduct preliminary conferences and public meetings with the City and other interested or involved entities regarding the alternatives for the Project. Report progress of this phase to the City relative to approved Project Resource Allocation Plan (RAP) as prescribed by the City.

b. Obtain and review existing plans, maps, records, traffic (vehicular and pedestrian), water and wastewater studies, planning studies, zoning, land use, other utility, population, and other available information relevant to the development of the Project. With approval from the City, perform or contract with other licensed professionals to perform geotechnical investigations and engineering, or any tests, investigations or studies that are required for the proper execution of Phase A of the Project.

c. Prepare, conduct and document studies, analyses and reports of the Project alternatives in sufficient detail to clearly indicate the problems involved and reasonable solutions available to the City. Such studies, analyses and reports may include, but are not limited to: preliminary layouts, maps, exhibits, sketches, construction materials and methods evaluations, schedules, utility coordination plans, design criteria, environmental reviews, compatibility with existing and proposed systems and/or processes, and other investigations pertinent to the evaluation of the Project alternatives.

d. Collect all pertinent information concerning proposed public or private projects and/or proposed improvements in the Project area. Coordinate with City and other entities as necessary to comply with the Project RAP and minimize Project impacts and to communicate Project details to minimize impact to other projects in the area.

e. Prepare preliminary Project construction schedule estimate of the probable Project construction, life cycle and maintenance costs for all alternative solutions. The Consultant's opinion of construction costs shall be based on materials and labor process prevailing at the time of the preparation of the preliminary report with consideration of inflationary increases in costs. The Consultant shall apply reasonable consideration and knowledge to the preliminary cost estimate development.

f. Conduct preliminary field surveys, and determine site constraints and permitting requirements.

g. Prepare an environmental report for the recommended Project alternative(s) that addresses appropriate environmental issues, which may include, but are not limited to, impacts to air, noise, and water quality, historical features, vegetation, environmental and geological features, and endangered species.

h. Prepare a geotechnical report and other technical reports for the recommended Project alternatives that may include, but are not limited to: subsurface utility engineering

(SUE) findings, delineation of geologically sensitive areas, hydrologic issues, soils formation, and information necessary to identify contractor's probable or recommended means of construction.

i. Prepare, present, and publish details and a summary of findings for the recommended Project in a Preliminary Engineering and Investigations Report. This report will be drafted upon conclusion of the Consultant's reviews, investigations, and preliminary evaluations and shall include, but not be limited to, cost estimates (as outlined in Subsection I.E.1(e), alternate routes, identification of permanent and temporary easements, identification of need for additional right-of-way, evaluations of and of Project construction contracts to be bid, and design recommendations for construction methods and materials, including recommendations on the number and construction phase schedules.

j. For all Phase A services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

k. For all Phase A services, the Consultant shall provide all required Quality Control Plan (QCP) documentation.

2. *Phase B: Design Phase Services*

The accepted recommendations from the Preliminary Engineering Report will define the Scope of work for the Design of the Project. If authorized by the City, the Consultant shall perform the Phase B services as described below and in RAP for each subsequent written authorization.

a. Attend and/or arrange for conferences, at periodic intervals not to exceed **fourteen (14) calendar days**, with the City for the purposes of explaining completed design activities and review of Project RAP for completion of remaining activities.

b. Conduct or otherwise acquire the necessary field surveys, soils tests, geotechnical tests, and additional analysis that, in the opinion of the Consultant, are required for the proper execution of the design of the Project.

c. Provide for field surveys, which may include photogrammetry, and perform related office computations and drafting for collecting information required for design. Such surveys must include horizontal and vertical control adequately documented on the final plans. Field surveys must also include the staking and referencing of points of intersection (PI's), points of curvature (PC's), points of tangency (PT's), and benchmarks (BM's) necessary to establish the Project construction in the field. If necessary, establish Static GPS Control Monuments with U.S. Geological Survey (USGS) NAD 83 and NAVD 88. Horizontal control for facilities shall be on the *Texas State Grid Coordinate System* Central Zone Grid Coordinates carried to second-order accuracy to permit actual construction staking to third order accuracy. The vertical control shall be based on the USGS NAVD 88 datum, specify the Geoid Model, and BM's shall be established not more than 1000 feet apart at accuracy of 0.01 feet. Visible topographic features will be tied to the Project centerline(s) and will include, but not necessarily be limited to, existing property or lease lines, property or lease corners, utilities and appurtenance, roadways, structures, railroad structures, trees over eight inches in diameter, and other features within the limits of construction and twenty-five (25) feet beyond. Project control must be complete and staked in the field at the time of advertisement for bid so that construction staking can be accomplished immediately thereafter.

d. The Consultant shall prepare a Draft Storm Water Pollution Prevention Plan (SWPPP) using a standard template and submit to the City for review and comment. All engineering

computations shall be certified by a Licensed Professional Engineer with competence in this area as required by Title 22, Chapter 137 of the Texas Administrative Code. All SWPPPs shall be signed by a Licensed Professional Engineer (TX) or a Certified Professional in Erosion and Sedimentation Control [(CPESC)(<http://cpesc.org/>)]. If the SWPPP itself contains engineering calculations, then a Licensed Professional Engineer must seal and sign the SWPPP. All drainage calculations shall be done in accordance with the guidelines in the Drainage Criteria Manual. The final SWPPP will address all City's comments provided on the Draft SWPPP.

e. Update construction cost estimates of authorized Project construction. If the estimated construction cost exceeds the Preliminary Construction Budget as established in Section III, the Consultant shall consult with the City as to what action is to be taken. If the City requires revisions to the Project scope to reduce the Project construction cost as required to stay within the Preliminary Construction Budget, the Consultant shall, at no additional cost to the City, make such revision to the Project construction document.

f. Provide City:

(i) One (1) electronic editable and searchable copy of 30%, 60%, 90% and 100% design complete submittals for review and comment.

(ii) Address the City's comments on each submittal.

(iii) One (1) electronic editable and searchable copy of Final Bidding Documents (consisting of plans, details and the Project Manual) and, one (1) electronic editable set of final design criteria and calculations of principal elements of final design.

g. Prepare information for any permits or approvals required by regulatory agencies for which the City must apply. The Consultant shall realize and acknowledge that all necessary permits are identified in the approved Preliminary Engineering Report (PER). The Consultant will be responsible for obtaining any additional permits that are not required by Contractor to obtain and are not identified in the PER at no additional cost to the City.

h. Provide final bid documents, which incorporate the City's comments, to the City at least fourteen (14) calendar days prior to advertising the Project for bids. Bid documents will not be printed until the City authorizes the Consultant to do so.

i. Obtain the City's acceptance of the Project bidding documents and provide one (1) electronic pdf set of final Project bidding documents for distribution to contractors. The Consultant agrees that the City may post the Consultant's Bidding Documents on-line for bidding purposes.

j. Update construction cost estimates of authorized Project construction. If the estimate exceeds the Preliminary Construction Budget described in Section III, the Consultant shall consult with the City as to what action is to be taken. If the City requires revisions to the Project scope to reduce the Project construction cost as required to stay within the Preliminary Construction Budget, the Consultant shall, at no additional cost to the City, make such revision to the Project construction documents.

k. Only if requested by the City, the Consultant shall assist the City in determining what additional information on Contractor qualifications may be required to be submitted by the bidders with their bids.

l. For all Phase B services, the Consultant shall submit written progress reports at least monthly. If the required reports are not received within seven (7) calendar days of the end of the month, the City may withhold payment, in accordance with Subsection V.B.3, until the reports are received.

m. For all Phase B services, the Consultant must design for compliance with the applicable laws, rules, and regulations of City, State and federal governments. The Consultant must request variances or waivers of any such requirements as appropriate.

n. For all Phase B services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

o. For all Phase B services, the Consultant shall provide all required QCP documentation.

3. *Phase C: Bid-Award-Execution Phase Services*

If authorized by the City, the Consultant shall perform the Phase C services as described below:

a. Only if requested by the City, the Consultant shall assist the City in the advertisement of the Project for construction bids. Consultant services may include distributing bid documents, maintaining a record of bid document issuance and receipt, and receiving bid document deposits. Bid deposit checks shall be made payable to the City and those deposits not returned to bidders shall be given to the City.

b. The Consultant shall participate in or conduct a pre-bid conference, prepare and issue addenda, and attend bid opening.

c. Following the City's receipt of bids and bidders' post-bid information, the Consultant shall assist the City in analyzing Contractor bids and qualifications. The Consultant shall furnish to the City a recommendation regarding the responsibility of the bidder(s) within seven (7) calendar days following bid opening. Should the apparent lowest responsible bidder's construction cost of the Project (or component thereof) be greater than the Preliminary Construction Budget (or appropriate portion thereof) and the City elects not to award the Project (or component thereof) construction contract, the Consultant will consult with the City to determine revisions to the Project to reduce the Project cost as required to stay within approved or authorized cost limitations. The Consultant shall then make such revision to the Project construction documents at no additional cost to the City.

d. For all Phase C services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

e. The Consultant shall prepare a conformed (construction) set of contract documents that incorporates all addenda, alternates and clarifications to both the Project Manual and the Plans. The Consultant shall submit a pdf of the conformed Project Manual and Plans to the City prior to City Council award of the construction contract.

4. *Phase D: Construction Phase Services*

If authorized by the City, the Consultant shall perform the Phase D services as described below:

a. The Consultant will be a representative of the City's Representative during the Construction Phase, and shall advise and consult with the City. Instructions to the Contractor will be forwarded through the Consultant. The Consultant will have authority to act on behalf of the City only to the extent provided in this Subsection I.E.4, Phase D: Construction Phase Services.

b. The Construction Phase will commence with the construction contract execution and will terminate on the date of final expiration completion of the construction Project, based on the completion milestone established for the construction Contract Time. The expiration date includes any time extensions granted to the Contractor by the City, but in no case will time extensions exceed approved Project Resource Allocation Plan (RAP).

c. Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Consultant shall administer the construction contract as set forth below and in the City's General Conditions of Agreement.

d. The Consultant shall participate in and document the proceedings of the preconstruction conference.

e. The Consultant shall visit the site to observe the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. The Consultant's visits to the site shall be at intervals appropriate to the stage of construction, but in no case less than **weekly**. The Consultant shall record observations made on each job site visit, including regularly scheduled Project meetings, and shall submit a written within 48 hours of site visit report to the City.

(i) Reports should include: list of subcontractors on-site by week as reported by Contractor, trades at work, approximate manpower, temperature/weather conditions, any variations from Contract Documents, any defective Work, percentage of contract time used compared with percentage of completion of construction, updates to the Project RAP, estimated contract completion date, and other meaningful information. Reports for periods when no Work is in progress will state "No Work in Progress."

(ii) The Consultant will furnish reports to the City within five (5) calendar days of the end of the work week of the observations or the report will be considered late. As stated in Subsection V.B.3, the City may withhold payment until the reports are received.

(iii) In addition, the Consultant's subconsultants shall visit the site at appropriate stages of the Work related to their area of specialty, shall record observations made on each job site visit and shall submit reports to the Consultant to be incorporated in the Consultant's reports to the City. The Consultant's subconsultants shall also attend those progress meetings when the Contractor's Application for Payment includes requests for areas of Work related to their discipline.

f. The Consultant shall review the Contractor's Application for Payment, based on Consultant's observations on site, evaluate the request, and recommend to the City the amount to be paid to the Contractor.

g. The Consultant's approval signature on the Application for Payment constitutes a representation by the Consultant to the City that the work is proceeding in general

accordance with the Contract Documents, and that the Contractor has progressed to the construction schedule point indicated and is entitled to payment in the amount certified. The Consultant is not responsible for work that is the Contractor's responsibility as defined in the Contractor's contract with the City.

h. The Consultant shall provide a draft response to the City for review and comment within seven (7) calendar days (unless the City grants a time extension), to all requests for information, claims, disputes and other matters in question between the City and the Contractor relating to the execution or progress of the work or the interpretation of the Contract Documents. After acceptance by the City, Consultant shall provide to the Construction Contractor the interpretations and decisions in written form, accompanied by signed and sealed drawings as appropriate.

i. If any Work does not conform to the Contract Documents, the Consultant shall, within 24 hours of the Consultant's observation, recommend the rejection of any such work to the City in writing. At any point during the Construction Phase, the Consultant may recommend that the City require special inspection or testing of the Work in accordance with the provisions of the Contract Documents.

j. The Consultant shall review and take other appropriate action upon Contractor submittals such as Shop Drawings, product data and samples following the requirements in the City Front End documents. The Consultant shall provide a written response to the Contractor (with a copy to the City) within seven (7) calendar days (unless a time extension is granted in writing by the City) to avoid a delay in the work.

(i) The Consultant's review is for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant is not responsible for work or requirements that are the Contractor's responsibility as defined in the Contractor's contract with the City.

(ii) The Consultant's review will not constitute approval of safety precautions, construction means, methods, techniques, sequences or procedures.

(iii) The Consultant may rely upon professional certifications of performance characteristics of materials, systems or equipment if such certifications are required by the Contract Documents.

k. The Consultant shall prepare Change Orders Documentation for the City's approval and execution in accordance with the Construction Contract Documents. The Consultant will recommend to the City accepting minor changes in the Work which are consistent with the intent of the Contract Documents, but do not involve an adjustment to the Contract Amount or an extension of the Contract Time. The City shall review the recommendation and if acceptable issue a Field Order to the Contractor.

l. Upon receipt of Contractor's notification that the Work has been substantially completed, the Consultant and its subconsultants shall work with the Contractor to ensure the Project is ready for the City's inspection within seven (7) calendar days unless the City approves a time extension. The Consultant shall provide written notification to the City that the Work has been substantially completed and is ready for the City's inspection. The City shall schedule a City inspection to be attended by the Consultant and its subconsultants.

(i) Within twenty-four (24) hours of the City's inspection, the Consultant shall provide the Contractor a draft written punchlist of items that need to be addressed prior to the Final Completion date specified in the construction contract. The Consultant shall provide the Contractor a final written punchlist within three (3) calendar days of the City's inspection.

(ii) If requested by the City, Consultant shall prepare and issue a Certificate of Substantial Completion no later than three (3) calendar days after the contract requirements for substantial completion have been met.

m. The Consultant shall review all warranties, guarantees, bonds, equipment operating instructions, and similar required material and documents for general compliance with the Contract Documents and shall present them to the City. Upon receipt of Contractor's written notice that the work is ready for final inspection and acceptance and receipt of a final Application for Payment from the Contractor, the Consultant shall make an on-site review within seven (7) calendar days. When the work is found to be acceptable by the City, the Consultant shall, within seven (7) calendar days, sign the final Application for Payment and provide a Letter of Concurrence to the City signifying that the work has been completed in general conformance to the requirements of the construction contract documents and that final payment is due the Contractor.

n. For all Phase D services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

a. Construction Project Representation Beyond Basic Services

(i) If the City and Consultant agree that more extensive representation is needed at the site, the Consultant shall provide one or more Project Representatives to assist the Consultant in carrying out such responsibilities at the Project or work site. The Project RAP must be revised accordingly.

(ii) Such Project Representatives will be selected with the written approval of the City, employed and directed by the Consultant, and the Consultant will be compensated as mutually agreed between the City and the Consultant.

5. PHASE E: POST-CONSTRUCTION PHASE SERVICES

If authorized by the City, the Consultant shall perform the Phase E services as described below:

a. The scope of assistance referenced in this Paragraph 5 will include, but not be limited to, the following: (1) producing Record Documents for the City; (2) notifying the Contractor of deficiencies or failures in labor and materials and requesting corrective action; (3) preparing correspondence and other written data as necessary to document, clarify, and resolve discrepancies; and (4) meeting with the Contractor at the Project site or other local places when requested by the City.

b. Upon receipt from the Contractor of details of deviations from Contract Documents, Consultant shall produce Record Documents for the City's use within thirty (30) calendar days. The Consultant will ensure that the Record Documents of construction incorporate all compiled change orders, change directives, and field orders. The Consultant will ensure that a Professional Engineer's seal is affixed and signed on each document, stamped and identified as "RECORD DOCUMENTS", that signifies the recorded changes have been transferred.

(i) The Consultant shall submit electronic files of Project drawings that are considered Record Documents to the City on CD-ROM or other comparable durable electronic media. Consultant shall include Computer-Aided Design electronic files of Record Documents in a format usable by the City (e.g. AutoCAD or Revit files) as well as a pdf copy, signed and sealed by the Consultant.

c. Under Basic Services, the Consultant shall assist and represent the City through the post-construction period on matters involving malfunctions or deficiencies of the Work. The Consultant shall communicate with and assist the Contractor as necessary to correct all deficiencies within seven (7) calendar days of notification by the Consultant for a specific correction.

d. The Consultant shall require its subconsultants to provide assistance as necessary during the post-construction period stipulated in the approved Project Resource Allocation Plan (RAP).

e. The Consultant shall perform an on-site review of the Work, accompanied by its subconsultants, no less than thirty (30) calendar days before the one-year anniversary of the date of Substantial Completion. Based on the site review, the Consultant shall prepare, within seven (7) calendar days, a list of items needing correction and direct the Contractor to resolve them within a specified time frame. After determining that deficiencies have been corrected, the Consultant shall so notify the City in writing within seven (7) calendar days. This notification by the Consultant does not release the Contractor from its responsibilities set forth in the Contract Documents and will not be construed as an implied or express warranty or representation by the Consultant that there are no other deficiencies on the Project.

f. Under Basic Services, the Consultant and its subconsultants agree to provide Post-Construction Phase services as specified in the approved Project RAP. The Consultant shall provide accounting for time expended under Basic Services at the time these services are provided. Additional time for extended warranty period services not included in Basic Services will be considered Additional Services in accordance with Paragraph I.E.6 and paid for in accordance with the RAP.

g. For all Phase E services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

F. Additional Services:

1. Unless otherwise stated in this Agreement, the Services listed in Subsections (a) through (e) below are Additional Services. Additional Services authorized in writing by the City will be paid for by the City as provided in this Agreement, in addition to the compensation for Basic Services. Additional Services authorized by the City in writing will be incorporated in the RAP, and all applicable articles of the Agreement will apply to the Additional Services. If Consultant identifies a need for Additional Services, the Consultant will submit a proposal for those services to the City within fourteen (14) calendar days of identifying the need.

a. Making revisions in Drawings, Specifications or other documents in connection with Change Orders, unless such Change Orders are caused by errors, omissions or other factors within the Consultant's control.

b. Making revisions in Drawings, Specifications or other documents when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.

c. Providing design services of subconsultans not included in original scope of the Project.

d. Providing any other services not otherwise included in the Agreement.

e. Legal proceeding, unless the Consultant is a party to the proceedings.

2. For all Additional Services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the RAP.

3. The following are **not** Additional Services

a. Any revisions required for failure to adhere to the Preliminary Construction Budget.

b. Minor requests for information as determined by the City that clearly do not require extensive work by the Consultant.

c. Any revisions to Drawings, Specifications or other documents when the item requiring revision is inconsistent with or contradicts prior approvals or instructions given by the City, when the revision is required due to Consultant's failure to adhere to prior approvals or instructions given by the City, or when the revision corrects or revises any errors or deficiencies.

II. CITY'S RESPONSIBILITIES

A. The City will:

1. Provide its requirements for the Project.

2. Designate the City's Designated Representative.

3. Provide a "Preliminary Construction Budget for each Project" as defined in Subsection III A.

4. Assist Consultant by providing access to readily available (i) reports; (ii) property, boundary, easement, right-of-way, topographic and utility surveys; (iii) zoning and deed restrictions; and (iv) other data relevant to the development of the Project.

5. Assist Consultant in gaining entry to public property and private property, only when reasonably necessary, as may be required by the Consultant in the performance of their services under this Agreement.

6. Review and provide written comments on documents and questions presented by the Consultant and render decisions pertaining thereto within seven (7) calendar days. The City

will review and provide written comments on periodic plan and specifications submittals within fourteen (14) calendar days. The City shall immediately notify the Consultant if additional time is needed.

7. Give prompt written notice to the Consultant whenever the City observes or otherwise becomes aware of any defect in the Consultant's work product or services.

8. Direct Consultant, through an Amendment to this Agreement, to provide any necessary Additional Services beyond those authorized in the approved Scope of Services and Project RAP or as stipulated in the Terms and Conditions of this Agreement.

B. The City may pay for or provide surveys describing physical characteristics, legal limitations for the site of the Project, and a written legal description of the site. The surveys and legal information will include, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees, and other special data or conditions. The Consultant may reasonably rely upon such information in the performance of their services under this Agreement unless Consultant's on-site review shows encroachments or other legal impediments.

C. The City may pay or provide for the services of soil engineers or other subconsultants when such services are deemed necessary by the Consultant and have the City's written concurrence. Such services shall include test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations for determining subsoil, air and water conditions, with reports and appropriate professional recommendations.

III. PRELIMINARY CONSTRUCTION BUDGET

A. The "Preliminary Construction Budget" means the amount allocated by the City for the Project construction contract, which can only be adjusted by the City's prior written approval.

1. The Preliminary Construction Budget will be determined for each specific assignment.

B. Preliminary Construction Budget does not include the compensation of the Consultant and the Consultant's Subconsultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the City.

C. Responsibility for Preliminary Construction Budget

1. Consultant is responsible for designing the Project to be constructible within the Preliminary Construction Budget. The Consultant will determine what materials, equipment, component systems and types of construction to include in the Contract Documents, make reasonable adjustments in the scope of the Project with the City's consent, and, with the City's approval, develop bid alternates.

2. Consultant shall promptly advise the City, in writing, if the Consultant finds that the project being designed will exceed or is likely to exceed the Preliminary Construction Budget

and the Consultant is unable to design the Project within the Preliminary Construction Budget. The Consultant shall provide the City with a written revised estimate of construction costs, recommended changes in scope or quality to reduce the construction cost, and a description of any recommended bid alternates. If, after reviewing the Consultant's revised estimate of construction cost and recommendations, the City determines that award of a construction contract within the Preliminary Construction Budget is improbable, the City may:

- a. give written approval of an increase in the Preliminary Construction Budget;
 - b. cooperate in revising the Project scope and quality as required to reduce the construction cost;
 - c. direct the Consultant to prepare the bid documents to include bid alternates; or
 - d. authorize any combination of 2.a, 2.b, and 2.c.
3. If the Preliminary Construction Budget is exceeded by the lowest responsive bid submitted by a responsible bidder, the City shall either:
 - a. give written approval of an increase in the Preliminary Construction Budget;
 - b. cooperate in revising the Project scope and quality as required to reduce the construction cost;
 - c. abandon the Project; or,
 - d. authorize rebidding of the Project within a reasonable time.

In the case of 3.b and/or 3.d, above, the Consultant, without additional compensation, shall perform those services to produce the Drawings and Specifications as necessary to comply with the Preliminary Construction Budget provided that the bidding or rebidding processes occur within six (6) months of the date that the Consultant delivered the final bid documents to the City, unless the City finds, after consultations with Consultant, that unforeseeable changes in market conditions materially affected the bids. If the bidding or rebidding processes occur after that six (6) month period, or if the City finds that unforeseeable changes in market conditions materially affected the bids, the Consultant will be entitled to additional compensation for performing those services to produce the Drawings and Specifications as necessary to comply with the Preliminary Construction Budget.

4. Bid Alternates

- a. If, under the City's direction, the Consultant prepares the bid documents to include bid alternates as a means to keep the Project cost within the Preliminary Construction Budget, the Consultant's compensation will remain the established fee amount irrespective of the outcome of bids. In the event the base bid is not within the Preliminary Construction Budget,

Subsection III.C.3 of this Agreement governs. The City's acceptance of the base bid or bid alternates will not change the Consultant's fee amount.

b. If, under the City's direction, the Consultant prepares bid documents that include bid alternates, and the City has advised Consultant that such alternates may not be within the Preliminary Construction Budget, the Consultant must track the cost of any such alternates. Compensation for the requested bid alternates will be as follows:

(i) If the bid for the alternates requested by the City is within the Preliminary Construction Budget, there is no change in the fee.

(ii) Otherwise, the work to reconfigure the Bid Documents to include the requested bid alternates will be considered Additional Services with compensation to be determined in accordance with Subsection V.A.3 of this Agreement.

IV. SCOPE OF SERVICES AND RESOURCE ALLOCATION PLAN (RAP)

A. The City will issue a request for proposal to the Consultant for each project to be negotiated. The request for proposals will include a description of the requested Scope of Services, a schedule for the submittal of the proposal, and a proposed schedule for the performance of the services. The Consultant will submit its proposal to the City on a timely basis for its review and approval. Approved proposals will become a part of this Agreement. Hourly rates for engineering services attached.

B. The Consultant agrees to complete the phases of services in accordance with the applicable standard of professional care, the approved proposal(s), the Project's Resource Allocation Plan ("RAP"). The RAP describes the major tasks to be performed and work products to be delivered by the Consultant, the estimated time to complete the tasks and work products, the amount of compensation allocated for the respective tasks and work products, and an estimated allowance for reimbursable expenses. A specific time period will be set for the completion of each phase in the accepted proposal for the applicable services.

C. Reimbursable Expenses

Reimbursable Expenses are part of Basic Services and include actual expenditures made by the Consultant and the Consultant's employees and Subconsultants in performing services for the Project for the expenses listed in the following Subsections. Consultant must submit invoices or other similar documentation for Reimbursable Expenses as part of a payment request. The City is a tax exempt entity and will not reimburse the Consultant for any tax expenses. The City will consider exceptions on a case-by-case basis. Reimbursable Expenses are limited to these specific items:

1. By prior written approval of the City, reasonable transportation and living expenses in connection with out-of-town travel.

a. All travel and lodging expenses in connection with the Agreement for which reimbursement may be claimed will be reviewed against the City's Travel Policy and the current

(at the time the travel occurs) the General Services Administration (GSA) Domestic Per Diem Rates (the "GSA Rates") at <http://www.gsa.gov/portal/category/26429> Amounts in excess of the Travel Policy or GSA Rates will not be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets).

b. Reimbursement will be made only for expenses actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

c. Mileage charges for rental cars in connection with out-of-town travel may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations. Mileage costs for travel within the South Texas area to be included in Consultant's overhead rate and not billed separately as a reimbursable expense.

2. Fees paid for securing approval of authorities having jurisdiction over the Project.

3. Reproduction expenses for drawings, specifications and all other documents required for bidding, City submittals, and for file copies of Consultant, Contractor, and City, and other parties approved by the City.

4. Expense of renderings, models and mock-ups requested by the City. Expense of reproducing record drawings for the City on sepi, mylars or plastic.

5. Reproduction expense for drawings, specifications and any other documentation to be submitted to utility Owners and governmental authorities having jurisdiction over the Project. Interim review plots or drawings for Consultant and Subconsultants are not reimbursable.

D. Amendments

1. Before additional work may be performed or additional costs incurred beyond what is specified in the approved Scope of Services and Project RAP, both parties must execute a written Amendment. The City is not responsible for actions by the Consultant or any costs incurred by the Consultant relating to additional work prior to the execution of the Amendment. Any additional work must be performed within the time period established in the Project RAP.

a. More Time Needed. If the Consultant determines or reasonably anticipates that the Project cannot be completed before the specified completion date, the Consultant shall submit a RAP revision request to the City for approval. The City may, at its sole discretion, extend the authorized Project period.

b. Changes in Scope. Changes that would modify the scope of work authorized for the Project must be established by a Amendment. If the change in scope affects the schedule or Consultant's fee for the Project, the Consultant shall prepare a revised Project budget and RAP for the City's approval.

2. The City may ask the Consultant to submit a proposal for additional work that is within the defined scope of work under this Agreement. The amount to be paid for the proposed

additional work will be a lump sum for each proposal. The Consultant may, without penalty, elect not to submit a proposal. If both parties agree to the proposal for additional work, the parties must execute a written Amendment and revise the RAP.

E. If the City sustains actual damages as a result of willful or negligent failure of the Consultant to furnish services in compliance with the approved Scope of Services and Project RAP described in this Section IV and subsequent approved amendments in accordance with Subsection IV.E, the Consultant agrees to compensate the City for the cost of such damages in accordance with Section VIII, itemized costs of which will be provided to the Consultant by the City. The City agrees to provide the Consultant written notification of such damages as the cost is being incurred.

F. The Consultant is not liable or responsible for City delays or suspensions of services. If the Consultant is delayed through no fault of its own, written time extension requests may be submitted to the City for approval. These requests will be reviewed only if submitted to the City within (14) calendar days of the occurrence unless force majeure conditions exist.

G. If the Consultant fails to meet the approved Project RAP schedule, including subsequently approved amendments, the City may elect to invoke remedies outlined in Section VIII of this Agreement.

H. Time required by the City to review and return documents to the Consultant following their submittal during and after each phase will be included in the approved Project RAP.

V. COMPENSATION

A. Basis of Compensation

1. General. The City will compensate the Consultant for the Scope of Services described in the approved Project RAP, as it may be subsequently amended, in accordance with Subsection V.B, Payments to the Consultant, and the other Terms and Conditions of this Agreement, as follows:

a. No advance payment will be paid to the Consultant prior to rendering services.

b. Payments for Basic Services will be made monthly in proportion to services performed within each phase of services, as shown in the ProjectRAP.

(i) Basic Compensation

The total amount of compensation to be paid to the Consultant during the term of this Agreement will not exceed in the amount negotiated.

c. Basic Services for Subconsultants may be billed by a Consultant a multiple of up to one and five hundredth (1.05) times the amount billed to the Consultant for such services.

2. Total Compensation. The total amount of compensation to be paid to the Consultant will not exceed the amount stated in Subsection V.A.1.b(i).

a. Compensation for Basic Services for the Project will be determined either on a Standard Hourly Rate with a Not-to-Exceed Maximum Amount (Standard Hourly Rate) fee basis or as a Stipulated Sum fee basis, as shown in the approved Project RAP.

b. *Standard Hourly Rate:* Compensation for Basic Services described in Subsection I.E. is as follows:

(i) The Consultant's hourly rate for each standard job title includes all labor, overhead, and profit necessary to perform the requested services.

(ii) The Not-to-Exceed-Maximum-Amount for the Project shall include the estimated cumulative hours needed to perform the services multiplied by the appropriate rate schedule plus the estimated allowance for Reimbursable Expenses.

c. *Stipulated Sum*

For Basic Services, as described in Subsection I.E., is as follows:

(i) The Stipulated Sum includes all labor, overhead, and profit necessary to perform the requested services. Payments will be made on the basis of the proportion of services performed for each phase.

(ii) Phases of services and percentages of the total Basic compensation payable per Phase will be included in the approved RAP.

3. Compensation for Additional Services

a. For Project representation beyond Basic Services as described in Subsection I.F. of this Agreement, compensation will be made for Additional Services in accordance with the basis for compensation established in the Project RAP.

b. For Additional Services of Subconsultants a multiple of one and five hundredth (1.05) times the amounts billed to the Consultant for such services will be paid.

4. Principals may only bill at the hourly rate of Principals when acting in that capacity. Principals acting in the capacity of staff must bill at staff rates. The Consultant shall provide documentation with each payment request that clearly indicates how that individual's time is allocated and the justification for that allocation.

5. Compensation for Reimbursable Expenses

a. Reimbursable Expenses, as described in Subsection IV.C, may be billed at a multiple of one and five hundredths (1.05) times the amounts expended by the Consultant, the Consultant's employees and Subconsultants in the interest of the Project.

b. The City is a tax-exempt organization as defined by Chapter 11 of the Property Tax Code of Texas. The City will furnish Consultant with a Sales Tax Exemption Certification to be issued to suppliers in lieu of tax. If payment of the sales tax is unavoidable in a specific case, the Consultant will be reimbursed by the City for any such costs incurred.

c. An allowance for Reimbursable Expenses described in Subsection IV.C will be determined and included in the approved RAP. The Consultant shall not exceed the allowance amount without prior written approval by the City.

6. The City and the Consultant agree in accordance with the Terms and Conditions of this Agreement that:

a. If the City determines the scope of the Project or Consultant's Services are changed materially, compensation will be equitably adjusted through negotiation.

b. If the City determines the Services covered by this Agreement have not been completed within the time specified in the Project RAP, through no fault of the Consultant, the amounts of compensation, rates and multiples set forth herein may be adjusted through negotiation.

B. Payments to the Consultant

1. Payments for Basic Services

Payments for Basic Services, including Reimbursable Expenses, will be made monthly in accordance with the approved Project RAP on the basis set forth in Subsection V.A. Consultant shall submit the application for payment using the forms supplied by the City.

2. Payments for Additional Services

Payments for the Consultant's Additional Services as defined in Subsection I.F may be made no more often than monthly upon presentation by Consultant of an acceptable statement of Additional Services rendered and/or expenses incurred.

3. Payments Withheld

The City may withhold, amend, or nullify any request for payment by the Consultant under those conditions described below.

a. Failure of the Consultant to follow the approved schedule and meet all phase and milestone requirements specified in the Project RAP.

b. The City's receipt of notice that, despite payment to Consultant for services rendered by Subconsultants, Consultant has not paid Subconsultants for services invoiced to and paid by the City within ten (10) calendar days of Consultant's receipt of payment from the City.

c. Failure of the Consultant to submit timely and complete records of Project conference proceedings as specified in Subsection I.B.8.

d. Failure of the Consultant to submit timely and complete weekly reports of its job site observations containing detailed information as specified in Subsection I.E.4.e. of this Agreement.

e. Failure of the Consultant to provide updated record drawings and Contractor's record contract documents to the City within thirty (30) calendar days after Contractor's record contract documents have been provided to the Consultant by the Contractor upon substantial or final completion of the Project.

4. Prompt Payments

a. The City shall make payment to Consultant of the sum named in a payment application within thirty (30) calendar days after the day on which the City received the mutually acceptable payment application.

b. The City cannot make a partial payment on an invoice in dispute. The Consultant may resubmit an invoice for the undisputed amount or wait for payment until the dispute has been resolved. The thirty (30) calendar days restarts after the City receives a corrected payment application.

5. Payment for Project Suspension or Termination

If the Project is suspended or abandoned in whole or in part for more than three months, the Consultant will be compensated for all services performed prior to receipt of written notice from the City of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than three months, the Consultant's compensation may be equitably adjusted through negotiation. If the parties cannot agree on an adjustment, the City may terminate the Agreement in accordance with Subsection VII.F.

C. Payment Applications

1. Payment applications must be submitted on a monthly basis.

2. For Projects that are to be compensated on a Stipulated Sum basis, the Consultant's statement of services must include a brief summary of the progress and completion of tasks to substantiate the percentage of completion of services by Phase during the time period covered by the payment application.

a. Each payment application from the Consultant will be reviewed to ensure the following information is included and/or is correct. Without this information, the City will not approve the payment. Consultant will be notified, within fourteen (14) calendar days after the City's receipt of the payment application, if the payment application is inaccurate and/ or incomplete. An "accurate and complete payment application" means: That the critical figures included on the payment application have been accurately calculated.

b. That the labor rates, reimbursable, fixed fee, subconsultant's rates, overhead and fringe benefits listed on the payment application are consistent with the terms of the Agreement or the most recent Amendment.

c. That the charges included on the payment application reflect activity for which the Consultant has actually performed work.

d. That the charges included on the payment application are for work included in the Agreement or an amendment, and the charges are tied directly to tasks outlined in the Agreement.

e. That the Consultant's principals are billing at staff rates when acting in that capacity.

f. That the subconsultant activity, the subconsultant approved for a specific discipline being used paid when the work is the discipline is performed.

g. That for any reimbursable expenses, supporting documentation is attached to the invoice.

h. That the Consultant is billing the City for all work performed by both the Consultant and subconsultants within 45 calendar days of when the work was performed.

3. The City may review the first payment application in detail with the Consultant to explain the City's payment requirements and to ensure payment application is accurate and complete.

4. Any costs in excess of approved maximum not-to-exceed contract amount(s) incurred prior to the City's written consent will be at Consultant's risk and the City will not pay such costs unless such costs were incurred at the City's direction. The City is not required to increase the approved maximum not-to-exceed contract amount(s) established under this Agreement.

VI. INSURANCE REQUIREMENTS

A. The Consultant shall carry insurance in the types and amounts indicated below for the duration of the Agreement:

1. Workers' Compensation and Employers' Liability Insurance Coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401) and (1) minimum policy limits for Employers Liability Insurance of \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee; or (2) as otherwise required of this Agreement. The Consultant's policy must be issued

by an insurer licensed or approved to do business in the State of Texas and include these endorsements in favor of the City.

2. Commercial General Liability Insurance with a minimum combined bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B of this Agreement. The policy must contain the following provisions:

- a. Blanket contractual liability coverage for liability assumed under this Agreement and all contracts relative to this Project.
- b. Independent Contractors coverage.
- c. The City listed as an additional insured, endorsement Commercial General Liability Form), or equivalent.
- d. 30-day Notice of Cancellation in favor of the City, endorsement CG 0205, or equivalent.
- e. Waiver of Transfer Right of Recovery Against Others in favor of the City, endorsement CG 2404, or equivalent.

3. Aggregate limits of insurance per Project, endorsement CG 2503, or Business Automobile Liability Insurance for all owned, non-owned and hired vehicles (1) with a minimum combined single limit of \$500,000 per accident for bodily injury and property damage; or (2) \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability; or (3) as otherwise required of this Agreement. The policy shall contain the following endorsements in favor of the City:

- a. Waiver of Subrogation endorsement CA 0444, or equivalent.
- b. 30-day Notice of Cancellation endorsement CA 0244, or equivalent.
- c. Additional Insured endorsement CA 2048, or equivalent.

4. Consultant's Professional Liability Insurance to pay on behalf of the assured all sums which the assured becomes legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The policy must provide for 30-day notice of cancellation in favor of the City.

- a. Consultant's Professional Liability Insurance with a minimum limit of **One (1) Million Dollars** per claim and in aggregate.

B. General Insurance Requirements

1. The Consultant must complete and forward to the City before the Agreement is executed, as verification of coverage required in the agreement The Consultant shall not commence services until the required insurance has been obtained and until such insurance has been reviewed by the City. Approval of insurance by the City does not relieve or decrease the liability of the Consultant hereunder and must not be construed to be a limitation of liability on the part of the Consultant.

2. Applicable to all insurance policies: If coverage is underwritten on a claims-made basis, the retroactive date must be coincident with or prior to the date of this Agreement and the certificate of insurance must state that the coverage is claims made and the retroactive date. The Consultant shall maintain continuous coverage for the duration of this Agreement and for not less than twenty-four (24) months following substantial completion of the Project. Coverage, including any renewals, must have the same retroactive date as the original policy applicable to the Project. The Consultant shall, on at least an annual basis, provide the City with a certificate of insurance as evidence of such insurance.

3. The Consultant's insurance coverage must be written by companies licensed or approved to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better unless otherwise required of this Agreement.

4. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the certificate of insurance will indicate: City of Mercedes, 400 S. Ohio Ave, Mercedes, TX 78570.

5. The "other" insurance clause will not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and the Consultant, be considered primary coverage as applicable. In addition, any limitation in Subsection XI.F below, notwithstanding, when the Consultant names the City as an additional insured party under its general liability policy, the Consultant will require that the policy provides any defense provided by the policy. In addition, any limitation in Subsection VI.B.6 below, notwithstanding, when the Consultant names the City as an additional insured party under its general liability policy, the Consultant will require that the policy provides any defense provided by the policy.

6. If insurance policies are not written for amounts specified above, the Consultant shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it must follow the form of the primary coverage.

7. The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies. Certified copies may include redactions of proprietary information including executive salaries, proprietary revenue information, and client endorsements.

8. The City reserves the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Consultant.

9. The Consultant shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

10. The Consultant shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance.

11. The Consultant shall provide the City thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

12. If City-owned property is being transported or stored off-site by the Consultant, the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect the City's property.

13. The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of the Consultant.

C. Consultant shall determine appropriate types and levels of insurance coverage to be provided by Subconsultants and advise the Subconsultants of the documentation to be provided to Consultant to verify coverage.

VII. TERMINATION OF AGREEMENT

A. The rights to terminate this Agreement provided in this Section are in addition to and cumulative of all other rights and remedies available to the parties at law or in equity.

B. This Agreement may be terminated by the Consultant upon at least thirty (30) calendar days written notice should the City substantially fail to perform in accordance with the City's responsibilities through no fault of the Consultant.

C. Notice to Cure.

The City will provide a Notice to Cure to the Consultant to cure an event of default described in this Section and/or an anticipatory breach of contract. The Consultant must attend a meeting with the City regarding the Notice to Cure, the event of default, and/or the anticipatory breach of contract. The Notice to Cure will set forth the time limit in which the cure is to be completed or commenced and diligently prosecuted. Upon receipt of any Notice to Cure, the Consultant must prepare a report describing its program and measures to affect the cure of the event of default and/or

anticipatory breach of contract within the time required by the Notice to Cure. The Consultant's report must be delivered to the City at least three (3) business days prior to the required Notice to Cure meeting with the City.

D. This Agreement may be terminated by the City upon at least thirty (30) calendar day's written notice to the Consultant in the event that the Project is abandoned or indefinitely postponed.

E. This Agreement may be terminated by the City for cause upon thirty (30) calendar day's written notice. In the event the City terminates the Agreement for cause, the City may reject any and all proposals submitted by Consultant for up to three (3) years. In the event that a termination for cause is found to be wrongful, the termination shall be converted to a termination without cause ("termination for convenience" The City may terminate for cause due to the occurrence of any one of the following:

1. If Consultant persistently fails to perform the work in accordance with the Agreement, in particular the approved Project RAP;
2. If Consultant disregards laws or regulations of any public body having jurisdiction;
3. If Consultant makes fraudulent statements;
4. If Consultant fails to make adequate progress and endangers timely and successful completion of the Agreement, which failure includes failure of Subconsultants to meet contractual obligations;
5. Consultant's failure under this Section includes failure of Subconsultants to meet contractual obligations; or
6. If Consultant otherwise violates in any substantial way any provisions of the Agreement.

F. This Agreement may be terminated at the City's convenience upon thirty (30) calendar days written notice; in which event, the Consultant will be compensated for all services performed to termination date, together with Reimbursable Expenses then due, and the City retains the right to continue the Project.

G. In the event of termination not the fault of the Consultant, the Consultant will be compensated for all services performed to termination date, together with Reimbursable Expenses then due without the right to compensation for anticipated profits on services not completed. Consultant will submit to the City, within the timeframe set in the termination notice, all work and documents prepared to that point. Fixed-fee payment to the Consultant, if applicable, shall be proportional to services performed to the date of termination.

VIII. CITY'S REMEDIES

The City and Consultant agree that in the event of a delay in completion or other cause for which the City suffers actual damages, the City may elect to pursue its actual damages and any other remedy

allowed by law. Conditions under which the City may seek other damages include, but are not limited to: VII.E.4 above.

A. Failure of the Consultant to make adequate progress in accordance with Subsection

1. Failure of the Consultant to design in compliance with the laws of City, State and federal governments as specified in Subsection I.E.2, such that subsequent compliance costs exceed expenditures which would have been involved had services been properly executed by the Consultant. The Consultant will financially participate in the City's financial losses for those non-value added compliance costs.

2. Losses are incurred, despite the Quality Control Plan (QCP), because of defects, errors and omissions in the design, working drawings, specifications or other documents prepared by the Consultant, to the extent that the financial losses are greater than the City would have originally paid had there not been defects, errors and omissions in the documents. The Consultant will financially participate in the City's financial losses for those non-value added work costs.

B. Pursuant to Subsection VI.A.4, the City may assert a claim against the Consultant's professional liability insurance as appropriate when other remedies are not available or offered for design deficiencies discovered during and after Project construction. When the City incurs non-value added work costs for change orders due to design errors or omissions the City will send the Consultant a certified cost recovery claim letter that includes:

1. Summary of facts with supporting documentation;
2. Instruction for Consultant to revise design documents, if appropriate, at Consultant's expense;
3. Calculation of non-value added work costs incurred by the City;and,
4. Deadline for Consultant's response.

The Consultant will provide a preliminary response to the City's cost recovery claim letter within seven (7) calendar days of receipt of the claim letter. The Consultant must submit a formal documented response to the claim letter to the City within fourteen (14) calendar days of the date of the preliminary response. The Consultant will provide the payment requested by the City within thirty (30) calendar days of the City's acceptance of the Consultant's formal response or the Consultant will request alternative dispute resolution, as described in Subsection X.B of this Agreement, within fourteen (14) calendar days of the City's rejection of the Consultant's formal response.

C. The Consultant may be required to revise bid documents and re-advertise the Project at the Consultant's sole cost (including printing) if, in the City's judgment, the Consultant generates excessive addenda, either in terms of the nature of the revisions or the actual number of changes due to the Consultant's errors or omissions.

D. If the Consultant materially fails to furnish services in compliance with the approved Project RAP schedule or any subsequently approved amendments to the schedule or the Consultant's services, or deliverables are unusable for their intended purpose and these failures are a material breach of this Agreement, then the City, in its reasonable discretion may contract with another consultant to complete the services or work product, and Consultant shall pay the City for the difference between the balance under Consultant's Agreement with the City had Consultant completed its services and the amount charged by the replacing consultant to complete Consultant's scope of work. The City will provide Consultant with the itemized costs as they are being incurred. Prior to contracting with another consultant, the City shall provide Consultant with a Notice to Cure, as described in Subsection VII.C.

E. Decisions to Withhold Payment

The City may withhold or nullify the whole or part of any payment to such extent as may be necessary because of conditions outlined in Subsection V.B.3 "Payments Withheld."

IX. CONSULTANT'S REMEDIES

A. If the Consultant is prevented from completing any part of the Project within the time established in the RAP due to delays beyond the reasonable control of either the City or the Consultant, an extension of the Project schedule in an amount equal to the time lost due to such delay shall be the Consultant's sole and exclusive remedy. Performance interrupted by an act of god or the result of war, riot civil commotion, sovereign conduct, or the conduct of a third party, will be excused for the period of time necessary to remedy the effect of the precipitating occurrence. In such cases, a conference will be held within seven (7) working days of the end of the occurrence to establish a revised schedule in the RAP.

B. Consultant's requests for remedies arising from the terms of this Agreement for conditions other than those specified in Subsection IX.A must be done in accordance with the following:

1. Within thirty (30) calendar days after the Consultant could be reasonably expected to know of the occurrence prompting the request for an extension of time, the Consultant must deliver a preliminary written notice to the City describing the general nature of the request. Within thirty (30) calendar days after the preliminary notice, the Consultant must provide the City written supporting documentation stating all known time extensions to which the Consultant is entitled.

2. Within thirty (30) calendar days of receipt of notice of the amount of the requested remedy with supporting data, the City and Consultant will meet to discuss the request, after which an offer of settlement or notification of no settlement offer will be made to Consultant. If Consultant is not satisfied with the proposal presented, Consultant will have thirty (30) calendar days in which to

- a. Submit additional supporting data requested by the City;
- b. Modify the initial request for remedy; or

c. Request Alternative Dispute Resolution.

X. DISPUTE RESOLUTION

A. Filing of Claims

1. Claims arising from the circumstances identified in this Agreement, or other occurrences or events, shall be made by written notice delivered by the party making the Claim to the other party within thirty (30) calendar days after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered in writing within thirty (30) calendar days after written notice of Claim is delivered by claimant and shall represent that the adjustment claim covers all known amounts and/or extension of time to which claimant is entitled.

2. Within thirty (30) calendar days of receipt of notice of the amount of the Claim with supporting data, the City and Consultant shall meet to discuss the Claim, after which an offer of settlement or notification of no settlement offer will be made to claimant. If claimant is not satisfied with the proposal presented, claimant shall have thirty (30) calendar days in which to: (i) submit additional supporting data requested by the other party; (ii) modify the initial Claim; or (iii) request Alternative Dispute Resolution.

B. Alternative Dispute Resolution

1. If a dispute exists concerning a Consultant or the City, the parties agree to use the following procedure prior to pursuing any other available remedies.

2. Negotiating with Previously Uninvolved Personnel

Either party may make a written request for a meeting to be held between representatives of each party within fourteen (14) calendar days of the request or such later period that the parties may agree to. Each party shall endeavor to include, at a minimum, one (1) previously uninvolved senior level decision maker (the City, officer, or employee of each organization) empowered to negotiate on behalf of their organization. If a previously uninvolved senior level decision maker is unavailable due to the size of the Consultant's organization or any other reason, the Consultant shall nonetheless provide an appropriate senior level decision maker for the meeting. The purpose of this and any subsequent meetings will be good faith negotiations of the matters constituting the dispute. Negotiations will be concluded within thirty (30) calendar days of the first meeting, unless mutually agreed otherwise.

C. Mediation

1. If the procedure described in X.B.2 proves unsuccessful or is waived pursuant to its terms, the parties shall initiate the mediation process. The City and Consultant agree to select within thirty (30) calendar days a mediator trained in mediation skills and knowledgeable of the Consultant's professional discipline, to assist with resolution of the dispute. The City and Consultant

agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the parties from relying on the skills of a person who also is trained in the subject matter of the dispute and/or a contract interpretation expert. Should the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the parties agree to mediate with Scott McClain. The parties agree that any mediation will occur in Hidalgo County, Texas which is the choice venue of law.

2. Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. The parties hereby agree that mediation, at a minimum, shall provide for actgathering

D. Resolution of Disputes between Consultant and Subconsultant:

The Consultant agrees to follow the procedures paralleling those outlined in Subsections X.A, X.B, and X.C in the event of a dispute with a Subconsultant. The City is not a party to the dispute resolution process between the Consultant and Subconsultants. However, if the City is notified of a Subconsultant claim, the City will withhold payments to the Consultant in accordance with Subsection V.B.3.b until receiving notification that the claim has been resolved.

XI. MISCELLANEOUS PROVISIONS

A. The City's Right to Audit

1. "Records" means all records generated by or on behalf of Consultant and each Subconsultant, whether paper, electronic, or other media, which are in any way related to performance of or compliance with this Agreement, including, without limitation:

- a. Accounting records;
- b. Written policies and procedures;
- c. Subcontract files;
- d. Correspondence;
- e. Amendments to this Agreement (as appropriate);
- f. Agreements between Consultant and any Subconsultant;
- g. Records necessary to evaluate contract compliance and any claim submitted by Consultant or any of its Subconsultants; technical work products in accordance with the approved Project RAP.

2. Consultant shall allow the City's agent or its authorized representative to inspect, audit, and/or reproduce all Records generated by or on behalf of Consultant and each Subconsultant, upon the City's written request. Further, Consultant shall allow the City's agent or

authorized representative to interview any of Consultant's employees, all Subconsultants, and all their respective employees.

3. Consultant shall retain all its Records, and require all its Subconsultants to retain their respective Records, during this Agreement and for the longest of these specified periods: (i) three (3) years after final payment, (ii) until all audit and litigation matters that the City has brought to the attention of Consultant are resolved, or (iii) longer if required by law. The City's right to inspect, audit, or reproduce Records (at no cost to the City), or interview employees of Consultant or its respective Subconsultants exists for the same period described in the preceding sentence.

4. Consultant must provide sufficient and accessible facilities during its normal business hours for the City to inspect, audit, and/or reproduce Records, and to interview any person about the Records.

5. Consultant shall insert these requirements in each written Agreement between Consultant and any Subconsultant and require each Subconsultant to comply with these provisions.

B. Ownership and Use of Documents

1. All Project Drawings and Specifications produced by the Consultant under this Agreement are the property of the City. The Consultant shall also provide the City high quality mylar and digital computer copies on CD or other City-approved media of updated drawings and reproducible copies of specifications as specified in Subsection I.E.2 this Agreement. The cost of such copies will be paid as specified in Section V of this Agreement. The Consultant may not provide copies of or otherwise use the work products covered by this Subsection XI.B without the express prior written approval of the City.

2. The Consultant agrees that items such as plans, drawings, photos, designs, studies, specifications, computer programs, schedules, technical reports, or other work products which is/are specified to be delivered under this Agreement, and which is/are to be paid for by the City, is/are subject to the rights of the City in effect on the date of this Agreement. These rights include the right to use, duplicate and disclose such items in whole or in part, in any manner and for whatever purpose, and to have others do so. The Consultant shall not copyright or otherwise claim Ownership of the work products covered by this Subsection XI.B. The Consultant shall include in its Subconsultant contracts appropriate provisions to achieve the purpose of this Subsection XI.B.

3. All such items furnished by the Consultant pursuant to this Agreement are considered instruments of its services in respect to the Project. It is understood that the Consultant does not represent such items to be suitable for reuse on any other Project or for any other purpose(s). If the City reuses such items without the Consultant's specific written verification or adaptation, such reuse will be at the risk of the City, without liability to the Consultant.

4. Should the Consultant be terminated under this Agreement, the City may continue the Project and receive copies of the Drawings, Specifications, or other documents within

fourteen (14) calendar days of the termination notice. Copies will be in the format designated by the City, as specified in Subsections I.E.2 or I.E.5 of this Agreement (depending on the Project's status at time of termination). The City may have these documents completed, corrected, revised or added to by another design professional in accordance with Title 22, Chapter 137.33(i) of the Texas Administrative Code.

5. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Consultant's rights.

C. Venue

In the event of any suit at law or in equity involving the Agreement, venue will be exclusively in Hidalgo County, Texas and the laws of the State of Texas shall apply to the interpretation and enforcement of this Agreement.

D. Severability

If any word, phrase, clause, sentence or provisions of this instrument, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding only effects such word, phrase, clause, sentence or provision, and such finding does not affect the remaining portions of this instrument; this being the intent of the parties in entering into this instrument; and all provisions of this instrument are declared to be severable for this purpose.

E. INDEMNIFICATION

To the extent allowed by Section 271.904 of the Texas Local Government Code, the Consultant shall indemnify, protect, and save harmless City of Mercedes, Texas and its officials, agents, and employees from and against all claims, demands, suits, causes of action, loss, damage, attorney's fees, costs, expenses, and liability of every kind and nature whatsoever, for personal injury or death or property damage to the extent that such injury, death or damage is caused by, results from, or arises in whole or in part from any negligent act, error or omission of the Consultant or any of its Subconsultants or any other party for whom Consultant is responsible in connection with the performance of its services or failure to perform its services in conformance with the terms and conditions of this Agreement; provided, however, Consultant shall not be responsible for the negligence of any other parties.

THIS INDEMNITY SHALL BE BROADLY CONSTRUED TO APPLY TO ALL LIABILITY ATTRIBUTED TO THE CONCURRENT AND SOLE NEGLIGENCE OF CONSULTANT, INCLUDING GROSS NEGLIGENCE, WILLFUL MISCONDUCT, AND STRICT LIABILITY, AND SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

F. Notices

1. Any and all notices under this Agreement must be in writing and shall be delivered to the party entitled to receive the same by hand or U.S. Certified Mail, return receipt requested, addressed as specified in Subsection XI.G.1 of this Agreement.

a. Notices shall be addressed as follows (or as amended in writing in the future):

Mailed Notices to the City:

City of Mercedes
City Secretary
400 S. Ohio Ave
Mercedes, Texas 78570

Mailed Notices to Consultant:

XXXXXXXXXXXXXXXXXXXX

2. Mailed notice will be deemed effective three (3) business days after such notice is mailed by Certified Mail with return receipt requested. Hand delivered notice will be effective when received and acknowledged by signed receipt.

G. Successors and Assigns

The City and the Consultant bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement with respect to all covenants of this Agreement. Neither the Consultant nor the City may assign, sublet or transfer any interest in this Agreement without the prior written consent of the other party.

H. Extent of Agreement

This Agreement represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations or Agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both the City and Consultant.

Hourly Rates for Engineering Services

PERSONNEL	RATE PER HOUR (\$)
<u>Engineering</u>	
Principal (P.E.)	\$ 165.00
Project Engineer (P.E.)	\$ 125.00
Engineer in Training (E.I.T.)	\$ 100.00
Sr. Engineering Technician	\$ 95.00
CAD Technician	\$ 65.00
Administrative Clerk	\$ 45.00
Clerk	\$ 40.00
ROW / Easement Specialist	\$ 70.00
Project Inspector	\$ 90.00
Aerial Videography (EA.)	\$ 325.00
<u>Surveying</u>	
Three-Man Party	\$ 145.00
Two-Man Party	\$ 125.00
GPS Party	\$ 165.00
RPLS	\$ 130.00
Technician	\$ 65.00
<u>Tasks*</u>	
Subdivision Review (3 hrs)	\$ 600.00
Site Plan Review (2 hrs)	\$ 450.00
Zoning Review (2 hrs)	\$ 450.00
Construction Plan Review (3 hrs)	\$ 600.00

**Any hours beyond fixed time will
be billed at the Engineering rate
schedule.*

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/29/2022

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 have ADDITIONAL INSURED provisions or 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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Southwest 9811 Katy Freeway, Suite 500 Houston, TX 77024 713 490-4600		CONTACT NAME: USI Southwest PHONE (A/C, No, Ext): 713 490-4600 FAX (A/C, No): 713-490-4700 E-MAIL ADDRESS:																						
INSURED SDI Engineering, LLC P. O. Box 3363 Edinburg, TX 78540		<table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td colspan="2">INSURER A : Sentinel Insurance Company Ltd.</td> <td>11000</td> </tr> <tr> <td colspan="2">INSURER B : Hartford Ins Co of the Midwest</td> <td>37478</td> </tr> <tr> <td colspan="2">INSURER C : XL Specialty Insurance Company</td> <td>37885</td> </tr> <tr> <td colspan="2">INSURER D :</td> <td></td> </tr> <tr> <td colspan="2">INSURER E :</td> <td></td> </tr> <tr> <td colspan="2">INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A : Sentinel Insurance Company Ltd.		11000	INSURER B : Hartford Ins Co of the Midwest		37478	INSURER C : XL Specialty Insurance Company		37885	INSURER D :			INSURER E :			INSURER F :		
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INSURER E :																								
INSURER F :																								

COVERAGES

CERTIFICATE NUMBER:

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	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC OTHER:			61SBMZM3422	11/04/2021	11/04/2022	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS NON-OWNED AUTOS ONLY			61SBMZM3422	11/04/2021	11/04/2022	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$10000			61SBMZM3422	11/04/2021	11/04/2022	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	61WBCAE7609	11/04/2021	11/04/2022	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional Liab Claims Made Pol.			DPS998545602YR Retro: 11/01/10	11/01/2021	11/01/2022	\$1,000,000 per claim \$1,000,000 annl aggr.

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

The General Liability and Auto Liab. policy(s) includes a blanket automatic Additional Insured endorsement that provides Additional Insured status to the Certificate holder, only when there is a written contract or written agreement between the named insured and the certificate holder that requires such status, and only with regard to work performed on behalf of the named insured. The General Liability, Auto Liability and Workers Compensation policy(s) provide a Blanket Waiver of Subrogation as required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Mercedes 400 S. Ohio Ave. Mercedes, TX 78570	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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CITY OF MERCEDES

ENGINEERING SERVICES CONTRACT

This Contract made and signed this 31st day of August, 2022 by and between the City of Mercedes, Texas ("City") and Freese and Nichols, Inc. ("Consultant") whose place of business is in Brownsville, Texas. The City and the Consultant for the consideration stated herein agree as follows:

Section 1. General Requirement:

The Consultant hereby agrees to provide a full variety of engineering and consulting services on an as-needed basis, described in the Request for Qualifications No. 2022-13, which is not attached hereto, but are incorporated by reference on to this Contract. Due to the nature of as-needed services, it is not feasible to define the exact scope of work in advance. Once the qualified pool of consultants is established, the City will assign projects based upon the consultant's skill set, experience, and availability to perform and complete the services in a timely manner at a fair and reasonable price

Section 2. Scope of Work:

Engineering services to be provided may include:

- 21 Preparation of plans and specifications for construction projects varying in complexity. Services may include preliminary plans and cost estimates, necessary fieldwork, drafting, design, surveying, bid assistance, construction observation, project management, preliminary reports, and identification of alternatives, the Engineer will also obtain all necessary permits for the project consistent with the limitations specified in Section I.B.7 of the General Terms of Agreement.
- 22 Preparation of specialized engineering studies on a variety of subjects including, but not limited to structural design and structural analysis of buildings, bridges, drainage studies, master planning, water and wastewater, and construction feasibility studies.
- 23 Construction administration and engineering including, but not limited to, review and approval of material submittals, daily construction observation, as needed, and documentation, coordinating contractor's work.
- 24 Surveying activities including, but are not limited to, topographic survey, title search, easement legal description preparation, construction staking, and cut-sheet preparation.
- 25 Engineering or project management services may include, but not limited to sanitary sewer, storm sewer, water mains, street paving, sidewalks, bridges,

drainage projects, building repairs, stormwater detention pond design, lift station design, plan reviews, geotechnical, mechanical, electrical, plumbing, and road design drainage studies, in accordance with city standards and procedures.

Possible projects could include:

- a. Site and utility plans at any City facilities and City parks;
- b. Detention ponds;
- c. Road engineering projects;
- d. Facility remodels;
- e. Subdivision and development reviews;
- f. Projects identified in the Parks Master Plan;
- g. Projects identified in the City of Mercedes Capital Improvement Plan; and
- h. Thoroughfare projects;
- i. Land Use Analysis;
- j. Feasibility studies;
- k. Water and Wastewater Master Planning
- l. Water and Wastewater Plants;
- m. Hydraulic modeling;
- n. Water wells;
- o. Owner's representative.

- 26 Consultants may perform various topographical surveying tasks as requested for the preparation of civil engineering construction plans. Services may include but not be limited to, the gathering of topographical survey data and providing digital submissions. It is understood that the final work product will be a complete survey that will contain all reasonably observable site features and will be ready for use as a base drawing for final engineering plans.
- 27 Services may include construction supervision and full-time observation services on all construction work on which this task is assigned to the consulting engineer. Sufficient personnel as agreed upon by the City shall be assigned to the construction project to observe that each element of the project is constructed in keeping with the plans and specifications approved by the City. Activities task will be dedicated to verifying that all materials provided and. Work performed is in general conformance with the project plans and specifications.
- 28 Engineering Firm shall furnish its employees with equipment and materials and any incidentals necessary to properly perform their work.
- 29 The Engineering Firm, at its own expense, may enter contracts with joint contractors, sub-consultants, or employ additional personnel to the extent deemed necessary for the required work. The firm acknowledges that such contracts made with these sub-contractors are not contracted by the City.

Section 3.0 Terms:

- 3.1 This Contract shall be in force upon acceptance in accordance with the City's procurement policy for professional services and a start date of the notice to proceed with two (2) optional annual renewals. Annual renewals are predicated on sufficient budgetary allocation by the City Council for the renewal of the awarded Contract. City Council shall be under no obligation to make such budgetary allocation.
- 3.2 This Contract may be terminated at any time by the City or the Consultant upon receipt of thirty (30) days' prior written notice.
- 3.3 Any Work outside the scope of this Contract must be in writing and authorized, in advance, by the City.
- 3.4 Any variations from this Contract must be in writing and agreed upon by both the City and the Consultant.
- 3.5 In the event that additional or removed services from a particular group, Consultant may give the City a revised price in writing. The City shall have thirty (30) days to accept or reject the price revision.

Section 4. Payment Terms:

- 4.1 City agrees to pay Consultant for the Work performed under this Contract, and Consultant agrees to accept, as his full and only compensation thereof, a sum mutually agreed upon and authorized by the City be paid for each authorization on the following terms: Each payment will be based on the receipt of a monthly invoice from the Consultant which details the exact location, date, and type of services rendered during the previous month.
- 4.2 If the Consultant fails to perform any of its obligations under this Contract in accordance with Texas Local Government Code § 271.904(d), including its obligation to the City to pay any subcontractor or workmen or other person which arises out of or in connection with the performance of this Contract, then the City shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as are reasonably necessary to protect the City.

Section 5. Miscellaneous:

These Contract, together with the documents and attached Professional Services General Terms of the Agreement are fully a part of this agreement.

THE CITY OF MERCEDES:



Alberto Perez, City Manager

ATTEST:



Joselynn Castillo, City Secretary

CONSULTANT:

Signature: _____

Printed Name: David Bennett

Address: 222 N. Expressway 77, Suite 106
Brownsville, TX 78521

Phone Numbers:

Office: 956-338-2219

Cell: _____

Fax: _____

Federal Taxpayer Identification Number: _____

PROFESSIONAL SERVICES GENERAL TERMS OF THE AGREEMENT

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I. CONSULTANT'S RESPONSIBILITIES

A. General

The Consultant will perform engineering and consultant, as needed, in relation to the design of the identified projects. The Consultant will serve as the City's (City of Mercedes) professional consultant and will advise the City during the performance of the Consultant's services. The City agrees to compensate the Consultant for those services in accordance with Section V - Compensation. Consultant shall report to City's designated Project Manager which can and will vary depending on the nature of the identified project. Consultant's services expressly do not include providing advice pertaining to insurance, legal, finance, surety-bonding, or similar services. In no event is Consultant acting as a "municipal advisor" as set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission.

B. Performance of Services

The Consultant will perform services under this Agreement with the degree of skill and care ordinarily provided by competent professional engineers, architects, or consultants practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent, considering the ordinary professional skill and care of a competent engineer, architect, or other consultant.

The City is agreeing to contract with the Consultant on basis of its qualifications and proposal, including its proposed Key Personnel, who are the employees of the Consultant responsible for performing major aspects of the services to be provided under this Agreement, and its' designated Subconsultants, the other professional service providers, who will provide specialized services under this Agreement.

1. The Consultant's Key Personnel, including its Project Manager, and the Consultant's associated Subconsultants to be employed in the performance of the Project professional services shall not be changed except with the City's prior written approval.

2. The Consultant must disclose any potential conflict of interest relating to the Consultant, the Consultant's employees, a Subconsultant or supplier. Failure to disclose any such conflicts may be grounds for termination.

3. The Consultant agrees not to modify any Subconsultant's design after Subconsultant's seal has been affixed, except with the written consent of the Subconsultant. The Consultant is fully responsible for the Subconsultants' performance and obligations under this Agreement.

4. The Consultant shall obtain City's written approval prior to terminating, adding or substituting Subconsultants.

5. If the City notifies the Consultant that a member of the Consultant's team, including Subconsultants, is incompetent, disorderly, abusive, or disobedient, or has knowingly or repeatedly violated any federal, state, or local law, the Consultant shall immediately remove any such person from performing work on the Project. The City's prior written consent and approval must be obtained before any such person may be reinstated. The City may report any breaches of professional codes of ethics to the appropriate licensing board.

6. The Consultant will attend and draft complete minutes of each Project design and construction meeting between Consultant, City and Construction Contractor and/or Consultant and other agencies, and submit them to City for approval within seven (7) calendar days after each Project conference.

7. The Consultant shall prepare and submit all appropriate permit applications and supporting drawings, specifications and other documents in the name of the City of Mercedes to utility companies and providers and governmental authorities having jurisdiction over the Project and shall obtain all approvals and all development and building permits necessary to complete the Project or as otherwise specified by City. Development and permitting fees due to the City of Mercedes will be waived. Consultant provides no guarantee regarding the timeframe for obtaining approvals from outside agencies, nor does it guarantee approval of permits. Accordingly, in no event is Consultant responsible for schedule or cost impacts associated with delays caused by such outside agencies. Consultant's fee and/or the schedule shall be adjusted to compensate Consultant for such effects, if any.

8. Consultant agrees to attend and make presentations, as Basic Services, including (i) Council and Committee meetings, (ii) public meetings, and (iii) internal City of Mercedes meetings. Any other presentations required by City will be considered Additional Services.

9. The Scope of Services generally consists of all elements of work, material and equipment required for the professional development of the Project satisfactory to the City and in compliance with all applicable laws, rules, regulations, and ordinances and in accordance with the requirements, policies, and general practices of the City.

10. The Consultant shall not knowingly specify, request or approve for use any asbestos containing materials or lead-based paint without the City's prior written approval. For materials specified on the basis of performance criteria, the Consultant shall include a requirement in the specifications effectively stating that "Asbestos containing materials or lead-based paint are prohibited from being used in the Project." When a specific product is specified by the Consultant, the Consultant shall make efforts, in conformance with Texas Local Government Code § 271.904(d), to verify that the product does not include asbestos containing material. Regarding information and/or products provided or specified by City, Consultant is entitled to reasonably rely upon the accuracy and completeness of the same. The Consultant agrees to execute a Statement of Non-Inclusion of Asbestos Containing Material, both prior to design and upon completion of the Construction Documents Phase.

11. If directed by City, Consultant shall update City provided record documents. If the City provided record documents to be updated have been sealed by another Engineer, the Consultant shall notify the Engineer of record of the agreement to update said documents. All updates and revisions

to existing sealed documents shall be made as directed by City and in accordance with the Texas Board of Professional Engineers rules.

12. The Consultant agrees that record documents provided by the City are to be used only for the intended purpose and to meet this contract's obligations. Use of these record documents for any other purpose not explicitly authorized by the City is strictly prohibited.

13. The Consultant shall prohibit discrimination in employment based upon race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.

14. Confidentiality: In order to provide services to the City, Consultant may require access to certain of the City's and/or its licensors' clearly labeled confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Consultant acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensor's and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Consultant (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Consultant promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Consultant agrees to use protective measures no less stringent than the Consultant uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information. Notwithstanding the foregoing, nothing in this Agreement shall prohibit Consultant from disclosing: i) information which was or becomes generally available to the public other than as a result of disclosure hereunder; ii) information made available to Consultant on non-confidential basis prior to its disclosure hereunder; iii) information which Consultant independently develops without the use of any Confidential Information; or iv) general information about the project for reference within marketing purposes. Confidentiality obligations are limited to a period of two (2) years from the date of final signature on this Agreement.

15. The Consultant shall assist the City with the selection of colors for finishes, furniture, equipment, etc. included in the Work. The Consultant shall prepare and submit a color board for the City's review and approval that clearly illustrates the Consultant's recommended color scheme.

16. The Consultant shall use an integrated design approach, where the evaluation of any Project element, material, or system is not viewed solely on the basis of its own isolated merit, but is designed and then appraised as an integrated part of the entire Project. This approach will require team members from all disciplines, during each stage of the design process, to investigate alternatives, question assumptions and research approaches to optimize performance.

C. Non-Infringement: The Consultant represents to the City that: (1) the Consultant shall provide the City good and indefeasible title to the deliverables and (2) the deliverables supplied by the Consultant in accordance with the specifications in the Contract will not

infringe, directly or contributory, and patent, trademark, copyright, trade secret or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Consultant does not know of any valid basis for such claims; provided however, Consultant cannot and does not make the foregoing representations regarding information and/or technology provided or specified by City which result in infringement. The Consultant shall, at its sole expense, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from any claim that the City's exercise of the rights associated with the City's ownership, and if applicable, license rights, and its use of deliverables infringes the intellectual property rights of any third party (excepting to the extent stemming from information and/or technology provided or specified by City). In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel at its own cost to act as co-counsel on the City's behalf.

D. Laboratory Services

If laboratory services are provided for the Project by the Consultant or its Subconsultant(s) through this Agreement, those services must be performed by a properly accredited laboratory. The Consultant will provide evidence to the City of such accreditation on an annual basis for the duration of this Agreement.

E. Quality Control Plan (QCP)

1. The Consultant will develop a Quality Control Plan (QCP) form and agrees to perform quality assurance-quality control/ constructability reviews. The approved QCP will be incorporated by reference and will include any subsequent revisions approved by City. In addition to providing the reports required by the QCP, the Consultant agrees to address any QCP comments from the City and provide resolution to the City's satisfaction. In the event the City retains a separate consultant to perform additional QCP services for the City, the Consultant will provide all necessary information to the City, address any comments from the City's consultant, and provide resolution to the City's satisfaction. The Consultant shall include this language in all its Subconsultant contracts to ensure Subconsultants understand their responsibility for complying with the City's or City's consultant's QCP requirements.

2. The QCP reviews will be performed by a staff member of the Consultant not involved in day-to-day Project tasks. If the Consultant does not have the internal staff capacity to provide for this independent review, the Consultant must include a QCP Subconsultant on the Project team. The person performing the QCP reviews shall certify, seal and attest that the final construction bid documents have been drafted in full compliance with the QCP.

3. The Consultant will perform QCP reviews at intervals during the design phase, specified in the QCP, to confirm plans, specifications, and drawings satisfy accepted quality standards and meet the requirements of the Project scope. Based on the findings of the QCP reviews, the Consultant must reconcile the Project scope and budget as needed. Documentation will be included that verifies interdisciplinary coordination has occurred.

4. The Consultant will perform constructability reviews, using persons with construction experience, at appropriate intervals, during the design phase, specified in the QCP to verify based on Consultant's experience that the Project is buildable, as well as cost-effective, biddable, and maintainable but at all times in conformance with Texas Local Government Code § 271.904(d). Based on the findings of the constructability reviews, the Consultant shall adjust the Project design based on changes mutually agreed to by all Parties, as required, to conform to the Preliminary Construction Budget. The Consultant will provide interim construction estimates to verify that the Project is within the Preliminary Construction Budget as further described in the phase descriptions in this Agreement.

5. Acceptance and/or approval of the Consultant's QCP documentation by the City do not constitute a release of the responsibilities and liability of the Consultant for the technical accuracy and competency of its QCP reviews and final construction documents in conformance with Texas Local Government Code § 271.904(d).

F. Basic Services: The Consultant will perform the basic Scope of Services described in this Agreement.

This Scope of Services shall be performed only as authorized by the City.

1. Phase A: Preliminary Phase Services

If authorized by City, the Consultant shall perform the Phase A: Preliminary Phase Services as described below and in Resource Allocation Plan (RAP) for each subsequent written authorization.

a. Attend and, if requested by the City, conduct preliminary conferences and public meetings with the City and other interested or involved entities regarding the alternatives for the Project. Report progress of this phase to the City relative to approved Project Resource Allocation Plan (RAP) as prescribed by the City.

b. Obtain and review existing plans, maps, records, traffic (vehicular and pedestrian), water and wastewater studies, planning studies, zoning, land use, other utility, population, and other available information relevant to the development of the Project. With approval from the City, perform or contract with other licensed professionals to perform geotechnical investigations and engineering, or any tests, investigations or studies that are required for the proper execution of Phase A of the Project. Notwithstanding anything in this Agreement to the contrary, in accordance with applicable law, Consultant is entitled to reasonably rely upon the accuracy and completeness of City provided information.

c. Prepare, conduct and document studies, analyses and reports of the Project alternatives in sufficient detail to clearly indicate the problems involved and reasonable solutions available to the City. Such studies, analyses and reports may include, but are not limited to: preliminary layouts, maps, exhibits, sketches, construction materials and methods evaluations, schedules, utility coordination plans, design criteria, environmental reviews, compatibility with existing and proposed systems and/or processes, and other investigations pertinent to the evaluation of the Project alternatives.

d. Collect all pertinent information concerning proposed public or private projects and/or proposed improvements in the Project area. Coordinate with City and other entities as necessary to comply with the Project RAP and minimize Project impacts and to communicate Project

details to minimize impact to other projects in the area.

e. Prepare preliminary Project construction schedule estimate of the probable Project construction, life cycle and maintenance costs for all alternative solutions. The Consultant's opinion of construction costs shall be based on materials and labor process prevailing at the time of the preparation of the preliminary report with consideration of inflationary increases in costs. The Consultant shall apply reasonable consideration and knowledge to the preliminary cost estimate development. Notwithstanding anything in this Agreement to the contrary, since Consultant has no control over: (i) the cost of labor, materials, equipment, or services furnished by others; (ii) the contractor or its subcontractor(s)' methods of determining prices; (iii) competitive bidding; (iv) market conditions; or (v) similar material factors, Consultant's opinions of Project costs or construction costs provided, if any, are to be made on the basis of Consultant's experience and qualifications and represent Consultant's reasonable judgment as an experienced and qualified professional engineering firm, familiar with the construction industry; and Consultant cannot and does not guarantee that proposals, bids, or actual Project or construction costs will not vary from estimates prepared by Consultant. Notwithstanding anything in this Agreement to the contrary, City understands that the construction cost estimates developed by Consultant do not establish a limit for the construction contract amount and if the actual amount of the low construction bid or resulting construction contract exceeds the construction budget established by City, Consultant will not be required to re-design the services without additional compensation. In the event City requires greater assurances as to probable construction cost, then City agrees to obtain an independent cost estimate.

f. Conduct preliminary field surveys, and determine site constraints and permitting requirements.

g. Prepare an environmental report for the recommended Project alternative(s) that addresses appropriate environmental issues, which may include, but are not limited to, impacts to air, noise, and water quality, historical features, vegetation, environmental and geological features, and endangered species.

h. Hire a subconsultant to prepare a geotechnical report and other technical reports for the recommended Project alternatives that may include but are not limited to: subsurface utility engineering (SUE) findings, delineation of geologically sensitive areas, hydrologic issues, soils formation, and information necessary to identify contractor's probable or recommended means of construction.

i. Prepare, present, and publish details and a summary of findings for the recommended Project in a Preliminary Engineering and Investigations Report. This report will be drafted upon conclusion of the Consultant's reviews, investigations, and preliminary evaluations and shall include, but not be limited to, cost estimates (as outlined in Subsection I.E.1(e), alternate routes, identification of permanent and temporary easements, identification of need for additional right-of-way, evaluations of and of Project construction contracts to be bid, and design recommendations for construction methods and materials, including recommendations on the number and construction phase schedules.

j. For all Phase A services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

k. For all Phase A services, the Consultant shall provide all required Quality Control Plan (QCP) documentation.

2. *Phase B: Design Phase Services*

The accepted recommendations from the Preliminary Engineering Report will define the Scope of work for the Design of the Project. If authorized by the City, the Consultant shall perform the Phase B services as described below and in RAP for each subsequent written authorization.

a. Attend and/or arrange for conferences, at periodic intervals not to exceed **fourteen (14) calendar days**, with the City for the purposes of explaining completed design activities and review of Project RAP for completion of remaining activities.

b. Conduct or otherwise acquire the necessary field surveys, soils tests, geotechnical tests, and additional analysis that, in the opinion of the Consultant, are required for the proper execution of the design of the Project.

c. Provide for field surveys, which may include photogrammetry, and perform related office computations and drafting for collecting information required for design. Such surveys must include horizontal and vertical control adequately documented on the final plans. Field surveys must also include the staking and referencing of points of intersection (PI's), points of curvature (PC's), points of tangency (PT's), and benchmarks (BM's) necessary to establish the Project construction in the field. If necessary, establish Static GPS Control Monuments with U.S. Geological Survey (USGS) NAD 83 and NAVD 88. Horizontal control for facilities shall be on the *Texas State Grid Coordinate System* Central Zone Grid Coordinates carried to second-order accuracy to permit actual construction staking to third order accuracy. The vertical control shall be based on the USGS NAVD 88 datum, specify the Geoid Model, and BM's shall be established not more than 1000 feet apart at accuracy of 0.01 feet. Visible topographic features will be tied to the Project centerline(s) and will include, but not necessarily be limited to, existing property or lease lines, property or lease corners, utilities and appurtenance, roadways, structures, railroad structures, trees over eight inches in diameter, and other features within the limits of construction and twenty-five (25) feet beyond. Project control must be complete and staked in the field at the time of advertisement for bid so that construction staking can be accomplished immediately thereafter.

d. The Consultant shall prepare a Draft Storm Water Pollution Prevention Plan (SWPPP) using a standard template and submit to the City for review and comment. All engineering computations shall be certified by a Licensed Professional Engineer with competence in this area as required by Title 22, Chapter 137 of the Texas Administrative Code. All SWPPPs shall be signed by a Licensed Professional Engineer (TX) or a Certified Professional in Erosion and Sedimentation Control [(CPESC)(<http://cpesc.org/>)]. If the SWPPP itself contains engineering calculations, then a Licensed Professional Engineer must seal and sign the SWPPP. All drainage calculations shall be done in accordance with the guidelines in the Drainage Criteria Manual. The final SWPPP will address all City's comments provided on the Draft SWPPP.

e. Update construction cost estimates of authorized Project construction. If the estimated construction cost exceeds the Preliminary Construction Budget as established in Section III, the Consultant shall consult with the City as to what action is to be taken. If the City requires revisions to the Project scope to reduce the Project construction cost as required to stay within the Preliminary Construction Budget, the Consultant shall, as an additional service to the City, make such revision to the Project construction document. If such revision is necessitated by a violation of Texas Local Government Code § 271.904(d), such revision will be at no additional cost to City.

f. Provide City:

(i) One (1) electronic editable and searchable copy of 30%, 60%, 90% and 100% design complete submittals for review and comment.

(ii) Address the City's comments on each submittal.

(iii) One (1) electronic editable and searchable copy of Final Bidding Documents (consisting of plans, details and the Project Manual) and, one (1) electronic editable set of final design criteria and calculations of principal elements of final design.

g. Prepare information for any permits or approvals required by regulatory agencies for which the City must apply. The Consultant shall realize and acknowledge that all necessary permits are identified in the approved Preliminary Engineering Report (PER). The Consultant will be responsible for obtaining any additional permits that are not required by Contractor to obtain and are not identified in the PER as an additional service to the City.

h. Provide final bid documents, which incorporate the City's comments, to the City at least fourteen (14) calendar days prior to advertising the Project for bids. Bid documents will not be printed until the City authorizes the Consultant to do so.

i. Obtain the City's acceptance of the Project bidding documents and provide one (1) electronic pdf set of final Project bidding documents for distribution to contractors. The Consultant agrees that the City may post the Consultant's Bidding Documents on-line for bidding purposes.

j. Update construction cost estimates of authorized Project construction. If the estimate exceeds the Preliminary Construction Budget described in Section III, the Consultant shall consult with the City as to what action is to be taken. If the City requires revisions to the Project scope to reduce the Project construction cost as required to stay within the Preliminary Construction Budget, the Consultant shall, as an additional service to the City, make such revision to the Project construction documents. If such revision is necessitated by a violation of Texas Local Government Code § 271.904(d), such revision will be at no additional cost to City.

k. Only if requested by the City, the Consultant shall assist the City in determining what additional information on Contractor qualifications may be required to be submitted by the bidders with their bids.

l. For all Phase B services, the Consultant shall submit written progress reports at least monthly. If the required reports are not received within seven (7) calendar days of the end of the month, the City may withhold payment, in accordance with Subsection V.B.3, until the reports are received.

m. For all Phase B services, the Consultant must design for compliance with the applicable laws, rules, and regulations of City, State and federal governments. The Consultant must request variances or waivers of any such requirements as appropriate.

n. For all Phase B services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

o. For all Phase B services, the Consultant shall provide all required QCP documentation.

3. *Phase C: Bid-Award-Execution Phase Services*

If authorized by the City, the Consultant shall perform the Phase C services as described' below:

a. Only if requested by the City, the Consultant shall assist the City in the advertisement of the Project for construction bids. Consultant services may include distributing bid documents, maintaining a record of bid document issuance and receipt, and receiving bid document deposits. Bid deposit checks shall be made payable to the City and those deposits not returned to bidders shall be given to the City.

b. The Consultant shall participate in or conduct a pre-bid conference, prepare and issue addenda, and attend bid opening.

c. Following the City's receipt of bids and bidders' post-bid information, the Consultant shall assist the City in analyzing Contractor bids and qualifications. The Consultant shall furnish to the City a recommendation regarding the responsibility of the bidder(s) within seven (7) calendar days following bid opening. Should the apparent lowest responsible bidder's construction cost of the Project (or component thereof) be greater than the Preliminary Construction Budget (or appropriate portion thereof) and the City elects not to award the Project (or component thereof) construction contract, the Consultant will consult with the City to determine revisions to the Project to reduce the Project cost as required to stay within approved or authorized cost limitations. The Consultant shall then make such revision to the Project construction documents as an additional service to the City. If such revision is necessitated by a violation of Texas Local Government Code § 271.904(d), such revision will be at no additional cost to City.

d. For all Phase C services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

e. The Consultant shall prepare a conformed (construction) set of contract documents that incorporates all addenda, alternates and clarifications to both the Project Manual and the Plans. The Consultant shall submit a pdf of the conformed Project Manual and Plans to the City prior to City Council award of the construction contract.

4. *Phase D: Construction Phase Services*

If authorized by the City, the Consultant shall perform the Phase D services as described below:

a. The Consultant will be a representative of the City's Representative during the Construction Phase, and shall advise and consult with the City. Instructions to the Contractor will be forwarded through the Consultant. The Consultant will have authority to act on behalf of the City only to the extent provided in this Subsection I.E.4, Phase D: Construction Phase Services.

b. The Construction Phase will commence with the construction contract execution and will terminate on the date of final expiration completion of the construction Project, based on the completion milestone established for the construction Contract Time. The expiration date includes any time extensions granted to the Contractor by the City, but in no case will time extensions

exceed approved Project Resource Allocation Plan (RAP) provided the same does not compromise Consultant's obligation to comply with applicable state law, namely Texas Local Government Code § 271.904(d).

c. Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Consultant shall administer the construction contract as set forth below

d. The Consultant shall participate in and document the proceedings of the preconstruction conference.

e. The Consultant shall visit the site to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. The Consultant's visits to the site shall be at intervals appropriate to the stage of construction, with the specific frequency of visits to be set forth in each written authorization. The Consultant shall record observations made on each job site visit, including regularly scheduled Project meetings, and shall submit a written within 48 hours of site visit report to the City.

(i) Reports should include: list of subcontractors on-site by week as reported by Contractor, trades at work, approximate manpower, temperature/weather conditions, any variations from Contract Documents, any defective Work, percentage of contract time used compared with percentage of completion of construction, updates to the Project RAP, estimated contract completion date, and other meaningful information. Reports for periods when no Work is in progress will state "No Work in Progress."

(ii) The Consultant will furnish reports to the City within the time frame set forth in the applicable written authorization. As stated in Subsection V.B.3, the City may withhold payment until the reports are received.

(iii) In addition, the Consultant's subconsultants shall visit the site at appropriate stages of the Work related to their area of specialty, shall record observations made on each job site visit and shall submit reports to the Consultant to be incorporated in the Consultant's reports to the City. The Consultant's subconsultants shall also attend those progress meetings when the Contractor's Application for Payment includes requests for areas of Work related to their discipline.

f. The Consultant shall review the Contractor's Application for Payment, based on Consultant's observations on site, evaluate the request, and recommend to the City the amount to be paid to the Contractor.

g. The Consultant's approval signature on the Application for Payment constitutes a recommendation by the Consultant to the City that the work is proceeding in general accordance with the Contract Documents, and that the Contractor has progressed to the construction schedule point indicated and is entitled to payment in the amount certified. The Consultant is not responsible for work that is the Contractor's responsibility as defined in the Contractor's contract with the City. Consultant shall not at any time supervise, direct, control, or have authority over Contractor's work, nor shall Consultant have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's services. Consultant shall not be responsible for the acts or omissions of any contractor for whom it does not have a direct contract. Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the construction contract documents

applicable to the contractor's work, even when Consultant is performing construction phase services.

h. The Consultant shall provide a draft response to the City for review and comment within seven (7) calendar days (unless the City grants a time extension), to all requests for information, claims, disputes and other matters in question between the City and the Contractor relating to the execution or progress of the work or the interpretation of the Contract Documents. After acceptance by the City, Consultant shall provide to the Construction Contractor the interpretations and decisions in written form, accompanied by signed and sealed drawings as appropriate. Notwithstanding anything to the contrary herein, Consultant shall only render interpretations of Contract Documents for which Consultant is the author. Consultant shall not be required to verify and interpret the work of another consultant unless it is expressly agreed upon between the parties hereto and authorized as an Additional Service.

i. If any Work does not conform to the Contract Documents, the Consultant shall, with reasonable promptness, recommend the rejection of any such work to the City in writing. At any point during the Construction Phase, the Consultant may recommend that the City require special inspection or testing of the Work in accordance with the provisions of the Contract Documents.

j. The Consultant shall review and take other appropriate action upon Contractor submittals such as Shop Drawings, product data and samples following the requirements in the City Front End documents. The Consultant shall provide a written response to the Contractor (with a copy to the City) within seven (7) calendar days (unless a time extension is granted in writing by the City) to avoid a delay in the work.

(i) The Consultant's review is for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant is not responsible for work or requirements that are the Contractor's responsibility as defined in the Contractor's contract with the City.

(ii) The Consultant's review will not constitute approval of safety precautions, construction means, methods, techniques, sequences or procedures.

(iii) The Consultant may rely upon professional certifications of performance characteristics of materials, systems or equipment if such certifications are required by the Contract Documents.

k. The Consultant shall prepare Change Orders Documentation for the City's approval and execution in accordance with the Construction Contract Documents. The Consultant will recommend to the City accepting minor changes in the Work which are consistent with the intent of the Contract Documents, but do not involve an adjustment to the Contract Amount or an extension of the Contract Time. The City shall review the recommendation and if acceptable issue a Field Order to the Contractor.

l. Upon receipt of Contractor's notification that the Work has been substantially completed, the Consultant and its subconsultants shall work with the Contractor to confirm the Project is ready for the City's inspection within seven (7) calendar days unless the City approves a time extension. The Consultant shall provide written notification to the City that the Work has been substantially completed and is ready for the City's inspection.

m. The City shall schedule a City inspection to be attended by the Consultant and its subconsultants.

(i) Within twenty-four (24) hours of the City's inspection, the Consultant shall provide the Contractor a draft written punchlist of items that need to be addressed prior to the Final Completion date specified in the construction contract. The Consultant shall provide the Contractor a final written punchlist within three (3) calendar days of the City's inspection.

(ii) If requested by the City, Consultant shall prepare and issue a Certificate of Substantial Completion no later than three (3) calendar days after the contract requirements for substantial completion have been met.

n. The Consultant shall review all warranties, guarantees, bonds, equipment operating instructions, and similar required material and documents for general compliance with the Contract Documents and shall present them to the City. Upon receipt of Contractor's written notice that the work is ready for final inspection and acceptance and receipt of a final Application for Payment from the Contractor, the Consultant shall make an on-site review within seven (7) calendar days. When the work is found to be acceptable by the City, the Consultant shall, within seven (7) calendar days, sign the final Application for Payment and provide a Letter of Concurrence to the City signifying that the work has been completed in general conformance to the requirements of the construction contract documents and that final payment is due the Contractor.

o. For all Phase D services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

p. Construction Project Representation Beyond Basic Services

(i) If the City and Consultant agree that more extensive representation is needed at the site, the Consultant shall provide one or more Project Representatives to assist the Consultant in carrying out such responsibilities at the Project or work site. The Project RAP must be revised accordingly.

(ii) Such Project Representatives will be selected with the written approval of the City, employed and directed by the Consultant, and the Consultant will be compensated as mutually agreed between the City and the Consultant.

5. PHASE E: POST-CONSTRUCTION PHASE SERVICES

If authorized by the City, the Consultant shall perform the Phase E services as described below:

a. The scope of assistance referenced in this Paragraph 5 will include, but not be limited to, the following: (1) producing Record Documents for the City; (2) notifying the Contractor of deficiencies or failures in labor and materials and requesting corrective action; (3) preparing correspondence and other written data as necessary to document, clarify, and resolve discrepancies; and (4) meeting with the Contractor at the Project site or other local places when requested by the City.

b. Upon receipt from the Contractor of details of deviations from Contract Documents, Consultant shall produce Record Documents for the City's use within thirty (30) calendar days. The Consultant will confirm that the Record Documents of construction incorporate all compiled change orders, change directives, and field orders. The Consultant will confirm that a Professional Engineer's seal is affixed and signed on each document, stamped and identified as "RECORD DOCUMENTS", that signifies the recorded changes have been transferred.

(i) The Consultant shall submit electronic files of Project drawings that are considered Record Documents to the City on CD-ROM or other comparable durable electronic media. Consultant shall include Computer-Aided Design electronic files of Record Documents in a format usable by the City (e.g. AutoCAD or Revit files) as well as a pdf copy, signed and sealed by the Consultant.

c. Under Basic Services, the Consultant shall assist and represent the City through the post-construction period on matters involving malfunctions or deficiencies of the Work. The Consultant shall communicate with and assist the Contractor as necessary to correct all deficiencies within seven (7) calendar days of notification by the Consultant for a specific correction.

d. The Consultant shall require its subconsultants to provide assistance as necessary during the post-construction period stipulated in the approved Project Resource Allocation Plan (RAP).

e. If agreed to in the applicable written authorization, the Consultant shall perform an on-site review of the Work, accompanied by its subconsultants, no less than thirty (30) calendar days before the one-year anniversary of the date of Substantial Completion. Based on the site review, the Consultant shall prepare, within seven (7) calendar days, a list of items needing correction and direct the Contractor to resolve them within a specified time frame. After determining that deficiencies have been corrected, the Consultant shall so notify the City in writing within seven (7) calendar days. This notification by the Consultant does not release the Contractor from its responsibilities set forth in the Contract Documents and will not be construed as an implied or express warranty or representation by the Consultant that there are no other deficiencies on the Project.

f. Under Basic Services, the Consultant and its subconsultants agree to provide Post-Construction Phase services as specified in the approved Project RAP. The Consultant shall provide accounting for time expended under Basic Services at the time these services are provided. Additional time for extended warranty period services not included in Basic Services will be considered Additional Services in accordance with Paragraph I.E.6 and paid for in accordance with the RAP.

g. For all Phase E services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the Project RAP.

G. Additional Services:

1. Unless otherwise stated in this Agreement, the Services listed in Subsections (a) through (e) below are Additional Services. Additional Services authorized in writing by the City will be paid for by the City as provided in this Agreement, in addition to the compensation for Basic Services. Additional Services authorized by the City in writing will be incorporated in the RAP, and all applicable articles of the Agreement will apply to the Additional Services. If Consultant identifies a need for Additional Services, the Consultant will submit a proposal for those services to the City within fourteen (14) calendar days of identifying the need.

a. Making revisions in Drawings, Specifications or other documents in connection with Change Orders, unless such Change Orders are caused by errors, omissions or other factors within the Consultant's control.

b. Making revisions in Drawings, Specifications or other documents when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.

c. Making revisions in Drawings, Specifications or other documents in connection with instructions or approvals given by the City that are inconsistent with or contradicts prior approvals or instructions given by the City, unless caused by errors, omissions or other factors within the Consultant's control.

d. Providing design services of subconsultants not included in original scope of the Project.

e. Providing any other services not otherwise included in the Agreement.

f. Legal proceeding, unless the Consultant is a party to the proceedings.

2. For all Additional Services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the RAP.

3. The following are **not** Additional Services

a. Any revisions required for failure to adhere to Texas Local Government Code § 271.904(d).

b. Minor requests for information as reasonably determined by the City that clearly do not require work by the Consultant which is in addition to what is included in the written authorization.

c. Any revisions to Drawings, Specifications or other documents when the item requiring revision is inconsistent with or contradicts prior approvals or instructions given by the City, when the revision is required due to Consultant's failure to adhere to prior approvals or instructions given by the City, or when the revision corrects or revises any errors or deficiencies.

II. CITY'S RESPONSIBILITIES

A. The City will:

1. Provide its requirements for the Project.

2. Designate the City's Designated Representative.

3. Provide a "Preliminary Construction Budget for each Project" as defined in Subsection III A.

4. Assist Consultant by providing access to readily available (i) reports; (ii) property, boundary, easement, right-of-way, topographic and utility surveys; (iii) zoning and deed restrictions; and (iv) other data relevant to the development of the Project.

5. Assist Consultant in gaining entry to public property and private property, only when reasonably necessary, as may be required by the Consultant in the performance of their services under this Agreement.

6. Review and provide written comments on documents and questions presented by the Consultant and render decisions pertaining thereto within seven (7) calendar days. The City will review and provide written comments on periodic plan and specifications submittals within fourteen (14) calendar days. The City shall immediately notify the Consultant if additional time is needed.

7. Give prompt written notice to the Consultant whenever the City observes or otherwise becomes aware of any defect in the Consultant's work product or services.

8. Direct Consultant, through an Amendment to this Agreement, to provide any necessary Additional Services beyond those authorized in the approved Scope of Services and Project RAP or as stipulated in the Terms and Conditions of this Agreement.

B. The City may pay for or provide surveys describing physical characteristics, legal limitations for the site of the Project, and a written legal description of the site. The surveys and legal information will include, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees, and other special data or conditions. The Consultant may reasonably rely upon such information in the performance of their services under this Agreement unless Consultant's on-site review shows encroachments or other legal impediments which would then make reliance in a reasonable manner impracticable.

C. The City may pay or provide for the services of soil engineers or other subconsultants when such services are deemed necessary by the Consultant and have the City's written concurrence. Such services shall include test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations for determining subsoil, air and water conditions, with reports and appropriate professional recommendations.

III. PRELIMINARY CONSTRUCTION BUDGET

A. The "Preliminary Construction Budget" means the amount allocated by the City for the Project construction contract, which can only be adjusted by the City's prior written approval.

1. The Preliminary Construction Budget will be determined for each specific assignment.

B. Preliminary Construction Budget does not include the compensation of the Consultant and the Consultant's Subconsultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the City.

C. Responsibility for Preliminary Construction Budget

1. Without compromising its professional obligations under Texas Local Government Code § 271.904(d), Consultant is responsible for designing the Project to be constructible within the Preliminary Construction Budget. The Consultant will determine what materials, equipment, component systems and types of construction to include in the Contract Documents, make reasonable adjustments in the scope of the Project with the City's consent, and, with the City's approval, develop bid alternates.

Consultant shall promptly advise the City, in writing, if the Consultant finds that the project being designed will exceed or is likely to exceed the Preliminary Construction Budget and the Consultant is unable to design the Project within the Preliminary Construction Budget. The Consultant shall provide the City with a written revised estimate of construction costs, recommended changes in scope or quality to reduce the construction cost, and a description of any recommended bid alternates. If, after reviewing the Consultant's revised estimate of construction cost and recommendations, the City determines that award of a construction contract within the Preliminary Construction Budget is improbable, the City may:

- a. give written approval of an increase in the Preliminary Construction Budget;
 - b. cooperate in revising the Project scope and quality as required to reduce the construction cost;
 - c. direct the Consultant to prepare the bid documents to include bid alternates; or
 - d. authorize any combination of 2.a, 2.b, and 2.c.
2. If the Preliminary Construction Budget is exceeded by the lowest responsive bid submitted by a responsible bidder, the City shall either:
 - a. give written approval of an increase in the Preliminary Construction Budget;
 - b. cooperate in revising the Project scope and quality as required to reduce the construction cost;
 - c. abandon the Project; or,
 - d. authorize rebidding of the Project within a reasonable time.

In the case of 3.b and/or 3.d, above, the Consultant, as an Additional Service in accordance with Paragraph I.E.6, shall perform those services to produce the Drawings and Specifications as necessary to comply with the Preliminary Construction Budget provided that the bidding or rebidding processes occur within six (6) months of the date that the Consultant delivered the final bid documents to the City, unless the City finds, after consultations with Consultant, that unforeseeable changes in market conditions materially affected the bids. If the bidding or rebidding processes occur after that six (6) month period, or if the City finds that unforeseeable changes in market conditions materially affected the bids, the Consultant will be entitled to additional compensation for performing those services to produce the Drawings and Specifications as necessary to comply with the Preliminary Construction Budget.

3. Bid Alternates

If, under the City's direction, the Consultant prepares the bid documents to include bid alternates as a means to keep the Project cost within the Preliminary Construction Budget, the Consultant's compensation will remain the established fee amount irrespective of the outcome of bids. In the

event the base bid is not within the Preliminary Construction Budget, Subsection III.C.3 of this Agreement governs. The City's acceptance of the base bid or bid alternates will not change the Consultant's fee amount.

a. If, under the City's direction, the Consultant prepares bid documents that include bid alternates, and the City has advised Consultant that such alternates may not be within the Preliminary Construction Budget, the Consultant must track the cost of any such alternates. Compensation for the requested bid alternates will be as follows:

(i) If the bid for the alternates requested by the City is within the Preliminary Construction Budget, there is no change in the fee.

(ii) Otherwise, the work to reconfigure the Bid Documents to include the requested bid alternates will be considered Additional Services with compensation to be determined in accordance with Subsection V.A.3 of this Agreement.

IV. SCOPE OF SERVICES AND RESOURCE ALLOCATION PLAN (RAP)

A. The City will issue a request for proposal to the Consultant for each project to be negotiated. The request for proposals will include a description of the requested Scope of Services, a schedule for the submittal of the proposal, and a proposed schedule for the performance of the services. The Consultant will submit its proposal to the City on a timely basis for its review and approval. Approved proposals will become a part of this Agreement.

B. The Consultant agrees to complete the phases of services in accordance with the applicable standard of professional care, the approved proposal(s), the Project's Resource Allocation Plan ("RAP"). The RAP describes the major tasks to be performed and work products to be delivered by the Consultant, the estimated time to complete the tasks and work products, the amount of compensation allocated for the respective tasks and work products, and an estimated allowance for reimbursable expenses. A specific time period will be set for the completion of each phase in the accepted proposal for the applicable services.

C. Reimbursable Expenses

Reimbursable Expenses are part of Basic Services and include actual expenditures made by the Consultant and the Consultant's employees and Subconsultants in performing services for the Project for the expenses listed in the following Subsections. Consultant must submit invoices or other similar documentation for Reimbursable Expenses as part of a payment request. The City is a tax exempt entity and will not reimburse the Consultant for any tax expenses. The City will consider exceptions on a case- by-case basis. Reimbursable Expenses are limited to these specific items:

1. By prior written approval of the City, reasonable transportation and living expenses in connection with out-of-town travel.

a. All travel and lodging expenses in connection with the Agreement for which reimbursement may be claimed will be reviewed against the City's Travel Policy and the current

(at the time the travel occurs) the General Services Administration (GSA) Domestic Per Diem Rates (the "GSA Rates") at <http://www.gsa.gov/portal/category/26429>. Amounts in excess of the Travel Policy or GSA Rates will not be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets).

b. Reimbursement will be made only for expenses actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

c. Mileage charges for rental cars in connection with out-of-town travel may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations. Mileage costs for travel within the Central Texas area to be included in Consultant's overhead rate and not billed separately as a reimbursable expense.

2. Fees paid for securing approval of authorities having jurisdiction over the Project.

3. Reproduction expenses for drawings, specifications and all other documents required for bidding, City submittals, and for file copies of Consultant, Contractor, and City, and other parties approved by the City.

4. Expense of renderings, models and mock-ups requested by the City. Expense of reproducing record drawings for the City on sepi, mylars or plastic.

5. Reproduction expense for drawings, specifications and any other documentation to be submitted to utility Owners and governmental authorities having jurisdiction over the Project. Interim review plots or drawings for Consultant and Subconsultants are not reimbursable.

D. Amendments

1. Before additional work may be performed or additional costs incurred beyond what is specified in the approved Scope of Services and Project RAP, both parties must execute a written Amendment. The City is not responsible for actions by the Consultant or any costs incurred by the Consultant relating to additional work prior to the execution of the Amendment. Without compromising professional obligations under Texas Local Government Code § 271.904(d), any additional work must be performed within the time period established in the Project RAP.

a. More Time Needed. If the Consultant determines or reasonably anticipates that the Project cannot be completed before the specified completion date, the Consultant shall submit a RAP revision request to the City for approval. The City may, at its reasonable discretion, extend the authorized Project period. Notwithstanding anything to the contrary herein, if, through no fault of Consultant, schedule or dates are changed, or the orderly and continuous progress of Consultant's services is impaired, or Consultant's services are delayed or suspended, then the time for completion of Consultant's services, and the rates and amounts of Consultant's compensation, shall be adjusted equitably.

b. Changes in Scope. Changes that would modify the scope of work authorized for the Project must be established by a Amendment. If the change in scope affects the

schedule or Consultant's fee for the Project, the Consultant shall prepare a revised Project budget and RAP for the City's approval.

2. The City may ask the Consultant to submit a proposal for additional work that is within the defined scope of work under this Agreement. The amount to be paid for the proposed additional work will be a lump sum for each proposal. The Consultant may, without penalty, elect not to submit a proposal. If both parties agree to the proposal for additional work, the parties must execute a written Amendment and revise the RAP.s

E. To the extent City sustains actual damages caused by the sole willful or negligent failure of the Consultant to furnish services in compliance with Texas Local Government Code § 271.904(d), the Consultant agrees to indemnify the City for third-party tort claims attributable to tangible property damage or bodily injury (or death) to the extent caused by such failure. The City agrees to provide the Consultant written notification of such claims.

F. The Consultant is not liable or responsible for City delays or suspensions of services. If the Consultant is delayed through no fault of its own, written time extension requests may be submitted to the City for approval. These requests will be reviewed only if submitted to the City within (14) calendar days of the occurrence unless force majeure conditions exist.

G. Time required by the City to review and return documents to the Consultant following their submittal during and after each phase will be included in the approved Project RAP.

V. COMPENSATION

A. Basis of Compensation

1. General. The City will compensate the Consultant for the Scope of Services described in the approved Project RAP, as it may be subsequently amended, in accordance with Subsection V.B, Payments to the Consultant, and the other Terms and Conditions of this Agreement, as follows:

a. No advance payment will be paid to the Consultant prior to rendering services.

b. Payments for Basic Services will be made monthly in proportion to services performed within each phase of services, as shown in the Project RAP.

(i) *Basic Compensation*

The total amount of compensation to be paid to the Consultant during the term of this Agreement will not exceed in the amount negotiated.

c. Basic Services for Subconsultants may be billed a Consultant a multiple of up to one and fifteen hundredths (1.15) times the amount billed to the Consultant for such services.

2. Total Compensation. The total amount of compensation to be paid the Consultant will not exceed the amount stated in Subsection V.A.1.b(i).

a. Compensation for Basic Services for the Project will be determined either on a Standard Hourly Rate with a Not-to-Exceed Maximum Amount (Standard Hourly Rate) fee basis or as a Stipulated Sum fee basis , as shown in the approved Project RAP.

b. *Standard Hourly Rate:* Compensation for Basic Services described in Subsection I.E. is as follows:

(i) The Consultant's hourly rate for each standard job title includes all labor, overhead, and profit necessary to perform the requested services.

(ii) The Not-to-Exceed-Maximum-Amount for the Project shall include the estimated cumulative hours needed to perform the services multiplied by the appropriate rate schedule plus the estimated allowance for Reimbursable Expenses.

c. *Stipulated Sum*

For Basic Services, as described in Subsection I.E., is as follows:

(i) The Stipulated Sum includes all labor, overhead, and profit necessary to perform the requested services. Payments will be made on the basis of the proportion of services performed for each phase.

(ii) Phases of services and percentages of the total Basic compensation payable per Phase will be included in the approved RAP.

3. Compensation for Additional Services

a. For Project representation beyond Basic Services as described in Subsection I.F. of this Agreement, compensation will be made for Additional Services in accordance with the basis for compensation established in the Project RAP.

b. For Additional Services of Subconsultants a multiple of one and fifteen hundredths (1.15) times the amounts billed to the Consultant for such services will be paid.

4. Principals may only bill at the hourly rate of Principals when acting in that capacity. Principals acting in the capacity of staff must bill at staff rates. The Consultant shall provide documentation with each payment request that clearly indicates how that individual's time is allocated and the justification for that allocation.

5. Compensation for Reimbursable Expenses

a. Reimbursable Expenses, as described in Subsection IV.C, may be billed at a

multiple of one and five hundredths (1.05) times the amounts expended by the Consultant, the Consultant's employees and Subconsultants in the interest of the Project.

b. The City is a tax-exempt organization as defined by Chapter 11 of the Property Tax Code of Texas. The City will furnish Consultant with a Sales Tax Exemption Certification to be issued to suppliers in lieu of tax. If payment of the sales tax is unavoidable in a specific case, the Consultant will be reimbursed by the City for any such costs incurred.

c. An allowance for Reimbursable Expenses described in Subsection IV.C will be determined and included in the approved RAP. The Consultant shall not exceed the allowance amount without prior written approval by the City.

6. The City and the Consultant agree in accordance with the Terms and Conditions of this Agreement that:

a. If the scope of the Project or Consultant's Services are changed, compensation will be equitably adjusted through negotiation.

b. If the Services covered by this Agreement have not been completed within the time specified in the Project RAP, through no fault of the Consultant, the amounts of compensation, rates and multiples set forth herein may be adjusted through negotiation.

B. Payments to the Consultant

1. Payments for Basic Services

Payments for Basic Services, including Reimbursable Expenses, will be made monthly in accordance with the approved Project RAP on the basis set forth in Subsection V.A. Consultant shall submit the application for payment using the forms supplied by the City.

2. Payments for Additional Services

Payments for the Consultant's Additional Services as defined in Subsection I.F may be made no more often than monthly upon presentation by Consultant of an acceptable statement of Additional Services rendered and/or expenses incurred.

3. Payments Withheld

The City may withhold, amend, or nullify any request for payment by the Consultant under those conditions described below.

a. Failure of the Consultant to follow the approved schedule and meet all phase and milestone requirements specified in the Project RAP but without compromising the professional obligations of Consultant under Texas Local Government Code § 271.904(d).

b. The City's receipt of notice that, despite payment to Consultant for services rendered by Subconsultants, Consultant has not paid Subconsultants for services invoiced to and paid by the City within ten (10) calendar days of Consultant's receipt of payment from the City.

c. Failure of the Consultant to submit timely and complete records of Project conference proceedings as specified in Subsection I.B.8.

d. Failure of the Consultant to submit timely and complete weekly reports of its job site observations containing detailed information as specified in Subsection I.E.4.e. of this Agreement.

e. Failure of the Consultant to provide updated record drawings and Contractor's record contract documents to the City within thirty (30) calendar days after Contractor's record contract documents have been provided to the Consultant by the Contractor upon substantial or final completion of the Project.

4. Prompt Payments

a. The City shall make payment to Consultant of the sum named in a payment application within thirty (30) calendar days after the day on which the City received the mutually acceptable payment application.

b. The City cannot make a partial payment on an invoice in dispute. The Consultant may resubmit an invoice for the undisputed amount or wait for payment until the dispute has been resolved. The thirty (30) calendar days restarts after the City receives a corrected payment application.

5. Payment for Project Suspension or Termination

If the Project is suspended or abandoned in whole or in part for more than three months, the Consultant will be compensated for all services performed prior to receipt of written notice from the City of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than three months, the Consultant's compensation and schedule may be equitably adjusted through negotiation. If the parties cannot agree on an adjustment, the City may terminate the Agreement in accordance with Subsection VII.F.

C. Payment Applications

1. Payment applications must be submitted on a monthly basis.

2. For Projects that are to be compensated on a Stipulated Sum basis, the Consultant's statement of services must include a brief summary of the progress and completion of tasks to substantiate the percentage of completion of services by Phase during the time period covered by the payment application.

a. Each payment application from the Consultant will be reviewed to ensure the following information is included and/or is correct. Without this information, the City will not approve the payment. Consultant will be notified, within fourteen (14) calendar days after the City's receipt of the payment application, if the payment application is inaccurate and/ or incomplete. An "accurate and complete payment application" means: That the critical figures included on the payment application have been accurately calculated.

b. That the labor rates, reimbursable, fixed fee, subconsultant's rates, overhead and fringe benefits listed on the payment application are consistent with the terms of the Agreement or the most recent Amendment.

c. That the charges included on the payment application reflect activity for which the Consultant has actually performed work.

d. That the charges included on the payment application are for work included in the Agreement or an amendment, and the charges are tied directly to tasks outlined in the Agreement.

e. That the Consultant's principals are billing at staff rates when acting in that capacity.

f. That the subconsultant activity, the subconsultant approved for a specific discipline being used paid when the work is the discipline is performed.

g. That for any reimbursable expenses, supporting documentation is attached to the invoice.

h. That the Consultant is billing the City for all work performed by both the Consultant and subconsultants within 45 calendar days of when the work was performed.

3. The City may review the first payment application in detail with the Consultant to explain the City's payment requirements and to ensure payment application is accurate and complete.

4. Any costs in excess of approved maximum not-to-exceed contract amount(s) incurred prior to the City's written consent will be at Consultant's risk and the City will not pay such costs unless such costs were incurred at the City's direction. The City is not required to increase the approved maximum not-to-exceed contract amount(s) established under this Agreement.

VI. INSURANCE REQUIREMENTS

A. The Consultant shall carry insurance in the types and amounts indicated below for the duration of the Agreement:

1. Workers' Compensation and Employers' Liability Insurance Coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401) and (1) minimum policy limits for Employers Liability Insurance of \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee; or (2) as otherwise required of this Agreement. The Consultant's policy must be issued by

an insurer licensed or approved to do business in the State of Texas and include these endorsements in favor of the City.

2. Commercial General Liability Insurance with a minimum combined bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B of this Agreement. The policy must contain the following provisions:

a. Blanket contractual liability coverage for liability assumed under this Agreement relative to this Project.

b. Independent Contractors coverage.

c. The City listed as an additional insured, endorsement Commercial General Liability Form), or equivalent.

d. 30-day Notice of Cancellation in favor of the City, endorsement CG 0205, or equivalent.

e. Waiver of Transfer Right of Recovery Against Others in favor of the City, endorsement CG 2404, or equivalent.

f. Aggregate limits of insurance per Project, endorsement CG 2503, or
3. Business Automobile Liability Insurance for all owned, non-owned and hired vehicles (1) with a minimum combined single limit of \$500,000 per accident for bodily injury and property damage; or (2) \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability; or (3) as otherwise required of this Agreement. The policy shall contain the following endorsements in favor of the City:

a. Waiver of Subrogation endorsement CA 0444, or equivalent.

b. 30 day Notice of Cancellation endorsement CA 0244, or equivalent.

c. Additional Insured endorsement CA 2048, or equivalent.

4. Consultant's Professional Liability Insurance to pay on behalf of the assured all sums which the assured becomes legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The policy must provide for 30-day notice of cancellation in favor of the City.

a. Consultant's Professional Liability Insurance with a minimum limit of **One (1) Million Dollars** per claim and in aggregate.

B. General Insurance Requirements

1. The Consultant must complete and forward to the City before the Agreement is executed, as verification of coverage required in the agreement. The Consultant shall not commence services until the required insurance has been obtained and until such insurance has been reviewed by the City. Approval of insurance by the City does not relieve or decrease the liability of the Consultant hereunder and must not be construed to be a limitation of liability on the part of the Consultant.

2. Applicable to all insurance policies: If coverage is underwritten on a claims-made basis, the retroactive date must be coincident with or prior to the date of this Agreement and the certificate of insurance must state that the coverage is claims made and the retroactive date. The Consultant shall maintain continuous coverage for the duration of this Agreement and for not less than twenty-four (24) months following substantial completion of the Project. Coverage, including any renewals, must have the same retroactive date as the original policy applicable to the Project. The Consultant shall, on at least an annual basis, provide the City with a certificate of insurance as evidence of such insurance.

3. The Consultant's insurance coverage must be written by companies licensed or approved to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better unless otherwise required of this Agreement.

4. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the certificate of insurance will indicate: City of Mercedes, 400 S. Ohio Ave, Mercedes, TX 78570.

5. The "other" insurance clause will not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and the Consultant, be considered primary coverage as applicable. In addition, any limitation in Subsection XI.F below, notwithstanding, when the Consultant names the City as an additional insured party under its general liability policy, the Consultant will require that the policy provides any defense provided by the policy. In addition, any limitation in Subsection VI.B.6 below, notwithstanding, when the Consultant names the City as an additional insured party under its general liability policy, the Consultant will require that the policy provides any defense provided by the policy.

6. If insurance policies are not written for amounts specified above, the Consultant shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it must follow the form of the primary coverage.

7. The City shall be entitled, upon request, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies. Any such requests will only be enacted if commercially available to Consultant and if funded by City. Certified copies may include redactions of proprietary information including executive salaries, proprietary revenue information, and client endorsements.

8. The City reserves the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Consultant. Any such adjustments will only be made if commercially available to Consultant and if funded by City.

9. The Consultant shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

10. The Consultant shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance.

11. The Consultant shall provide the City thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

12. If City-owned property is being transported or stored off-site by the Consultant, the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect the City's property.

13. The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of the Consultant.

C. Consultant shall determine appropriate types and levels of insurance coverage to be provided by Subconsultants and advise the Subconsultants of the documentation to be provided to Consultant to verify coverage.

VII. TERMINATION OF AGREEMENT

A. The rights to terminate this Agreement provided in this Section are in addition to and cumulative of all other rights and remedies available to the parties at law or in equity.

B. This Agreement may be terminated by the Consultant upon at least thirty (30) calendar days written notice should the City substantially fail to perform in accordance with the City's responsibilities through no fault of the Consultant.

C. Notice to Cure.

The City will provide a Notice to Cure to the Consultant to cure an event of default described in this Section and/or an anticipatory breach of contract. The Consultant must attend a meeting with the City regarding the Notice to Cure, the event of default, and/or the anticipatory breach of contract. The Notice to Cure will set forth the time limit in which the cure is to be completed or commenced and diligently prosecuted. Upon receipt of any Notice to Cure, the Consultant must

prepare a report describing its program and measures to affect the cure of the event of default and/or anticipatory breach of contract within the time required by the Notice to Cure. The Consultant's report must be delivered to the City at least three (3) business days prior to the required Notice to Cure meeting with the City.

D. This Agreement may be terminated by the City upon at least thirty (30) calendar day's written notice to the Consultant in the event that the Project is abandoned or indefinitely postponed.

E. This Agreement may be terminated by the City for cause upon thirty (30) calendar day's written notice. In the event the City terminates the Agreement for cause, the City may reject any and all proposals submitted by Consultant for up to three (3) years. The City may terminate for cause due to the occurrence of any one of the following:

1. If Consultant persistently fails to perform the work in accordance with the Agreement, in particular the approved Project RAP;
2. If Consultant disregards laws or regulations of any public body having jurisdiction;
3. If Consultant makes fraudulent statements;
4. If Consultant fails to make adequate progress and endangers timely and successful completion of the Agreement in violation of Texas Local Government Code § 271.904(d), which failure includes failure of Subconsultants to meet contractual obligations;
5. Consultant's failure under this Section includes failure of Subconsultants to meet contractual obligations; or
6. If Consultant otherwise violates in any substantial way any provisions of the Agreement.

F. This Agreement may be terminated at the City's convenience upon thirty (30) calendar days written notice; in which event, the Consultant will be compensated for all services performed to termination date, together with Reimbursable Expenses then due, and the City retains the right to continue the Project.

G. In the event of termination not the fault of the Consultant, the Consultant will be compensated for all services performed to termination date, together with Reimbursable Expenses then due without the right to compensation for anticipated profits on services not completed. Consultant will submit to the City, within the timeframe set in the termination notice, all work and documents prepared to that point. Fixed-fee payment to the Consultant, if applicable, shall be proportional to services performed to the date of termination.

VIII. CITY'S REMEDIES

The City and Consultant agree that in the event of a delay in completion or other cause for which the City suffers actual damages, the City may elect to pursue a claim under – Section X and any other remedy allowed by law.

IX. CONSULTANT'S REMEDIES

A. The City and Consultant agree that in the event of a delay in completion or other cause for which the Consultant suffers actual damages, the Consultant may elect to pursue a claim under Section X and any other remedy allowed by law.

X. DISPUTE RESOLUTION

A. Filing of Claims

1. Claims arising from the circumstances identified in this Agreement, or other occurrences or events, shall be made by written notice delivered by the party making the Claim to the other party within thirty (30) calendar days after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered in writing within thirty (30) calendar days after written notice of Claim is delivered by claimant and shall represent that the adjustment claim covers all known amounts and/or extension of time to which claimant is entitled.

2. Within thirty (30) calendar days of receipt of notice of the amount of the Claim with supporting data, the City and Consultant shall meet to discuss the Claim, after which an offer of settlement or notification of no settlement offer will be made to claimant. If claimant is not satisfied with the proposal presented, claimant shall have thirty (30) calendar days in which to: (i) submit additional supporting data requested by the other party; (ii) modify the initial Claim; or (iii) request Alternative Dispute Resolution.

B. Alternative Dispute Resolution

1. If a dispute exists concerning a Consultant or the City, the parties agree to use the following procedure prior to pursuing any other available remedies.

2. Negotiating with Previously Uninvolved Personnel

Either party may make a written request for a meeting to be held between representatives of each party within fourteen (14) calendar days of the request or such later period that the parties may agree to. Each party shall endeavor to include, at a minimum, one (1) previously uninvolved senior level decision maker (the City, officer, or employee of each organization) empowered to negotiate on behalf of their organization. If a previously uninvolved senior level decision maker is unavailable due to the size of the Consultant's organization or any other reason, the Consultant shall nonetheless provide an appropriate senior level decision maker for the meeting. The purpose of this and any subsequent meetings will be good faith negotiations of the matters constituting the dispute. Negotiations will be concluded within thirty (30) calendar days of the first meeting, unless mutually agreed otherwise.

C. Mediation

1. If the procedure described in Subsection X.B.2 proves unsuccessful or is waived pursuant to its terms, the parties shall initiate the mediation process. The City and Consultant agree to select within thirty (30) calendar days a mediator trained in mediation skills and knowledgeable of the Consultant's professional discipline, to assist with resolution of the dispute. The City and Consultant agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the parties from relying on the skills of a person who also is trained in the subject matter of the dispute and/or a contract interpretation expert. Should the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the parties agree to request selection of a qualified individual through a mutually agreed upon Texas Alternate Dispute Resolution Center or through the American Arbitration Association (Construction, Real Estate, and Environmental Practice). This selection is binding on the parties, subject to any reasonable objections of the parties.

2. Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. The parties hereby agree that mediation, at a minimum, shall provide for fact gathering.

3. If the procedure described in Subsection X.C.1 proves unsuccessful or is terminated by one of the parties, the parties may exercise such rights or remedies as allowed by law.

D. Resolution of Disputes between Consultant and Subconsultant:

The Consultant agrees to follow the procedures paralleling those outlined in Subsections X.A, X.B, and X.C in the event of a dispute with a Subconsultant. The City is not a party to the dispute resolution process between the Consultant and Subconsultants. However, if the City is notified of a Subconsultant claim, the City will withhold payments to the Consultant in accordance with Subsection V.B.3.b until receiving notification that the claim has been resolved.

E. LIABILITY: NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, THE PARTIES AGREE AS FOLLOWS:

1. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER CITY, CONSULTANT, NOR THEIR RESPECTIVE PERSONNEL SHALL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES, OR DAMAGES ARISING FROM OR IN CONNECTION WITH LOSS OF USE, LOSS OF REVENUE OR PROFIT (ACTUAL OR ANTICIPATED), LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED COST OF CONSTRUCTION, COST OF CAPITAL, COST OF REPLACEMENT POWER OR CUSTOMER CLAIMS, AND CITY HEREBY RELEASES CONSULTANT, AND CONSULTANT RELEASES CITY, FROM ANY SUCH LIABILITY.
2. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE WRITTEN AUTHORIZATION TO BOTH THE CITY AND CONSULTANT, CITY HEREBY AGREES THAT CONSULTANT'S AND ITS PERSONNEL'S TOTAL LIABILITY UNDER THE AGREEMENT SHALL BE LIMITED TO ONE HUNDRED PERCENT

(100%) OF CONSULTANT'S FEE SET FORTH IN THE APPLICABLE WRITTEN AUTHORIZATION GIVING RISE TO THE LIABILITY OR \$500,000, WHICHEVER IS LESS, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, OR NEGLIGENCE INCLUDING GROSS NEGLIGENCE, STRICT LIABILITY, WARRANTY, INDEMNITY, ERROR AND OMISSION, OR ANY OTHER CAUSE WHATSOEVER.

XI. MISCELLANEOUS PROVISIONS

A. The City's Right to Audit

1. "Records" means all records generated by or on behalf of Consultant and each Subconsultant, whether paper, electronic, or other media, which are in any way related to performance of or compliance with this Agreement, including, without limitation:

- a. Accounting records;
- b. Written policies and procedures;
- c. Subcontract files;
- d. Correspondence;
- e. Amendments to this Agreement (as appropriate);
- f. Agreements between Consultant and any Subconsultant;
- g. Records necessary to evaluate contract compliance and any claim submitted by Consultant or any of its Subconsultants; technical work products in accordance with the approved Project RAP.

2. Consultant shall allow the City's agent or its authorized representative to inspect, audit, and/or reproduce all Records generated by or on behalf of Consultant and each Subconsultant, upon the City's reasonable, prior written request. Further, Consultant shall allow the City's agent or authorized representative to interview any of Consultant's employees, all Subconsultants, and all their respective employees.

3. Consultant shall retain all its Records, and require all its Subconsultants to retain their respective Records, during this Agreement and for the longest of these specified periods: (i) three (3) years after final payment, (ii) until all audit and litigation matters that the City has brought to the attention of Consultant are resolved, or (iii) longer if required by law. The City's right to inspect, audit, or reproduce Records (at no cost to the City), or interview employees of Consultant or its respective Subconsultants exists for the same period described in the preceding sentence.

4. Consultant must provide sufficient and accessible facilities during its normal business hours for the City to inspect, audit, and/or reproduce Records, and to interview any person about the Records.

5. Except to the extent permitted by law, the City shall not be entitled to audit Consultant's proprietary financial records associated with the make-up of negotiated lump sum services, unit prices or fixed fees or rates agreed upon.

6. Consultant shall insert these requirements in each written Agreement between Consultant and any Subconsultant and require each Subconsultant to comply with these provisions.

B. Ownership and Use of Documents

1. All Project Drawings and Specifications delivered by the Consultant under this Agreement are the property of the City; provided however, this conveyance shall not deprive Consultant of ownership of Consultant's previously owned intellectual property, including but not limited to computer software, standard design details, derivatives or specifications which it has developed during the time of its business. The Consultant shall also provide the City high quality mylar and digital computer copies on CD or other City-approved media of updated drawings and reproducible copies of specifications as specified in Subsection I.E.2 this Agreement. The cost of such copies will be paid as specified in Section V of this Agreement. The Consultant may not provide copies of or otherwise use the work products covered by this Subsection XI.B without the express prior written approval of the City.

2. The Consultant agrees that items such as plans, drawings, photos, designs, studies, specifications, computer programs, schedules, technical reports, or other work products which is/are specified to be delivered under this Agreement, and which is/are to be paid for by the City, is/are subject to the rights of the City in effect on the date of this Agreement. These rights include the right to use, duplicate and disclose such items in whole or in part, in any manner and for whatever purpose, and to have others do so. The Consultant shall not copyright or otherwise claim Ownership of the work products covered by this Subsection XI.B. The Consultant shall include in its Subconsultant contracts appropriate provisions to achieve the purpose of this Subsection XI.B.

3. All such items furnished by the Consultant pursuant to this Agreement are considered instruments of its services in respect to the Project. It is understood that the Consultant does not represent such items to be suitable for reuse on any other Project or for any other purpose(s). If the City reuses such items without the Consultant's specific written verification or adaptation, such reuse will be at the risk of the City, without liability to the Consultant. To the extent permitted under applicable law, City shall defend, indemnify and hold harmless Consultant and its subconsultants against all claims, losses, damages, injuries and expenses, including reasonable attorneys' fees arising out of such reuse or modification.

4. Should the Consultant be terminated under this Agreement, the City may continue the Project and receive copies of the Drawings, Specifications, or other documents within fourteen (14) calendar days of the termination notice. Copies will be in the format designated by the

City, as specified in Subsections I.E.2 or I.E.5 of this Agreement (depending on the Project's status at time of termination). The City may have these documents completed, corrected, revised or added to by another design professional in accordance with Title 22, Chapter 137.33(i) of the Texas Administrative Code.

5. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Consultant's rights.

C. Venue

In the event of any suit at law or in equity involving the Agreement, venue will be exclusively in Hidalgo County, Texas and the laws of the State of Texas shall apply to the interpretation and enforcement of this Agreement.

D. Severability

If any word, phrase, clause, sentence or provisions of this instrument, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding only effects such word, phrase, clause, sentence or provision, and such finding does not affect the remaining portions of this instrument; this being the intent of the parties in entering into this instrument; and all provisions of this instrument are declared to be severable for this purpose.

E. INDEMNIFICATION

To the extent allowed by Section 271.904 of the Texas Local Government Code, the Consultant shall indemnify and save harmless City of Mercedes, Texas and its officials, agents, and employees from and against all third-party tort claims, demands, suits, causes of action, loss, damage, reasonable attorney's fees, costs, expenses, and liability for bodily injury or death or tangible property damage to the extent that such injury, death or damage is caused by or results from, any negligent act, error or omission of the Consultant or any of its Subconsultants or any other party for whom Consultant is responsible in connection with the performance of its services or failure to perform its services in conformance with the terms and conditions of this Agreement; provided, however, Consultant shall not be responsible for the negligence of any other parties.

F. Notice

1. Any and all notices under this Agreement must be in writing and shall be delivered to the party entitled to receive the same by hand or U.S. Certified Mail, return receipt requested, addressed as specified in Subsection XI.G.1 of this Agreement.

a. Notices shall be addressed as follows (or as amended in writing in the future):

Mailed Notices to the City:

City of Mercedes
City Secretary
400 S. Ohio Ave
Mercedes, Texas 78570

Mailed Notices to Consultant:

Freese & Nichols, Inc.
222 N. Expressway 77, Suite 106
Brownsville, Texas 78521

2. Mailed notice will be deemed effective three (3) business days after such notice is mailed by Certified Mail with return receipt requested. Hand delivered notice will be effective when received and acknowledged by signed receipt.

G. Successors and Assigns

The City and the Consultant bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement with respect to all covenants of this Agreement. Neither the Consultant nor the City may assign, sublet or transfer any interest in this Agreement without the prior written consent of the other party.

H. Extent of Agreement

This Agreement represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations or Agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both the City and Consultant.

**City of Mercedes
Water and Wastewater Master Plan
Scope of Services**

Project Understanding

Freese and Nichols, Inc. (FNI) understands that the City of Mercedes is seeking professional engineering services to prepare a Water and Wastewater Master Plan. The overall intent of the study is to develop a capital improvements plan for the water and wastewater systems including long-term programmed maintenance. The land use assumptions and load projections will be completed as part of separate contract. Hydraulic models of the water and wastewater system will be developed and calibrated. The condition of the existing water and wastewater system assets will be evaluated and recommendations for rehabilitation and maintenance will be developed. FNI will develop comprehensive Water and Wastewater Capital Improvements Plans. The results of the study will be summarized in the Water and Wastewater Master Plan Report.

In addition to development of the Water and Wastewater Master Plan, the City is also developing a water and wastewater impact fee. Another firm will conduct the calculations, prepare reports, and attend meetings. FNI will develop the water and wastewater impact fee CIP and calculate the utilization for each project to be used in the impact fee calculation.

Scope of Work

TASK A: WATER AND WASTEWATER MODEL DEVELOPMENT

- A1. Conduct Temporary Pressure Testing: FNI will identify locations for field testing based on model calibration needs and areas of concern from the City. Up to twelve (12) pressure recorders will be furnished by FNI. Procedures for field testing will be prepared showing proposed location of testing, duration of testing, required SCADA data during testing period, and assistance from water utility department. The City will be responsible for installing and removing the pressure recorders on the designated fire hydrants.
- A2. Obtain and Evaluate SCADA Data: FNI will obtain water system SCADA records for the temporary field pressure testing period. SCADA data will be used for system operations planning, development of diurnal curves, and to assist in model calibration.
- A3. Water Model Development: FNI will develop a water model of the City's existing water distribution system using as-built drawings of recently completed projects and GIS data provided by the city. The model will consist of all water lines and facilities in GIS.
- A4. Allocate Water Demands: FNI will utilize the City's customer billing data to locate and distribute water system demands during each calibration period.
- A5. Water Model Calibration: FNI will conduct model calibration by adjusting c-factors, peaking factors, and demand distribution until modeling results match the field pressure measurements and pump/tank operation. FNI will provide comparison data points and mapping to document model calibration results.
- A6. Evaluate GIS Connectivity in Wastewater Line GIS Files and Build the Wastewater Model: FNI will evaluate the GIS files of the City's wastewater lines for connectivity. FNI will identify connectivity issues required for the model and request as-built drawings and/or staff input as needed for data

verification. FNI will import 8-inch and larger lines and critical 6-inch lines into the wastewater modeling software from GIS.

- A7. Conduct Wastewater Model Validation: FNI will utilize available data to replicate existing collection system conditions in the wastewater model. FNI will conduct model validation by adjusting model parameters to match model results to field measurements.
- A8. Progress Meeting: Model Development and Calibration: FNI will attend a progress meeting with the City to discuss water and wastewater model development and calibration.

TASK B: WATER AND WASTEWATER SYSTEM ANALYSIS

- B1. Perform Modeling of Existing Water System: FNI will conduct modeling of the existing water system for maximum day operating conditions to evaluate tank cycling, system pressures, and deficiencies within the existing water system. FNI will also utilize the water system model to conduct fire flow analysis under existing maximum day demands to identify areas with less than adequate fire flow capacity. Fire flow analysis will be documented using mapping of available fire flows.
- B2. Perform Modeling of Existing Wastewater System: FNI will run the wastewater model under peak flow conditions and identify existing surcharging and overflow locations and other capacity/restriction issues. Mapping will be prepared to show model results of all surcharging and overflow locations.
- B3. Evaluate TCEQ Capacity Requirements Compliance: FNI will evaluate the system for compliance with the TCEQ Chapter 290 water system capacity requirements. FNI will analyze production capacity, pumping capacity, elevated storage capacity, and total storage capacity to determine if any deficiencies exist. FNI will evaluate the wastewater system for compliance with TCEQ Chapter 217. Recommended improvements will be developed for any areas not in compliance.
- B4. Identify Requirements for System Improvements: FNI will develop target design criteria for water tanks, pump stations, water lines, wastewater interceptors, force mains and lift stations, including allowable surcharging and minimum/maximum velocities.
- B5. Progress Meeting: Existing System Analysis: FNI will attend a progress meeting with the City to discuss the results of the existing water and wastewater system analysis and to develop design criteria for future system improvements.
- B6. Evaluate Pumping, Storage, and Production Capacity for Future Needs: FNI will analyze and develop existing vs. recommended capacity for pumping, ground and elevated storage, and water production throughout the city based on future needs for distribution system improvements.
- B7. Evaluate WWTP Capacity: FNI will evaluate required WWTP capacity for projected wastewater flows, including the need for additional treatment facilities outside of the current WWTP.
- B8. Perform Future Water System Modeling: FNI will utilize the hydraulic model under 20-year demand conditions to develop and analyze alternatives to determine sizing of water system transmission, elevated and ground storage, and pumping facilities needed to serve 20-year demands throughout each pressure zone. FNI will use interim 5-year and 10-year model runs to determine phasing of water system improvements. System improvements will include production, transmission, storage, pumping, and distribution system related needs.

- B9. Perform Future Wastewater System Modeling: FNI will utilize the wastewater model under 20-year flow conditions to develop and analyze alternatives to determine sizing of wastewater system conveyance, storage, and lift station facilities needed to serve 20-year flows. FNI will use interim 5-year and 10-year model runs to determine phasing of wastewater system improvements. System improvements will include gravity lines, force mains, lift stations and collection system related needs.
- B10. Progress Meeting: Water and Wastewater System Improvements: FNI will meet with the City to review the water and wastewater system improvement alternatives.

TASK C: WATER AND WASTEWATER SYSTEM RENEWAL PLANNING

- C1. Facility Site Visits and Maintenance Review: FNI will conduct up to 2 days of site visits to assess the condition of facilities. Data sheets will be compiled documenting the condition of each parameter such as mechanical, electrical, structural, and other physical data. FNI will also review available maintenance records for water system facilities. The site visits are for visual inspection of the condition only and do not include detailed testing of equipment. Data sheets detailing the results of the site visits will be provided to the City in excel format.
- C2. Develop and Assign Condition and Criticality Scores: FNI will develop a scoring system and assign a condition score to each visited facility based on site visits, maintenance history, staff input, and previous studies. FNI will assign criticality based on parameters such as population served, system redundancy, and environmental impact.
- C3. Risk Based Scoring for Facilities: FNI will utilize the condition and criticality scores to develop renewal risk ratings for the facilities. The resulting risk ratings will be used to prioritize renewal projects. A matrix prioritizing rehabilitation projects will be provided to the City.
- C4. Develop Recommended Rehabilitation Projects: FNI will develop a prioritized list of recommended improvements to facilities to address deficiencies or condition issues identified in the site visits. Recommended rehabilitation projects will take into account improvements that may be required to convey or treat the future flows. Cost estimates will be developed for the recommended projects to be programmed into the City's overall capital improvements plan.
- C5. Progress Meeting: System Renewal Planning: FNI will attend a progress meeting with the City to discuss the results of the condition assessment and the recommended rehabilitation projects.

TASK D: CAPITAL IMPROVEMENTS PLAN AND REPORT

- D1. Develop Draft Capital Improvement Plan (CIP) Costs, Phasing Plan & Mapping: FNI will develop costs and phasing for each proposed project. Costs will be in Year 2023 dollars and will include engineering and contingencies. Develop draft CIP scheduling of projects based upon water and wastewater system modeling requirements, future land use, and reliability needs. FNI will develop mapping showing project locations.
- D2. Develop Water and Wastewater Impact Fee Capital Improvements Plan (CIP): FNI will review recently completed water and wastewater improvements and determine which projects are eligible for future cost recovery from growth. FNI will also select projects from the proposed CIP that are

impact fee eligible. Large scale citywide maps will be produced showing proposed projects, costs, and phasing.

- D3. Progress Meeting: Capital Improvement Plans: FNI will meet with the City to discuss future water and wastewater system improvements for 5-year, 10-year and 20-year planning periods.
- D4. Conduct Water and Wastewater Impact Fee Capacity Analysis for Existing Projects: FNI will utilize the land use assumptions to analyze recently completed projects for remaining capacity for impact fee cost recovery for 10-year projected growth.
- D5. Conduct Water and Wastewater Impact Fee Capacity Analysis for Proposed Projects: FNI will utilize the land use assumptions to analyze proposed water and wastewater improvements for eligible capacity for impact fee cost recovery for 10-year projected growth.
- D6. Develop Service Unit Equivalents (SUEs) for Water and Wastewater Systems: FNI will utilize equivalent capacity of water meters to establish the service unit equivalents (SUEs) required in Chapter 395 of the Local Government Code for both existing and 10-year growth conditions.
- D7. Revise CIP and Prepare Draft Water and Wastewater Master Plan Report: FNI will revise the CIP and impact fee CIP based upon City's comments and modifications and prepare a master plan report discussing field test results, assumptions, water demand and wastewater flow projections and recommended capital improvement plans including costs of improvements. The report will include colored maps showing proposed system improvements as well as GIS digital copies. FNI will provide a PDF copy of the draft report to the City.
- D8. Revise and Finalize Water and Wastewater Master Plan Report: FNI will revise the report based on City comments and submit seven (7) final hard copies and one (1) electronic copy in PDF format of the Final Water and Wastewater Master Plan Report.
- D9. Council Presentation: FNI will present the Water and Wastewater Master Plan report to City Council. FNI will be available to answer questions and discuss content.

Summary of Project Meetings

- Progress Meeting: Model Development and Calibration
- Progress Meeting: Existing System Analysis
- Progress Meeting: Water and Wastewater System Improvements
- Progress Meeting: System Renewal Planning
- Progress Meeting: Capital Improvement Plans
- Council Presentation

Project Schedule

- FNI will provide a draft report within 15 months of notice to proceed.
- FNI will provide the final report within 3 weeks of receiving City comments.

Fee Summary

Task	Hours	Labor Effort	Expense Effort	Total Effort
Task A: Water and Wastewater Model Development	284	\$43,088	\$9,778	\$52,866
Task B: Water and Wastewater System Analysis	385	\$62,729	\$5,130	\$67,858
Task C: Water and Wastewater System Renewal Planning	290	\$59,489	\$3,394	\$62,883
Task D: Capital Improvements Plan and Report	416	\$72,443	\$7,084	\$79,527
Total	1,375	\$237,749	\$25,385	\$263,133

City of Mercedes
400 S. Ohio Ave
Mercedes, TX 78570
(956) 565-3114

Work Authorization No. 1

City of Mercedes Water and Wastewater Master Plan

This Work Authorization is made pursuant to the terms and conditions of the Agreement Between Owner and Engineer for Professional Services between CITY OF MERCEDES (Owner) and Freese and Nichols, Inc. (Consultant) for City Engineering Services.

- 1. Detailed Scope of Work.** The Consultant will provide all required work under Attachment No. 1 (Scope of Services).
- 2. Notice to Proceed.** Work shall begin on or after the LATER OF the date this Work Authorization is signed by CITY OF MERCEDES or by NTP date.
- 3. Work Delivery.** All work must be completed and delivered to CITY OF MERCEDES, 400 S. Ohio Ave, Mercedes, TX 78570, Attn: Mr. Alberto Perez, City Manager. (956) 532-7403
Email: aperez@cityofmercedes.com
- 4. Primary Contacts.**
(Project Manager): Mr. Javier A. Ramirez, Assistant City Manager Phone: (956) 532-0576
- 5. Work Authorization No.1 (Total Not to Exceed) Amount:** Lump sum as per Attachment No. 1 - Scope of Services (Fee Summary)
- 6. Request for Payment.** Invoices are to be submitted in accordance with Section V of the Agreement Between Owner and Engineer for Engineering Services between CITY OF MERCEDES (Owner) and Freese and Nichols, Inc. (Consultant) for Engineering Services.

Acceptance/ Acknowledgement:

OWNER

CITY OF MERCEDES

By: Alberto Perez

Printed Name: Alberto Perez

Title: City Manager

Date: 12-9-22

CONSULTANT

FREESE AND NICHOLS, INC.

By: David Bennett

Printed Name: DAVID BENNETT

Title: PRINCIPAL / VICE-PRESIDENT

Date: 12/07/2022

CITY OF MERCEDES

ENGINEERING SERVICES CONTRACT

This Contract made and signed this _____ day of _____, 2022 by and between the City of Mercedes, Texas ("City") and Supreme Engineering, PLLC ("Consultant") whose place of business is in _____. The City and the Consultant for the consideration stated herein agree as follows:

Section 1. General Requirement:

The Consultant hereby agrees to provide a full variety of engineering and consulting services on an as-needed basis, described in the Request for Qualifications No. 2022-13, which is not attached hereto, but are incorporated by reference on to this Contract. Due to the nature of as-needed services, it is not feasible to define the exact scope of work in advance. Once the qualified pool of consultants is established, the City will assign projects based upon the consultant's specialized expertise, experience, and availability to perform and complete the services in a timely manner at a fair and reasonable price

Section 2. Scope of Work:

Engineering services to be provided may include:

- 21 Preparation of plans and specifications for construction projects varying in complexity. Services may include preliminary plans and cost estimates, necessary fieldwork, drafting, design, surveying, bid assistance, construction inspection, project management, preliminary reports, and identification of alternatives, the Engineer will also secure all necessary permits for the project.
- 22 Preparation of specialized engineering studies on a variety of subjects including, but not limited to structural design and structural analysis of buildings, bridges, drainage studies, master planning, water and wastewater, and construction feasibility studies.
- 23 Construction administration and engineering including, but not limited to, review and approval of material submittals, daily construction observation, as needed, and documentation, coordinating contractor's work.
- 24 Development and subdivision reviews that conform with City's approved zoning ordinances, design standards, and any applicable ordinances related developments, subdivisions, and building codes.
- 25 Surveying activities including, but are not limited to, topographic survey, title search, easement legal description preparation, construction staking, and cut-sheet preparation.
- 26 Engineering or project management services may include, but not limited to sanitary sewer, storm sewer, water mains, street paving, sidewalks, bridges,

drainage projects, building repairs, stormwater detention pond design, lift station design, plan reviews, geotechnical, mechanical, electrical, plumbing, and road design drainage studies, in accordance with city standards and procedures.

Possible projects could include:

- a. Site and utility plans at any City facilities and City parks;
 - b. Detention ponds;
 - c. Road engineering projects;
 - d. Facility remodels;
 - e. Subdivision and development reviews;
 - f. Projects identified in the Parks Master Plan;
 - g. Projects identified in the City of Mercedes Capital Improvement Plan; and
 - h. Thoroughfare projects;
 - i. Land Use Analysis;
 - j. Feasibility studies;
 - k. Water and Wastewater Master Planning
 - l. Water and Wastewater Plants;
 - m. Hydraulic modeling;
 - n. Water wells;
 - o. Owner's representative.
- 27 Consultants may perform various topographical surveying tasks as requested for the preparation of civil engineering construction plans. Services may include but not be limited to, the gathering of topographical survey data and providing digital submissions. It is understood that the final work product will be a complete survey that will contain all known site features and will be ready for use as a base drawing for final engineering plans.
- 28 Services may include construction supervision and full-time inspection services on all construction work on which this task is assigned to the consulting engineer. Sufficient personnel as agreed upon by the City shall be assigned to the construction project to assure that each element of the project is constructed in keeping with the plans and specifications approved by the City. Activities task will be dedicated to verifying that all materials provided and work performed is in conformance with the project plans and specifications.
- 29 Engineering Firm shall furnish its inspectors with equipment and materials and any incidentals necessary to properly perform their work.
- 210 The Engineering Firm, at its own expense, may enter contracts with joint contractors, sub-consultants, or employ additional personnel to the extent deemed necessary for the required work. The firm acknowledges that such contracts made with these sub-contractors are not contracted by the City.

Section 3.0 Terms:

- 3.1 This Contract shall be in force upon acceptance in accordance with the City's procurement policy for professional services and a start date of the notice to proceed with two (2) optional annual renewals. Annual renewals are predicated on sufficient budgetary allocation by the City Council for the renewal of the awarded Contract. City Council shall be under no obligation to make such budgetary allocation.
- 3.2 This Contract may be terminated at any time by the City or the Consultant upon receipt of thirty (30) days' prior written notice.
- 3.3 Any Work outside the scope of this Contract must be in writing and authorized, in advance, by the City.
- 3.4 Any variations from this Contract must be in writing and agreed upon by both the City and the Consultant.
- 3.5 In the event that additional or removed services from a particular group, Consultant may give the City a revised price in writing. The City shall have thirty (30) days to accept or reject the price revision.

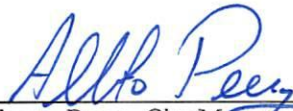
Section 4. Payment Terms:

- 4.1 City agrees to pay Consultant for the Work performed under this Contract, and Consultant agrees to accept, as his full and only compensation thereof, a sum mutually agreed upon and authorized by the City be paid for each authorization on the following terms: Each payment will be based on the receipt of a monthly invoice from the Consultant which details the exact location, date, and type of services rendered during the previous month.
- 4.2 If the Consultant fails to perform any of its obligations under this Contract or any other contract between the City and the Consultant, including its obligation to the City to pay any subcontractor or workmen or other person which arises out of or in connection with the performance of this Contract or any other contracts with the City, then the City shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the City Manager of the City may deem ample to protect the City against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the City Manager may deem proper to secure such protection or satisfy such claims.

Section 5. Miscellaneous:

These Contract, together with the documents and attached Professional Services General Terms of the Agreement are fully a part of this agreement.

THE CITY OF MERCEDES:



Alberto Perez, City Manager

ATTEST:



Joselynn Castillo, City Secretary

CONSULTANT:

Signature:  _____

Printed Name: Omar Cano

Address: 401 S. Jackson Rd #2780 Edinburg TX 78540

Phone Numbers:

Office: _____

Cell: (956) 272-2246

Fax: _____

Federal Taxpayer Identification Number: 84-2981433

CONTRACT FOR THE COLLECTION OF DELINQUENT TAXES

THE STATE OF TEXAS

§

COUNTY OF HIDALGO

§

§

THIS CONTRACT is made between the **CITY OF MERCEDES** a political subdivision of the State of Texas, acting by and through its BOARD OF COMMISSIONERS, hereinafter called Taxing Authority, and **PERDUE, BRANDON, FIELDER, COLLINS & MOTT, L.L.P.**, Attorneys at Law, McAllen, Texas, or their duly authorized representatives, hereinafter called the Firm.

I.

Taxing Authority agrees to employ and does hereby employ the Firm to enforce by suit or otherwise, the collection of all delinquent taxes, penalty and interest, owing to the Taxing Authority which the Taxing Authority's Tax Collector refers to the Firm, provided current years taxes becoming delinquent within the period of this contract shall become subject to its terms upon the following conditions:

- A. Taxes that become delinquent during the term of this Contract that are not delinquent for any prior year become subject to the terms of this Contract on the 1st day of July, of the year in which they become delinquent; and
- B. Taxes that become delinquent during the term of this Contract on property that is delinquent for prior years shall become subject to its term on the first day of delinquency when such property under litigation or comes under litigation or is referred to the Firm for collection by the Taxing Authority's Tax Collector.
- C. Taxing Authority reserves the right to make the final decision as to whether or not to enforce by suit any delinquent tax account turned over to the Firm for collection.
- D. In the event that the Taxing Authority has adopted or adopts a resolution under §33.11 of the Texas Property Tax Code, then all delinquent personal property taxes shall become subject to this contract and are to be turned over to the FIRM for collection 60 days after the delinquency date for said taxes. A 15% penalty shall be assessed to defray the cost of collecting those taxes as provided by §33.11, Texas Property Tax Code. All collection penalties or attorney fees collected on those taxes are the property of the firm and shall be paid in the same manner as all other collection penalties or attorney fees under this contract.

II.

The Firm is to call to the attention of the collector or officials any errors, double assessments or other discrepancies coming under their observance during the progress of the work and is to intervene on behalf of the Taxing Authority in all suits for taxes hereafter filed by any taxing unit on property located within its taxing jurisdiction.

III.

The Firm agrees to make progress reports to the Taxing Authority on request, and the advise the Taxing Authority of all cases where investigation reveals taxpayers to be financially unable to pay their delinquent taxes.

IV.

The Firm further incorporates its written proposal to collect delinquent taxes into this contract and agrees to perform in accordance thereto. All activities performed by the Firm in connection with this contract (i.e. title research and publications costs are at no out of pocket costs to the taxing authority.)

V.

Taxing Authority agrees to pay the Firm as compensation for services rendered hereunder fifteen (15%) percent of the total amount of all delinquent taxes, penalty and interest which are subject to this contract and which are actually collected and paid to the Taxing Authority's Collector of Taxes. Other taxes, including current taxes, which are turned over to the Firm by the Taxing Authority's Tax Assessor-Collector because of the necessity of filing claims in Bankruptcy, with other Federal authorities, or for other reasons, shall become subject to the terms of this contract at the time they are turned over to the Firm and the Firm shall be entitled to fifteen (15%) percent of any amounts of delinquent taxes, penalties, and interest actually received by the Taxing Authority, and fifteen (15%) percent of current taxes actually received by the Taxing Authority when such percentage is actually recovered from the taxpayer, if collected prior to July 1st of any tax year.

VI.

Taxing Authority agrees to furnish to the Firm all data and information in its possession as to the name and address of the taxpayer, the legal description of the property, years the property is delinquent and the amount of taxes due. Taxing Authority further agrees to update said information by furnishing a list of paid accounts and adjustments to the Tax Roll as necessary. Section 33.48(a) (4) of the Texas Property Tax Code provides: "In addition to other costs authorized by law, a taxing unit is entitled to recover...reasonable expenses that are

incurred by the taxing unit in determining the name, identity and location of necessary parties and in procuring necessary legal descriptions of the property on which a delinquent tax is due:..." The Firm agrees to advance on behalf of Taxing Authority such costs and expenses. In consideration of the advancement of such costs and expenses by the Firm, Taxing Authority assigns its right to recover the same to the extent approved by the Court and/or customarily and usually approved by the Court. The Firm expressly waives any claim against Taxing Authority for uncollected costs or expenses.

VII.

This Contract shall commence on October 1, 2020 and continue in force and effect until September 30, 2021, unless extended as hereinafter provided. Unless prior to sixty (60) days before the Expiration Date, the Client or the Firm notifies the other in writing that it does not wish to continue this Agreement beyond its initial term, this Agreement shall be automatically extended in its entirety without the necessity of any further action by either party. In the absence of any such sixty (60) day notice by either the Client or the Firm, the Agreement shall continue to automatically renew in its entirety. At any time during this Agreement or any extension hereof, the City may terminate this Agreement with sixty (60) day notice.

VIII.

For the term of this Contract for the Collection of Delinquent Taxes as set forth in Section VII, the Firm shall indemnify, defend and hold harmless the Taxing Authority, its elected officials, employees and agents (hereinafter referred to as Taxing Authority) from any and all claims, damages, losses, including attorneys' fees as limited herein, resulting from or connected with any claims made by third parties. Specifically, the Firm shall indemnify, defend and hold harmless the Taxing Authority, from any and all claims, damages, losses, resulting from a challenge to the validity of this contract and/or the right of the Taxing Authority to cancel and/or terminate its prior contract with a third party to collect the Taxing Authority's delinquent taxes. The Firm has the right and the obligation to select attorneys, including itself, to defend the Taxing Authority in any such claims and/or suits. The costs of such defense and of said attorneys shall be borne solely by Firm. The Firm, with the consent of the Taxing Authority may negotiate, effectuate, settle and compromise any claims of Third Parties for which Firm is an indemnitor. The Taxing Authority may not settle, compromise, negotiate or pay any claims of third parties for which it seeks indemnification from Firm without obtaining Firm's prior consent and approval.

IX.

Every provision of this Agreement is intended to be severable. If any term or provision hereof is hereafter deemed by a Court to be illegal, invalid, void or unenforceable, for any reason or to any extent whatsoever, such illegality, invalidity, or unenforceability shall not affect the validity of the remainder of this Agreement, it being intended that such remaining provisions

shall be construed in a manner most closely approximating the intention of the Parties with respect to the illegal, invalid, void or unenforceable provision or part thereof.

In consideration of the terms and compensation here stated, the Firm hereby accepts said employment and undertakes the performance of this Contract as above written.

The Firm verifies that it is in compliance with and will comply with all provisions of Texas Government Code Section 2270.002 during the term of this Contract.

This Contract is executed on behalf of the Taxing Authority by the presiding officer of its governing body who is authorized to execute this instrument by Order heretofore passed and duly recorded in its minutes.

WITNESS the signatures of all parties hereto in duplicate originals this the 1st day of September, 2020, in Mercedes, Hidalgo County, Texas.

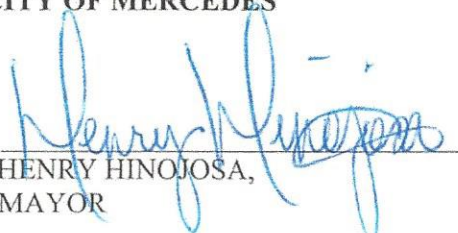
PERDUE, BRANDON, FIELDER
COLLINS & MOTT, L.L.P.

BY:


HIRAM A. GUTIERREZ,
PARTNER

CITY OF MERCEDES

BY:


HENRY HINOJOSA,
MAYOR

ATTEST:


JOSELYNN CASTILLO,
CITY SECRETARY

CONTRACT FOR COURT FINES AND FEES COLLECTION SERVICES

STATE OF TEXAS

§

COUNTY OF HIDALGO

§

§

SECTION I. PARTIES TO THE CONTRACT

THIS CONTRACT, hereinafter called "Contract", is made and entered into by and between the City of Mercedes, Texas, acting herein by and through its governing body, hereinafter called "the City" and **Perdue, Brandon, Fielder, Collins & Mott, L.L.P.**, hereinafter called "Perdue".

THIS CONTRACT supersedes all prior oral and written agreements between the parties, and can only be amended if done so in writing and signed by all parties. Furthermore, this Contract cannot be transferred or assigned by either party without the written consent of all parties.

The City agrees to employ and does hereby employ Perdue to enforce the collection of delinquent court fines, fees, and court costs pursuant to the terms and conditions described in this Contract.

NOW, THEREFORE, in consideration of the covenants, conditions and agreements hereinafter set forth, the adequacy of which is hereby acknowledged, the City and Perdue agree as follows:

SECTION II. CITY'S COLLECTION OBLIGATIONS

A. The City agrees to refer all delinquent accounts, as defined below, to Perdue for collection on or about the first (1st) or the fifteenth (15th) of each month. The City shall refer all delinquent accounts by electronic or magnetic medium, if available, or in any other way that is most favorable to the City. All delinquent accounts should be in a specified format that will allow Perdue to process the account data.

B. An account is considered delinquent when not paid within sixty (60) days of the scheduled appearance date (if the defendant failed to appear), or from any granted extension, or from the date of conviction or judgment, or other court specified due date.

C. The City will provide Perdue with copies of, or access to, the information and documentation necessary to collect the fines, fees, and court costs that are subject to this Contract.

SECTION III. PERDUE'S COLLECTION OBLIGATIONS

A. Perdue agrees to refer all payments and correspondence directly to the court that has assessed or levied the fines, fees, and court costs being collected pursuant to this Contract. Perdue reserves the right to return any accounts not collected within one (1) year of referral by the City. Neither party will have any obligation to the other with regard to returned accounts.

B. Perdue agrees to use its best efforts to collect the delinquent accounts received from the City and to comply with all provisions of state and federal law and regulations promulgated pursuant thereto in the rendition of collection services contemplated by this Contract.

C. If requested by the City, Perdue agrees to provide legal advice to the City on its delinquent accounts.

SECTION IV. COLLECTION FEE

The City agrees to pay Perdue as follows:

(1) No charge for the collected fines, fees, and court costs referred to Perdue by the City imposed on all unadjudicated offenses committed on or before June 18, 2003.

(2) Thirty percent (30%) of the collected fines, fees, and court costs referred to Perdue imposed on all adjudicated offenses committed on or before June 18, 2003; and

(3) Thirty percent (30%) of the collected fines, fees, and court costs referred to Perdue imposed on all offenses occurring after June 18, 2003.

The thirty percent (30%) collection fee shall be added to the amount owed by a defendant that is more than 60 days past due pursuant to Article 103.001, Texas Code of Criminal Procedure.

SECTION V. EXCEPTIONS TO THE COLLECTION FEE

Pursuant to Article 103.0031(b), Texas Code of Criminal Procedure, Perdue cannot collect from a defendant the percentages referred to in Section IV. COLLECTION FEE if the defendant has been determined by the court of original jurisdiction to be indigent, or has insufficient resources or income, or is otherwise unable to pay all or part of the underlying fine or costs. The collection fee does not apply to a case that has been dismissed by a court of competent jurisdiction or to any amount that has been satisfied through time-served credit or community service.

The collection fee shall, however, be applied to any balance remaining after a partial credit for time served or community service if the balance is more than 60 days past due.

SECTION VI. METHOD OF PAYMENT

Absent an agreement otherwise, the City shall calculate and receive the amount of any collection fee due to Perdue. Said fee shall be paid to Perdue by check on a monthly basis. All compensation shall become the property of Perdue at the time of payment.

SECTION VII. COMMENCEMENT AND TERMINATION OF CONTRACT

This Contract shall commence on October 1, 2020, 2016, and continue in force and effect until September 30, 2021, except that either party to this agreement may terminate this agreement by giving the other party thirty (30) days written notice of their desire and intention to terminate this agreement. This contract will be automatically renewed on its identical terms for a one-year term commencing on the anniversary date of this contract, unless written notice of intent not to automatically renew is delivered by the City to the firm not less than sixty (60) days prior to the expiration date of the initial 2-year term. Thereafter, the contract shall automatically renew for successive periods of one (1) year under the terms and conditions stated herein, unless either party gives prior notice of termination. Upon termination, Perdue shall have an additional thirty (90) days to complete work on all delinquent accounts referred from the City prior to the notice of termination and will be entitled to compensation on such accounts if collected.

SECTION VIII. NOTICES

For purposes of sending notice under the terms of this Contract, all notices from the City shall be sent to Perdue by certified United States mail, or delivered by hand or courier, and addressed as follows:

Perdue, Brandon, Fielder, Collins & Mott, LLP
Attn: Hiram A. Gutierrez, Partner
BY U.S. MAIL OR BY COURIER DELIVERY:
P.O. Box 2916
McAllen, Texas 78502
Telephone Number: 956-631-4026

All notices from Perdue shall be sent to the City by certified United States mail, or delivered by hand or courier, and addressed as follows:

City of Mercedes
Attn: Henry Hinojosa, Mayor
400 S. Ohio
Mercedes, Texas 78570
Telephone Number: 956-565-8592

SECTION IX. VENUE AND CONTROLLING LAW

This Contract is made and is to be interpreted under the laws of the State of Texas. Venue for any disputes involving this Contract shall be in the appropriate courts in Hidalgo County, Texas.

SECTION X. ACCEPTANCE OF EMPLOYMENT

In consideration of the terms and compensation herein stated, Perdue hereby accepts said employment and undertakes performance of said Contract as set forth above.

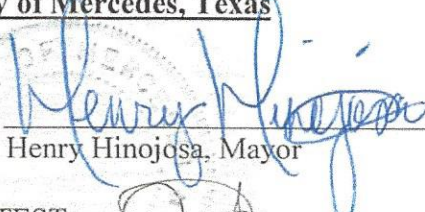
SECTION XI. SEVERABILITY

Every provision of this Contract is intended to be severable. If any term or provision hereof is hereafter deemed by a court of competent jurisdiction to be illegal, invalid, void or unenforceable, for any reason or to any extent whatsoever, such illegality, invalidity, or unenforceability shall not affect the validity of the remainder of this Contract, it being intended that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the illegal, invalid, void or unenforceable provision or part thereof.

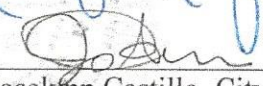
This Contract is executed on behalf of the City by the presiding officer of its governing body who is authorized to execute this instrument by Ordinance heretofore passed and recorded in its minutes. This Contract may be executed in any number of counterparts, and each counterpart shall be deemed an original for all purposes. Signed facsimiles or electronically signed Contracts executed on behalf of the City by the presiding officer of its governing body authorized to execute this instrument shall be binding and enforceable.

WITNESS the signature of all parties hereto this 1st day of September, 2020.

City of Mercedes, Texas

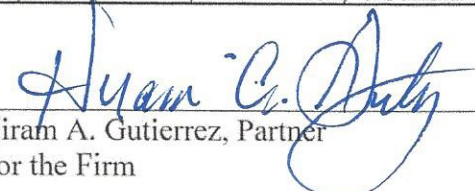
By: 

Henry Hinojosa, Mayor

ATTEST: 

Joselynn Castillo, City Secretary

PERDUE, BRANDON, FIELDER, COLLINS & MOTT, L.L.P.

By: 

Hiram A. Gutierrez, Partner
For the Firm

August 2020

4

THE UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

MEMORANDUM FOR THE DIRECTOR

SUBJECT: [Illegible]

DATE: [Illegible]

[Illegible text block]

[Illegible text block]

[Illegible text block]



DATE: July 1, 2025**FROM:****ITEM:** **Discussion and possible action to Discussion and Possible Action to Approve
The Interlocal Agreement For Police Services Between The City of Mercedes
And The Mercedes Independent School District**

BACKGROUND INFORMATION: The City of Mercedes and the Mercedes Independent School District (MISD) seek approval for an Interlocal Agreement for Police Services for the 2025-2026 school year. This agreement establishes a collaborative effort between the City and MISD to enhance school safety and maintain a secure learning environment. Under this agreement, the City will provide five (5) certified police officers to serve on MISD campuses. These officers will perform a range of duties, including law enforcement, traffic enforcement, and participation in school activities, while ensuring compliance with all applicable laws and regulations. The agreement also outlines cost-sharing measures, where MISD will reimburse the City for officer salaries, fringe benefits, and other associated costs.

This agreement is authorized under Chapter 791 of the Texas Government Code, which permits local governments to contract for shared services. Additionally, Texas Education Code §37.081 grants MISD the authority to employ security personnel and peace officers to ensure school safety.

The primary objective of this agreement is to foster a cooperative approach to law enforcement within MISD, thereby ensuring the safety of students, staff, and visitors. This collaboration between the City and MISD is seen as a crucial step in addressing safety concerns and maintaining a secure educational environment.

BOARD REVIEW/CITIZEN FEEDBACK:**ALTERNATIVES/OPTIONS:****FISCAL IMPACT:** (Total Costs)**Proposed Expenditure/(Revenue):**

\$

Account Number(s):

01-522-1013 Regular - MISD

01-522-1083 Overtime - MISD

Finance Review by:**LEGAL REVIEW:**

ATTACHMENTS:

1. MISD INTERLOCAL AGREEMENT FOR POLICE SERVICES FY25-26 MEMO
2. MISD INTERLOCAL AGREEMENT FOR POLICE SERVICES FY25-26
3. MISD INTERLOCAL AGREEMENT FOR POLICE SERVICES FY24-26

STAFF RECOMMENDATION: Approval of the Interlocal Agreement for Police Services is recommended as it aligns with the shared goal of promoting a safe and secure environment for students and staff within the Mercedes Independent School District. The agreement is a proactive measure to ensure the well-being of the community and strengthen the partnership between the City of Mercedes and MISD.



MERCEDES POLICE DEPARTMENT

316 S Ohio Ave.
Mercedes, Texas 78570
(956) 565-3102 Fax (956) 565-2583

Francisco J. Sanchez
Chief of Police

MEMO

Date: July 1, 2025

From: Francisco J. Sanchez, Chief of Police

Item: Interlocal Agreement For Police Services Between The City of Mercedes And The Mercedes Independent School District

The City of Mercedes and the Mercedes Independent School District (MISD) seek approval for an Interlocal Agreement for Police Services for the 2025-2026 school year. This agreement establishes a collaborative effort between the City and MISD to enhance school safety and maintain a secure learning environment. Under this agreement, the City will provide five (5) certified police officers to serve on MISD campuses. These officers will perform a range of duties, including law enforcement, traffic enforcement, and participation in school activities, while ensuring compliance with all applicable laws and regulations. The agreement also outlines cost-sharing measures, where MISD will reimburse the City for officer salaries, fringe benefits, and other associated costs.

Background Information:

1. Legal Authority:

- This agreement is authorized under Chapter 791 of the Texas Government Code, which permits local governments to contract for shared services. Additionally, Texas Education Code §37.081 grants MISD the authority to employ security personnel and peace officers to ensure school safety.

2. Purpose:

- The primary objective of this agreement is to foster a cooperative approach to law enforcement within MISD, thereby ensuring the safety of students, staff, and visitors. This collaboration between the City and MISD is seen as a crucial step in addressing safety concerns and maintaining a secure educational environment.

3. Key Provisions:

- **Assignment of Officers:** The City will assign five certified police officers to MISD campuses for the 2025-2026 school year. These officers will perform various duties, including law enforcement, traffic control, and participation in school activities. They will also serve as a visible deterrent to crime and educate faculty on safety measures.
- **Cost Reimbursement:** MISD will reimburse the City for all costs associated with officer salaries, benefits, and other expenses. The estimated cost for the agreement is \$368,504.65, and MISD will also cover fuel, maintenance, and other vehicle-related expenses.

MERCEDES POLICE DEPARTMENT

316 S Ohio Ave.
Mercedes, Texas 78570
(956) 565-3102 Fax (956) 565-2583

- **Supplemental Duty Pay:** MISD agrees to pay for additional officers needed for extracurricular activities, sporting events, and other special events.
- 4. **Jurisdiction and Authority:**
 - The agreement specifies the jurisdiction and authority of the assigned officers, ensuring they have the necessary powers to enforce laws and maintain safety within MISD properties, both within and outside the city limits.
- 5. **Duration and Terms:**
 - The agreement is set to commence on September 1, 2025, and will conclude on August 31, 2026. It also includes provisions for mediation in case of disputes and clarifies that neither party waives governmental immunity.

Recommendation:

Approval of this Interlocal Agreement for Police Services is recommended as it aligns with the shared goal of promoting a safe and secure environment for students and staff within the Mercedes Independent School District. The agreement is a proactive measure to ensure the well-being of the community and strengthen the partnership between the City of Mercedes and MISD.

Thank you for your time and consideration.

X

Francisco J. Sanchez
Chief of Police

INTERLOCAL AGREEMENT FOR POLICE SERVICES

This INTERLOCAL AGREEMENT FOR POLICE SERVICES (Agreement) is made by and between the City of Mercedes, Texas (Contractor) and the Mercedes Independent School District (Agency) on this the 1st day of September, 2025.

PREMISES

Whereas, Chapter 791 of the Texas Government Code authorizes local governments to contract with each other to provide governmental functions and services, and

Whereas, the Texas Education Code §37.081 gives the Board of Trustees of AGENCY the power to employ security personnel and commissioned peace officers to carry out the effects of that Chapter, and

Whereas, the City of Mercedes, Texas is a Texas Municipality and Home Rule City as set forth in VTCA Government Codes §791.003 (4), and

Whereas, the Mercedes Independent School District is a Texas School District and local government entity as set forth in the VTCA Government Code §791.003, and

Whereas, the Mercedes Independent School District School Resource Officers and the City of Mercedes all have the authority to perform law enforcement actions within their respective jurisdictional areas, and

Whereas, the Parties are of the opinion that achieving the objectives of law enforcement, the protection of students, and maintenance of a safe learning environment within the Mercedes Independent School District can be facilitated by establishing a cooperative approach to law enforcement, and that the performance of this Agreement is in the common interest of both parties and that the division of cost fairly compensates the performing party for the services under this contract,

Whereas, the parties, in performing governmental functions or in paying for the performance of governmental functions hereunder shall make the performance, or those payments from current revenues legally available to each party:

Now therefore, in consideration of the promises and mutual covenants herein contained, it is agreed, under the authority of Section 791.001-791.029 of the Texas Government code, as follows:

AGREEMENT

ARTICLE 1. STATEMENT OF WORK:

CONTRACTOR agrees to perform the following, in a good professional manner:

- I. CONTRACTOR shall assign and provide to AGENCY'S campuses **Five (5)** Texas Certified Police Officers during the **2025-2026** school year in accordance with the dates set forth in Article 5 of this agreement. Specific campus and time assignments will be mutually agreed to by the Contractor and AGENCY. Time assignments are not limited to any time of day. CONTRACTOR agrees that officers may be assigned to sporting events or other extra-curricular activities.
- II. CONTRACTOR will Assign contracted Police Offices to provide police presence on and around school campuses and all AGENCY property, including, without limitation, traffic enforcement and pedestrian crosswalk policing, etc. The Chief of Police shall assign the duties of each officer considering the safety of each student, school district employee, and non-school person.
- III. CONTRACTOR shall ensure that assigned officers comply with all departmental policies and procedures, including but not limited to, city policies and state and federal statutes, procedures, and directives.
- IV. Contracted Police Officers may execute investigative and arrest authority.
- V. Contracted Police Officers shall function as Certified Peace Officers of the State of Texas and shall comply with all duties and obligations, which they have under state and federal law as licensed peace officers.
- VI. CONTRACTOR will supply five (5) police vehicles as available.
- VII. AGENCY agrees to pay overtime for additional officers for sporting events, parades, other extra-curricular activities that require more than the number of Contracted Police Officers.

ARTICLE 2. OBJECTIVES:

CONTRACTOR with the cooperation of the AGENCY is employed to carry out the purposes of Chapter 37, Texas Education Code, Safe Schools to include, but not limited to the following:

1. Provide a safe learning environment by fulfilling their obligations as licensed peace officer.
2. Serve as visible deterrent, through their presence and action as peace officers to reduce drug abuse, alcohol abuse and other crime amongst students.
3. Educate faculty in the following:
 - Identification of gangs and their effects
 - Identification of drugs and their effects
 - Training and preparation for safety measures; active shooter training(s)
4. Participate in other school activities and events when appropriate.
5. Report incidents (in writing) of a delinquent criminal nature to the campus Principal and the Chief of Police.
6. Take positive enforcement action as a law enforcement officer when confronted by a violation of Federal Law, State Law and any City Ordinance.
7. Promote and support organizational strategies of the district to address the causes and reduce the fear of crime and social disorder through problem solving tactics and their work as peace officers within the district.

ARTICLE 3. DUTIES AND RESPONSIBILITIES OF AGENCY:

The AGENCY will provide the following to the CONTRACTOR:

1. Reimburse the City of Mercedes for all costs associated with Salaries and Fringe Benefits for the Contracted Peace Officers.
2. Will assign office space on campus.
3. Access to telephones.
4. Administrative and clerical support whenever possible from the campus and central office.
5. Supplies and materials within an approved budget
6. Costs associated with uniforms and training as needed to maintain school-based policing; and
7. Other support as requested.

ARTICLE 4. JURISDICTION AND SCOPE OF DUTIES OF EMPLOYED OFFICERS

The AGENCY hereby determines that the jurisdiction of any officer exercising the terms under this agreement shall include all territory, within the boundaries of the AGENCY and also all property outside the boundaries of the AGENCY that is owned, leased or rented by or otherwise under the control of the AGENCY. The AGENCY further determines that the Police Officers assigned under this agreement shall have the following powers:

- I. All the powers, privileges and immunities as police officers when working as police officers for the AGENCY.
- II. The powers to enforce all laws, including municipal ordinances, and state laws and may, in accordance with Chapter 52, Texas Family Code, take a juvenile into custody.
- III. The power to enforce any and all laws of the State of Texas and the rules of the AGENCY which have a direct bearing on the safety and welfare of students within the AGENCY.
- IV. The power, jurisdiction and lawful authority to provide police services under the terms of this agreement even if said police officers are off duty. However, nothing in this agreement shall require any Mercedes Police Officer to provide police services pursuant to this agreement if off duty.
- V. With regards to the jurisdiction of police officers exercising their authority in areas owned, leased or rented by or otherwise under the control of the AGENCY not located within the city limits of the CONTRACTOR. Police Officers will exercise their authority and shall detain any juvenile or adult for the violations of state law and then contact the appropriate law enforcement agency having jurisdiction of the AGENCY School in question for the purpose of proceeding forward with the proper reporting and processing of cases to the Hidalgo County Juvenile Probation Department of the Hidalgo County District Attorney's Office for prosecution.
- VI. Any other powers necessary to carry out the effects of Texas Education Code Chapter 37, particularly 37.081.

ARTICLE 5. TERMS AND DATES OF CONTRACT:

The period of performance of the agreement shall commence on the 1st day of September, 2025 and shall end on the 31st day of August, 2026. This is based on a regular City of Mercedes Police Officer work year. No cost will be incurred or charged on the agreement prior to the starting date or after the ending date. All days are payable based on eight (8) hour day terms.

ARTICLE 6. SUPPLEMENTAL DUTY PAY:

Agency agrees to pay supplemental duty pay for the services of any and all uniformed, sworn law enforcement personnel for the purposes of providing security and crowd control for athletic and special events sponsored by the Agency. Arrangements will be made between the Safe Schools Coordinator and/or the Athletic Director. The Contractor will provide the number of officers reasonably necessary as requested by the Agency for any such event subject to availability of officers. The Agency shall reimburse Contractor for the actual rate of pay Contractor expends and/or is responsible for compensating individual officer(s) for the time spent in providing Agency Supplemental Duty services.

ARTICLE 7. CONSIDERATION:

It is estimated that the total cost of the basic agreement (excluding supplemental duty pay) will not exceed **\$368,504.65** and the CONTRACTOR agrees to use its best effort to perform all work described for this estimated cost. If at any time it is determined by the CONTRACTOR that the total cost for performance of said work will be greater than the above estimated cost, then CONTRACTOR shall notify AGENCY of such excess cost, giving its revised estimate of the total cost. AGENCY is not obligated to pay any amount exceeding the estimated cost indicated in this section unless such amount is approved by AGENCY in writing before the cost is incurred nor is the CONTRACTOR obligated to perform any such work after such determination until approved of such excess amount.

Item	Qty	Unit Cost	Total
Certified Police Officers	5	\$73,700.93 (annual salary including FICA/MED and fringe benefits)	\$368,504.65
TOTAL			\$368,504.65

Mercedes ISD (agrees to reimburse the City of Mercedes for costs associated with fuel, maintenance and/or repair of vehicles and equipment incurred during the time the Contracted Peace Officers are on duty for Mercedes ISD.

ARTICLE 8. PAYMENT:

Payment for services will be processed only when proper documentation has been provided for the AGENCY business office for payment. Proper business accounting will be utilized. CONTRACTOR shall bill AGENCY on a monthly basis and shall not bill AGENCY for a service period that exceeds thirty days (30) of service to AGENCY. Once proper documentation has been provided to the AGENCY, payment will be processed within 15 - 30 days.

ARTICLE 9. MEDIATION:

It is the policy of the State of Texas to encourage resolution of any disputes through alternative dispute resolution procedures such as non-binding mediation. Any dispute between the parties to this agreement, which is not resolved through informal discussion, may be submitted to a mutually acceptable mediation service or provider for non-binding mediation. The parties involved in the mediation shall equally share the costs of mediation. This paragraph does not preclude a party from seeking legal or equitable relief from a court of competent jurisdiction.

ARTICLE 10. VENUE AND JURISDICTION:

The parties acknowledge that exclusive jurisdiction and venue for any such action for breach of this agreement shall be Hidalgo County, Texas.

ARTICLE 11. MODIFICATION OF AGREEMENT:

This document constitutes the entire agreement between the AGENCY and CONTRACTOR and may be modified only by written agreement executed by both the AGENCY and CONTRACTOR.

ARTICLE 12. DUTIES:

Officers shall only be assigned duties by the AGENCY which are consistent with their existing obligations as licensed police officers under state law and which arise pursuant to their employment under Chapter 37, Texas Education Code (Exhibit C).

ARTICLE 13. NO WAIVER OF GOVERNMENTAL IMMUNITY:

Neither the AGENCY nor CONTRACTOR, via this contract, waive governmental immunity from suit, or from liability, except as expressly set forth by the Texas Legislature in the Texas Local Government Code. The fact that the AGENCY and the CONTRACTOR have entered into this agreement shall not in any way, constitute a deliberate waiver of immunity by either entity, which immunities are expressly reserved by both parties.

ARTICLE 14. CITY NOT LIABLE FOR ACTIONS DIRECTED BY DISTRICT:

CONTRACTOR shall not be liable to the AGENCY or to any third party for any act or omission Mercedes of any Mercedes Police Officer who is at the time acting under the direction of any officer, administrator or employee of the district.

CONTRACTOR:

City of Mercedes

Oscar D. Montoya
Mayor

Alberto Perez
City Manager

Francisco J. Sanchez
Chief of Police

Joselynn Castillo
City Secretary

AGENCY:

Mercedes Independent School District

Marcos J. Garcia IV
President, Mercedes I.S.D.
Board of Trustees

Dr. Alicia Noyola
Mercedes I.S.D. Interim Superintendent of Schools

INTERLOCAL AGREEMENT FOR POLICE SERVICES

This INTERLOCAL AGREEMENT FOR POLICE SERVICES (Agreement) is made by and between the City of Mercedes, Texas (Contractor) and the Mercedes Independent School District (Agency) on this the 1st day of September, 2024.

PREMISES

Whereas, Chapter 791 of the Texas Government Code authorizes local governments to contract with each other to provide governmental functions and services, and

Whereas, the Texas Education Code §37.081 gives the Board of Trustees of AGENCY the power to employ security personnel and commissioned peace officers to carry out the effects of that Chapter, and

Whereas, the City of Mercedes, Texas is a Texas Municipality and Home Rule City as set forth in VTCA Government Codes §791.003 (4), and

Whereas, the Mercedes Independent School District is a Texas School District and local government entity as set forth in the VTCA Government Code §791.003, and

Whereas, the Mercedes Independent School District School Resource Officers and the City of Mercedes all have the authority to perform law enforcement actions within their respective jurisdictional areas, and

Whereas, the Parties are of the opinion that achieving the objectives of law enforcement, the protection of students, and maintenance of a safe learning environment within the Mercedes Independent School District can be facilitated by establishing a cooperative approach to law enforcement, and that the performance of this Agreement is in the common interest of both parties and that the division of cost fairly compensates the performing party for the services under this contract,

Whereas, the parties, in performing governmental functions or in paying for the performance of governmental functions hereunder shall make the performance, or those payments from current revenues legally available to each party:

Now therefore, in consideration of the promises and mutual covenants herein contained, it is agreed, under the authority of Section 791.001-791.029 of the Texas Government code, as follows:

ARTICLE 2. OBJECTIVES:

CONTRACTOR with the cooperation of the AGENCY is employed to carry out the purposes of Chapter 37, Texas Education Code, Safe Schools to include, but not limited to the following:

1. Provide a safe learning environment by fulfilling their obligations as licensed peace officer.
2. Serve as visible deterrent, through their presence and action as peace officers to reduce drug abuse, alcohol abuse and other crime amongst students.
3. Educate faculty in the following:
 - Identification of gangs and their effects
 - Identification of drugs and their effects
 - Training and preparation for safety measures; active shooter training(s)
4. Participate in other school activities and events when appropriate.
5. Report incidents (in writing) of a delinquent criminal nature to the campus Principal and the Chief of Police.
6. Take positive enforcement action as a law enforcement officer when confronted by a violation of Federal Law, State Law and any City Ordinance.
7. Promote and support organizational strategies of the district to address the causes and reduce the fear of crime and social disorder through problem solving tactics and their work as peace officers within the district.

ARTICLE 3. DUTIES AND RESPONSIBILITIES OF AGENCY:

The AGENCY will provide the following to the CONTRACTOR:

1. Reimburse the City of Mercedes for all costs associated with Salaries and Fringe Benefits for the Contracted Peace Officers.
2. Will assign office space on campus.
3. Access to telephones.
4. Administrative and clerical support whenever possible from the campus and central office.
5. Supplies and materials within an approved budget
6. Costs associated with uniforms and training as needed to maintain school-based policing; and

ARTICLE 5. TERMS AND DATES OF CONTRACT:

The period of performance of the agreement shall commence on the 1st day of September, 2024 and shall end on the 31st day of August, 2025. This is based on a regular City of Mercedes Police Officer work year. No cost will be incurred or charged on the agreement prior to the starting date or after the ending date. All days are payable based on eight (8) hour day terms.

ARTICLE 6. SUPPLEMENTAL DUTY PAY:

Agency agrees to pay supplemental duty pay for the services of any and all uniformed, sworn law enforcement personnel for the purposes of providing security and crowd control for athletic and special events sponsored by the Agency. Arrangements will be made between the Safe Schools Coordinator and/or the Athletic Director. The Contractor will provide the number of officers reasonably necessary as requested by the Agency for any such event subject to availability of officers. The Agency shall reimburse Contractor for the actual rate of pay Contractor expends and/or is responsible for compensating individual officer(s) for the time spent in providing Agency Supplemental Duty services.

ARTICLE 7. CONSIDERATION:

It is estimated that the total cost of the basic agreement (excluding supplemental duty pay) will not exceed \$368,504.65 and the CONTRACTOR agrees to use its best effort to perform all work described for this estimated cost. If at any time it is determined by the CONTRACTOR that the total cost for performance of said work will be greater than the above estimated cost, then CONTRACTOR shall notify AGENCY of such excess cost, giving its revised estimate of the total cost. AGENCY is not obligated to pay any amount exceeding the estimated cost indicated in this section unless such amount is approved by AGENCY in writing before the cost is incurred nor is the CONTRACTOR obligated to perform any such work after such determination until approved of such excess amount.

Item	Qty	Unit Cost	Total
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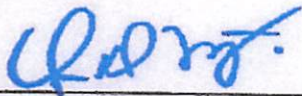
which immunities are expressly reserved by both parties.

ARTICLE 14. CITY NOT LIABLE FOR ACTIONS DIRECTED BY DISTRICT:

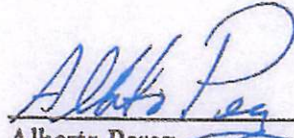
CONTRACTOR shall not be liable to the AGENCY or to any third party for any act or omission Mercedes of any Mercedes Police Officer who is at the time acting under the direction of any officer, administrator or employee of the district.

CONTRACTOR:

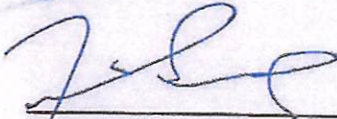
City of Mercedes



Oscar D. Montoya
Mayor



Alberto Perez
City Manager



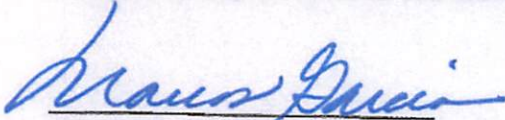
Francisco J. Sanchez
Chief of Police



Joselynn Castillo
City Secretary

AGENCY:

Mercedes Independent School District



Marcos J. Garcia IV
President, Mercedes I.S.D.
Board of Trustees



Jeanne Venecia
Mercedes I.S.D. Acting Superintendent of Schools