

**CONTRACT AGREEMENT
FOR
ENGINEERING/PROFESSIONAL SERVICES**

STATE OF TEXAS
COUNTY OF HIDALGO

PART I. PARTIES AND PROJECT

THIS AGREEMENT is effective as of the date of execution by the last party to sign (the "Effective Date") by and between the City of Mission hereinafter called the **OWNER**, located at 1201 E. 8th St., Mission, TX 78572 and M2 ENGINEERING hereinafter called the **ENGINEER** for the **22nd STREET EXPANSION in Mission, Hidalgo County, Texas**, hereinafter called the **PROJECT**.

PART II. ENGINEERING FEES

The maximum amount payable under this Agreement without modification is **\$43,500.00**. The basis of cost is identified in **EXHIBIT "D" Cost Proposal**, attached hereto.

PART III. TERM OF AGREEMENT

This Agreement shall be in effect until the close of business two years after final execution of this contract.

PART IV. NOTICES

Reports and notices shall be made by **ENGINEER** to **OWNER's** representative:

City of Mission
Attention: Juan Pablo "JP" Terrazas, P.E., CPM
1201 E. 8th St.
Mission, TX 78572

PART V. TERMS AND CONDITIONS

ARTICLE 1. - ENGINEER'S SERVICES

1.1 Basic Services

The work to be furnished by the **ENGINEER** under this Agreement shall consist of engineering services to be developed in accordance with applicable state and local design standards and in a format acceptable to the **OWNER**, and/or other reviewing agencies.

The **ENGINEER** agrees to perform professional services in connection with the **PROJECT**, including normal civil engineering services related thereto, as set forth below and contained within this Agreement. Specifically, the **OWNER** will furnish items and perform those services for fulfillment of the Agreement as identified in **EXHIBIT A "Further Description of Engineering Services and Related Matters: Services to be Provided by the OWNER"**, attached hereto and made a part of this Agreement. The **ENGINEER** shall render professional services necessary for the development of the **PROJECT** as identified in **EXHIBIT B "Further Description of Engineering Services and Related Matters: Services to be Provided by the ENGINEER"**, attached hereto and made a part of this Agreement. The **ENGINEER** shall perform all work in accordance with the outline identified in **EXHIBIT C "Work Schedule"**, attached hereto and made a part of this Agreement.

1.2 Survey Topography for Design Phase

After written authorization to proceed with the Survey Data Collection and Reporting Phase **ENGINEER** shall provide the following:

The specific duties and responsibilities of **ENGINEER** during the Survey Topography for Design Phase are as indicated in **EXHIBIT B “Further Description of Engineering Services and Related Matters: Services to be Provided by the ENGINEER”**.

1.3 Design Phase

After written authorization to proceed with the Design Phase, **ENGINEER** shall:

1.3.1 In consultation with **OWNER**, review the extent of the **PROJECT** as identified in 1.3.7.

1.3.2 Prepare for incorporation in the construction contract documents final drawings (hereinafter called "Drawings and Specifications") to show the character and extent of the **PROJECT**.

1.3.3 Furnish to **OWNER** such documents and design data as may be required for, and assist in the preparation of, the required documents so that **OWNER** may apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the **PROJECT**, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

1.3.4 Advise **OWNER** of any adjustments to the latest opinion of probable Project Cost caused by changes in extent or design requirements of the Project or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.

1.3.5 Prepare for review and approval by **OWNER**, his legal counsel and other advisors construction contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitation to bid and instructions to bidders, and assist in the preparation of other related documents.

1.3.6 Furnish four (4) copies of the above documents and present and review them in person with **OWNER**.

1.3.7 The specific duties and responsibilities of **ENGINEER** during the Design Phase are amended and supplemented as indicated in **EXHIBIT B “Further Description of Engineering Services and Related Matters: Services to be Provided by the ENGINEER”**.

1.4 Bidding or Negotiating Phase

After written authorization to proceed with the Bidding or Negotiating Phase, **ENGINEER** shall:

1.4.1 Distribute complementary set of plans and specifications to plan review rooms as designated by **OWNER**.

1.4.2 Conduct a pre-bid conference, inviting all prospective bidders and prospective subcontractors to discuss all aspects and requirements to the proposed work.

1.4.3 Issue all addenda which do not affect the scope of the proposed **PROJECT**. Obtain **OWNER**'s approval prior to issuance of addenda which affect the scope of the **PROJECT** or significantly alters the **PROJECT** as approved by **OWNER**.

1.4.4 Assist the **OWNER** in obtaining bids and prepare tabulations of bids received; submit four (4) copies of the bid tabulation and the **ENGINEER'S** recommendation for the award of contract to the **OWNER**.

1.4.5 Consult with and advise **OWNER** as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the bidding documents.

1.4.6 Consult with and advise **OWNER** as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.

1.4.7 The duties and responsibilities of **ENGINEER** during the Bidding or Negotiating Phase are amended and supplemented as indicated in **EXHIBIT B "Further Description of Engineering Services and Related Matters: Services to be Provided by the Engineer"**.

1.5 Construction Phase

During the Construction Phase, **ENGINEER** shall:

1.5.1 Perform the duties and discharge the responsibilities stated in **PROJECT** specifications after receiving written authorization to proceed with construction. The extent and limitations of the duties, responsibilities and authority of **ENGINEER** as assigned in **PROJECT** specifications shall not be modified, except to the extent provided in **EXHIBIT B "Further Description of Engineering Services and Related Matters: Services to be Provided by the Engineer"**, and except as **ENGINEER** may otherwise agree in writing. All of **OWNER's** instructions to Contractor(s) will be issued through **ENGINEER** who will have authority to act on behalf of **OWNER** to the extent provided in said Standard General Conditions of the construction contract documents except as otherwise provided in writing.

1.5.2 Make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of Contractor(s) and to determine if such work is proceeding in accordance with the construction contract documents (hereinafter referred to as "Contract Documents"). During such visits and on the basis of on-site observations, **ENGINEER** shall keep **OWNER** informed of the progress of the work, and shall notify **OWNER** of defects and deficiencies and may disapprove or reject work failing to conform to the Contract Documents.

1.5.3 Review and approve or take other appropriate action in respect of shop drawings and samples, the results of tests and inspections and other data which each Contractor is required to submit but only for conformance with the design concept of the **PROJECT** and compliance with the information given in the Contract Documents (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto); determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by contractor(s) in accordance with the Contract Documents.

1.5.4 Issue all instructions of **OWNER** to Contractor(s): issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare change orders (**for errors or omissions only**) as required; have authority as **OWNER's** representative to require special inspection or testing of the work; act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of **OWNER** and Contractor(s) relating to the acceptability of the work or the interpretation of the Contract Documents pertaining to the execution and progress of the work.

1.5.5 Based on **ENGINEER's** on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data schedules, determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts; such recommendations of payment will constitute a representation to **OWNER**, based on such observations

and review, that the work has progressed to the point indicated, that, to the best of **ENGINEER's** knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning **PROJECT** upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his recommendation), and that payment of the amount recommended is due Contractor(s); but by recommending any payment **ENGINEER** will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by **ENGINEER** to check the quality or quantity of the work or to review the means, methods, techniques or procedures of construction or safety precautions or programs incident thereto or that **ENGINEER** has made an examination to ascertain how or for what purposes any Contractor has used the monies paid on account of the contract price.

1.5.6 Conduct an inspection to determine if the **PROJECT** is substantially complete and a final inspection to determine if the work has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that **ENGINEER** may recommend, in writing, final payment to each Contractor and may give written notice to **OWNER** and the contractor(s) that the work is acceptable (subject to any conditions therein expressed), by any such recommendation and notice shall be subject to the limitations expressed in Paragraph 1.5.5.

1.5.7 Revise contract drawings to record as-built conditions, with the assistance of the Contractor and **OWNER**. Provide **OWNER** with one (1) set of record drawings, and one (1) set in electronic format.

1.5.8 **ENGINEER** shall not be responsible for the acts or omissions of any Contractor, or subcontractor, or any of the Contractor(s)' or subcontractors' agents or employees or any other persons (except **ENGINEER's** own employees and agents) at the site or otherwise performing any of the Contractor(s)' work; however, nothing contained in Paragraphs 1.5.1 through 1.5.8, inclusive, shall be construed to release **ENGINEER** from liability for failure to properly perform duties undertaken by him in the Contract Documents.

1.5.9 The duties and responsibilities of **ENGINEER** during the Construction Phase are amended and supplemented as indicated in **EXHIBIT B "Further Description of Engineering Services and Related Matters: Services to be Provided by the Engineer"**.

1.6 Period of Service

1.6.1 The provisions of Article 1 and the various rates of compensation for the **ENGINEER's** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the **PROJECT** through completion of the Construction Phase. **ENGINEER's** obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts and construction of the **PROJECT** including extra work and required extensions thereto.

1.6.2 If **OWNER** has requested significant modifications or changes in the extent of the **PROJECT**, the time of performance of **ENGINEER's** services and his various rates of compensation shall be adjusted appropriately.

ARTICLE 2. - ADDITIONAL OR SPECIAL SERVICES

2.1 If authorized in writing by **OWNER**, **ENGINEER** shall furnish or obtain Additional or Special Services of the following types which are not considered normal or customary Basic Services except to the extent provided otherwise in **EXHIBIT B "Further Description of Engineering Services and Related Matters: Services to be Provided by the Engineer"**; compensation to the **ENGINEER** shall be as provided in Article 4.

2.1.1 Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the **PROJECT**; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the **PROJECT** of

any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the **PROJECT**.

2.1.2 Services resulting from significant changes in extent of the **PROJECT** or its design including, but not limited to, changes in size, complexity, **OWNER's** schedule, or character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond **ENGINEER's** control.

2.1.3 Providing models for **OWNER's** use.

2.1.4 Preparing documents for alternate bids requested by **OWNER** for Contractor(s) work which is not executed or documents for out-of-sequence work.

2.1.5 Investigations involving detailed consideration of operations, maintenance and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the **PROJECT**; evaluating processes available for licensing and assisting **OWNER** in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by **OWNER**.

2.1.6 Furnishing the services of special consultants for other than the normal civil design.

2.1.7 For services resulting from the arranging for performance by persons other than the principal prime contractors of services for the **OWNER** and administering **OWNER's** contracts for such services.

2.1.8 Services in connection with change orders to reflect changes requested by **OWNER** where such changes are outside the normal scope of this **PROJECT**.

2.1.9 Services during out-of-town travel required of **ENGINEER** other than visits to the site as required in Article 1.

2.1.10 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction; (2) a significant amount of defective or neglected work of Contractor(s) that could not have been reasonably prevented by **ENGINEER** or his representatives; (3) prolongation of the contract time of any prime contract by more than sixty (60) days; (4) acceleration of the progress schedule involving services beyond normal working hours; and (5) default of Contractor(s).

2.1.11 Preparing to serve or serving as a consultant or witness for **OWNER** in any litigation, public hearing or other legal or administrative proceeding involving the **PROJECT** (except as agreed to under Basic Services).

2.1.12 Additional services in connection with the **PROJECT**, including services normally furnished by **OWNER** and services not otherwise provided for in the Agreement.

2.2 Resident Services During Construction

2.2.1 If requested by **OWNER** or recommended by **ENGINEER** and agreed to in writing by the other, a Resident Project Representative will be furnished and will act as directed by **ENGINEER** in order to assist **ENGINEER** in observing performance of the work of Contractor(s). Such services will be paid for by **OWNER** as indicated in Paragraph 4.1.2.3.

2.2.2 The duties and responsibilities and the limitations on the authority of the Resident Project Representative and assistants will be set forth in **EXHIBIT B "Further Description of Engineering Services and Related Matters: Services to be Provided by the Engineer"**, or if modified or amended is to be identified, attached to and made a part of this Agreement before such services begin.

2.2.3 Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative (if furnished) and assistants, **ENGINEER** shall endeavor to provide further protection for **OWNER** against defects and deficiencies in the work of Contractor(s); but the furnishing of such Resident Project representation will not make **ENGINEER** responsible for construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or for Contractor(s)' failure to perform their work in accordance with the Contract Documents.

2.2.4 If **OWNER** designates another person to represent **OWNER** at the **PROJECT** Site who is not **ENGINEER**'s agent or employee, the duties, responsibilities and limitations of authority of such other person and the effect thereof on the duties and responsibilities of **ENGINEER** under this Agreement will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

ARTICLE 3. - OWNER's RESPONSIBILITIES

OWNER shall:

3.1 Provide all criteria and full information as to **OWNER**'s requirements for the **PROJECT**, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards which **OWNER** will require to be included in the Drawings and Specifications.

3.2 Assist **ENGINEER** by placing at his disposal all available information pertinent to the **PROJECT**, and/or any other data relative to design or construction of the **PROJECT**.

3.3 Furnish to **ENGINEER**, as required for performance of **ENGINEER**'s Basic Services (except to the extent provided otherwise in **EXHIBIT B "Further Description of Engineering Services and Related Matters: Services to be Provided by the Engineer"**), data prepared by or services of others, including without limitation core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way; property descriptions; zoning, deed and other land use restriction; and other special data or consultations not covered in Article 2; all of which **ENGINEER** may rely upon in performing his services.

3.4 Arrange for access to and make all provisions for **ENGINEER** to enter upon public and private property as required for **ENGINEER** to perform his services.

3.5 Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **ENGINEER**, obtain advice of an attorney, insurance counselor and other consultants as **OWNER** deems appropriate for such examination and render in writing, decisions pertaining thereto within a reasonable time so as not to delay the services of **ENGINEER**.

3.6 Provide such accounting, independent cost estimating and insurance counseling services as may be required for the **PROJECT**, such legal services as **OWNER** may require or **ENGINEER** may reasonably request with regard to legal issues pertaining to the **PROJECT** including any that may be raised by Contractor(s). Such auditing service as **OWNER** may require to ascertain how or for what purpose any Contractor has used the moneys paid to him under the construction contract and such inspection services as **OWNER** may require to ascertain that Contractor(s) are complying with any law, rule or regulations applicable to their performance of the work.

3.7 Designate in writing a person to act as **OWNER's** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define **OWNER's** policies and decisions with respect to materials, equipment, elements and systems pertinent to **ENGINEER's** services; **OWNER's** representative for the Project will be: **Juan Pablo "JP" Terrazas, P.E., CPM, Assistant City Manager/City Engineer**

3.8 Give prompt written notice to **ENGINEER** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **ENGINEER's** services, or any defect in the work of Contractor(s).

3.9 Furnish, or direct **ENGINEER** to provide necessary Additional or Special Services as stipulated in Article 2 of this Agreement or other services as required.

3.10 Bear all costs incident to compliance with the requirements of this Article 3.

3.11 The duties and responsibilities of **OWNER** are amended and supplemented as indicated in **EXHIBIT B "Further Description of Engineering Services and Related Matters: Services to be Provided by the Owner"**.

ARTICLE 4. - PAYMENTS TO ENGINEER

4.1 Methods of Payment for Services and Expenses of ENGINEER.

4.1.1 For Basic Services. **OWNER** shall pay **ENGINEER** for Basic Services rendered under Article 1 (as amended and supplemented by **EXHIBIT B "Further Description of Engineering Services and Related Matters: Services to be Provided by the Engineer"**) as follows:

Payment of the lump sum fee will be in proportion to the percent completion of the work tasks and Basic Services to be provided by the **Engineer** in accordance with the Cost Proposal identified in **EXHIBIT D – Cost Proposal**.

The final 5% of the Basic Services fee shall not be payable until the As-Built Drawings are submitted by the **ENGINEER**.

4.1.2 For Additional or Special Services. **OWNER** shall pay **ENGINEER** for Additional or Special Services rendered under Article 2 as follows:

4.1.2.1 General. For Additional or Special Services rendered under Paragraphs 2.1.1 through 2.1.10 inclusive, Paragraph 2.1.12, and services in preparation to appear as a consultant or witness under Paragraph 2.1.11, on the basis of a negotiated fee, prior to commencing Additional or Special Services. The negotiated fee for Additional or Special Services will incorporate labor and non-labor rates no higher than shown in the table(s) of Contract Rates as shown in **EXHIBIT D – Cost Proposal**.

Payment of the lump sum fee for Additional or Special Services negotiated and/or as shown in **EXHIBIT D – Cost Proposal**, will be in proportion to the percent completion of the work tasks and Special Services to be provided by the **Engineer**.

4.1.2.2 Serving as a Witness. For the services rendered by principals and employees as consultants or witnesses in any litigation, hearing or proceeding in accordance with Paragraph 2.1.11 at the rate of no more than **\$175** per hour or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, hearing or proceeding will be on the basis provided in Paragraph 4.1.1).

4.1.2.3 Resident Project Services. For resident services during construction under Paragraph 2.2, on the basis of a negotiated daily, weekly or monthly fee.

4.2 Times of Payments

4.2.1 **ENGINEER** shall submit monthly statements for Basic and Additional or Special Services rendered and for Reimbursable Expenses incurred. The statements will be based upon **ENGINEER's** estimate of the proportion of the total services actually completed at the time of billing. **OWNER** shall make prompt monthly payments in response to **ENGINEER's** monthly statements.

4.3 Other Provisions Concerning Payments

4.3.1 If **OWNER** fails to make any payment due **ENGINEER** for services and expenses within thirty (30) days after receipt of **ENGINEER's** bill therefore, the amounts due **ENGINEER** shall include a charge of 10% per annum interest from said thirtieth day, and in addition, **ENGINEER** may, if himself not in default, after giving seven (7) days written notice to **OWNER**, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.

4.3.2 In the event of termination by **OWNER** under Paragraph 5.1 upon the completion of any phase of the Basic Services and Additional or Special Services, progress payments due **ENGINEER** for services rendered through such phase shall constitute total payment for such services. In the event of such termination by **OWNER** during any phase of the Basic Services and Additional or Special Services, **ENGINEER** will be paid for services rendered to the termination notice date including reimbursable expenses.

4.4 Definitions

4.4.1 The Payroll Costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all personnel engaged directly on the **PROJECT**, including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical personnel, stenographers, typists and clerks; plus the cost of customary and statutory benefits including but not limited to social security contributions, unemployment, excise and payroll taxes, workers compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto.

4.5 Request for Payment. On or before noon of the first Monday of each month during the performance of the services, **ENGINEER** shall submit to **OWNER** for its approval a request for payment ("Request for Payment") in form and substance satisfactory to **OWNER**. Each Request for Payment shall set forth the amount and the sums of all prior services rendered, a detailed breakdown of the amount and the sum of all prior payments. **OWNER** shall review each such Request for Payment and may make such exceptions, as **OWNER** reasonably deems necessary or appropriate under the circumstances then existing. About five (5) working days after the **OWNER's** Board of Commissioners meets approving such payment, the **OWNER** shall make payment to **ENGINEER** in the amount approved as aforesaid subject to 4.7, below.

4.6 Final Payment. After final completion of the work and acceptance thereof by **OWNER**, **ENGINEER** shall submit a final request ("Final Request") which shall set forth all amounts due and remaining unpaid to **ENGINEER** and upon approval thereof by **OWNER**, **OWNER** shall pay to **ENGINEER** the amount due (Final Payment") under such Final Request in accordance with the provisions of 4.5.

The Final Request for Payment shall not be made until **ENGINEER** delivers to **OWNER** an affidavit that so far as **ENGINEER** has knowledge or information, all materials and services over which **ENGINEER** has control have been paid.

4.7 Qualifications on Obligations to Pay. Any provision hereof to the contrary notwithstanding, **OWNER** shall not be obligated to make any payment (whether a payment under Article 4.5 hereof or Final Payment) to **ENGINEER** hereunder if any one or more of the following conditions precedent exist:

4.7.1 **ENGINEER** is in default of any of its obligations hereunder or otherwise is in default under this

Agreement or any of the Contract documents;

4.7.2 Any part of such payment is attributable to Services which are not performed in accordance with this Agreement; provided however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement;

4.7.3 **ENGINEER** has failed within ten (10) days after **ENGINEER** has been paid to make payments to consultants or other third parties used in connection with the Services for which **OWNER** has made payment to **ENGINEER**;

4.7.4 If **OWNER**, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement, no additional payments will be due **ENGINEER** hereunder unless and until **ENGINEER**, at its sole cost, performs a sufficient portion of the Services so that such portion of the compensation then remaining unpaid is determined by **OWNER** to be sufficient to so complete the services.

4.8 No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the services to which such partial payment relates or relieves **ENGINEER** of any of its obligations hereunder with respect thereto.

ENGINEER shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the Services.

4.9 Waiver. The making of the Final Payment shall constitute a waiver of all claims by the **OWNER** except those arising from (1) faulty or defective services appearing after completion of the Work, (2) failure of the services to comply with the requirements of this Agreement or the Contract documents or (3) terms of any special warranties required by this Agreement or provided at law or in equity. The acceptance of Final Payment shall constitute a waiver of all claims by the **ENGINEER** except those previously made in writing and identified by the **ENGINEER** as unsettled at the time of the Final Request for payment.

ARTICLE 5. - GENERAL CONSIDERATIONS

5.1 Termination. The obligation to provide further services under this Agreement may be terminated by the **OWNER** upon thirty (30) days written notice at the sole discretion of the **OWNER** or either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

5.2 Ownership of Documents. Original documents (plans, specifications, drawings, designs and survey notes) developed in connection with services performed hereunder belong to, and remain the property of the **OWNER**, in consideration of which it is mutually agreed that the **OWNER** will use them solely in connection with the **PROJECT**. The **ENGINEER** may retain reproducible copies of such documents.

5.3 Controlling Law. This agreement is to be governed by the Laws of the State of Texas. Venue shall be in Hidalgo County.

5.4 Successors and Assigns

5.4.1 **OWNER** and **ENGINEER** each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party in respect to all covenants, agreements, and obligations of this Agreement.

5.4.2 Neither **OWNER** nor **ENGINEER** shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement

without the written consent of the other except as stated in Paragraph 5.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent **ENGINEER** from employing such independent consultants, associates and sub-contractors as he may deem appropriate to assist him in the performance of services hereunder.

5.5 Attorney's Fees. In the unlikely event that a dispute occurs which is litigated or arbitrated, or a cause of action in law or equity is filed concerning the operation, construction, interpretation or enforcement of this agreement, the losing party shall bear the cost of the attorney's fees incurred by the prevailing party and any and all costs applicable thereto, including but not limited to court costs, deposition fees, expert witness fees, out of pocket expenses and travel expenses which are incurred by the prevailing party.

ARTICLE 6. - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

6.1 This Agreement is subject to the following special provisions:

6.1.1 The Certificate of Insurance should be made to the City of Peñitas, P.O. Box 204, Peñitas, TX 78576, and should reference the operation.

All certificates must be received prior to commencement of service/work. All Certificates of insurance shall be approved by the Risk Manager and/or his/her designated representative prior to the commencement of any work.

In the event the insurance coverage expires prior to the completion of this contract, a renewal certificate shall be issued thirty (30) days prior to said expiration date. The City must be notified at least thirty (30) days prior to any material change in and/or cancellation and/or non-renewals of such policies.

The term "City" shall include The City of Peñitas and their employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement.

The City reserves the right to make reasonable requests or revisions pertaining to the types and limits of that coverage.

During the term of the Contract, the successful contractor/respondent/selected firm shall acquire and maintain, for the duration of the contract period the following insurances:

Comprehensive Commercial General Liability: The Contractor/Respondent/Selected Firm shall provide minimum limits of \$250,000 each occurrence, \$500,000 annual aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations, independent contractors, products, completed operations, personal and advertising injury, and contractual liability. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall name the "City of Mission" as an additional insured with a waiver of subrogation. The policy of insurance shall be written on an "occurrence" form.

Blanket "XCU" – Explosion, Collapse & Underground
Independent Contractors
Care, Custody and Control
Contractual Liability

No endorsements excluding these coverage's are allowed.

Additional Insured Requirement:

To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, the City of

Mission shall be included as additional insured under the CGL policy, using ISO Additional Insured Endorsements CG20101001 and CG20371001, or endorsements providing equivalent coverage, including products completed operations

Business Automobile Liability: The Contractor/Respondent/Selected Firm shall maintain limits of no less than \$250,000 combined single limit per occurrence for bodily injury and property damage, and \$500,000 annual aggregate. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall name the "City of Mission" as an additional insured with a waiver of subrogation. The policy of insurance shall be written on an "occurrence" form.

Applicable as long as no fragile or perishable products are transported; otherwise, Cargo Insurance is required.

Additional Insured Requirement:

To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, the City of Mission shall be included as additional insured under the CGL policy, using ISO Additional Insured Endorsements CG20101001 and CG20371001, or endorsements providing equivalent coverage, including products completed operations

Builder's Risk/Fire & Extended Coverage: The Contractor shall insure the building or other work included in this contract on an all-risk (special causes of loss) policy, with an insurance company or companies acceptable to the Owner. The amount of the insurance at all times to be at least equal to the amount paid on account of work and material and plus the value of the work or materials furnished or delivered but not yet paid for by the Owner. Builder's Risk Policies shall cover loss of materials by theft, vandalism, malicious mischief or other loss whether materials are incorporated in the work or not.

The policies shall be in the names of the City and the Contractor, as their interests may appear, and certificates of insurance shall be delivered to the Owner before monthly partial payments are made. The policy shall provide for the inclusion of names of all other contractors, subcontractors and other employed on the premises as ensured and shall stipulate that the insurance companies shall have no right to subrogation against any contractors, subcontractors or other parties employed on the premises for any work building alterations, construction or erection to the described property.

Workers' Compensation: The contractor/respondent/selected firm shall provide and maintain workers' compensation insurance for all employees in the full amount required by statute and full compliance with the applicable laws of the State of Texas. Employer's Liability insurance shall be provided in amounts not less than \$500,000 per accident for bodily injury by accident; \$500,000 policy limit by disease; and \$500,000 per employee for bodily injury by disease."

In addition, a Waiver of Subrogation Endorsement shall be provided by the contractor naming the City of Mission in said policy for Worker's Compensation Insurance. Contractor/Respondent/Selected Firm shall further ensure that all of its sub-contractors maintain appropriate levels of workers' compensation insurance.

Professional Services - Insurance Provisions: Errors & Omissions (Professional Liability): \$1,000,000 Each Claim Limit \$1,000,000 Aggregate Limit. If coverage is written on a claims-made basis, the retroactive date shall be on or prior to the date of the contractual Agreement. The certificate of insurance shall state that the coverage is claims-made and include the retroactive date. The insurance shall be maintained for the duration of the contractual Agreement and for four (4) years following completion of the services provides under the contractual Agreement or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence coverage.

Deductible Clause: Contractor/Respondent/Selected Firm to declare self-insured retention or deductible amounts in excess of \$25,000.

Other Provisions: All insurance carriers shall be rated A6 or better and be published on a current A.M. Best Rating Guide, or some other recognized equivalent rating service (e.g., Moody's, Standard & Poor's). The City may request a copy of the insurance policy according to the nature of the project. City reserves the right to accept or reject the insurance carrier. All Certificates of Insurance shall be provided on the Acord Form 25. All insurance requirements are imposed and must be complied with by any and all sub-contractors, and/or lower-tier sub-contractors. A copy of endorsements providing Additional Insured, Primary Insurance and Waiver of Subrogation wording shall be attached to the certificates of insurance.

6.1.2 Indemnity. The **OWNER** will require that any contractor or subcontractors performing work in connection with drawings and specifications produced under this Agreement to hold harmless, indemnify and defend, the **OWNER** and the **ENGINEER**, their consultants, and each of their officers, agents, and employees from any and all liability claims, losses or damage arising out of or alleged to arise from the contractor's (or subcontractor's) negligence in the performance of the work described in the construction contract documents.

6.2 The following Exhibits are attached to and made a part of this Agreement:

6.2.1 **Exhibit A "Further Description of Engineering Services and Related Matters: Services to be Provided by the Owner"**

6.2.2 **Exhibit B "Further Description of Engineering Services and Related Matters: Services to be Provided by the Engineer"**

6.2.3 **Exhibit C "Work Schedule"**

6.2.4 **Exhibit D "Cost Proposal"**

6.3 This Agreement (consisting of Pages 1 to 12, inclusive), together with the Exhibit(s) and schedule(s) identified above constitute the entire agreement between **OWNER** and **ENGINEER** and supersedes all prior written or oral understandings. This Agreement and said Exhibit(s) and Schedule(s) may only be amended, supplemented, modified or canceled by a duly executed written instrument.

ARTICLE 7. OTHER CONDITIONS OR SERVICES

7.1 Notwithstanding anything to the contrary contained in this Agreement, **OWNER** and **ENGINEER** agree and acknowledge that **OWNER** is entering into this Agreement in reliance on **ENGINEER's** experience and abilities with respect to performing the Services. The **ENGINEER** accepts the relationship of trust and confidence established between it and the **OWNER** by this Agreement. **ENGINEER** covenants with **OWNER** to use its best efforts, skill, judgment and abilities to design the **PROJECT** and to further the interests of **OWNER** in accordance with **OWNER's** requirements and procedures, in accordance with the National Society for Professional Engineers' professional standards, and in compliance with all applicable national, federal, state and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Prior to the commencement of construction, **ENGINEER** shall certify in writing to **OWNER** that the Drawings and Specifications and all drawings and the improvements when built in accordance therewith shall conform to all applicable governmental regulations, statutes and ordinances then in effect. **ENGINEER** represents, covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the Services.

7.2 The **ENGINEER** represents, covenants and agrees that all of the Services to be furnished by the **ENGINEER** under or pursuant to this Agreement, from the inception of the Agreement until the **PROJECT** has been fully completed, shall be of the standard and quality which prevail among engineers of similar experience, knowledge, skill and ability engaged in engineering practice throughout Texas under the same or similar circumstances involving the design and construction of a project such as the **PROJECT** with all the amenities as set forth in the Drawings and Specifications.

7.3 The **ENGINEER** represents, covenants and agrees that its special talent, training and experience cause it to be the prime professional on the **PROJECT** and that because of such talent and training, **ENGINEER** envisions the construction of the **PROJECT** in its entirety and possesses the special skills which enable it to recognize dangerous conditions that a reasonable, prudent **ENGINEER** having such special skills could anticipate may arise from the proper use of the **PROJECT** after accepted by **OWNER**; as the design professional, it has knowledge which will enable it to recognize specific dangers that may arise from the proper use of the **PROJECT** after accepted by **OWNER**; and, it recognizes that any management, employees, and agents of the **OWNER**, plus guests and visitors are within a class of foreseeable persons who will be relying on the **PROJECT** being designed in a professional and safe manner.

ENGINEER represents, covenants and agrees that its **PROJECT** Drawings and Specifications will be accurate and free from any material errors; shop drawing accuracy will be the responsibility of the Contractor as outlined in the Drawings and Specifications. **ENGINEER** also represents, covenants and agrees to the following: The design of the **PROJECT** will conform to its foreseeable use as a **PROJECT** with all the amenities as set forth in the Drawings and Specifications; the result of the drawings and Specifications, if built in accordance therewith, will be suitable for purposes for which the **PROJECT** is designed; and the **PROJECT** will be designed and construction will be inspected in a workmanlike, professional manner and will be suitable for human occupancy and use. The **ENGINEER**'s responsibilities as set forth herein shall at no time be in any way diminished by reason of any approval by the **OWNER** of the Drawings and specifications nor shall the **ENGINEER** be released from any liability by reason of such approval by the **OWNER**, it being understood that the **OWNER** at all times is ultimately relying upon the **ENGINEER**'s skill and knowledge in preparing the Drawings and specifications. Notwithstanding the immediately preceding sentence, **ENGINEER** may rely on any documents or information forwarded by **OWNER** pursuant to Article 2 hereof.

7.4 The **ENGINEER** represents, covenants and agrees that the person directly in charge of the professional engineering work is duly registered under the applicable Texas law.

7.5 Notwithstanding any provision herein to the contrary, in the event it is necessary for the **OWNER** to require changes in the final plan of the **PROJECT** to enable reduction of construction cost of the **PROJECT** to an amount within the sum estimated by the **ENGINEER**, the **ENGINEER** will be required to make such revisions or changes. Notwithstanding any provisions herein to the contrary, it is agreed that if the project cost is less than the lowest bona fide bid for construction and such low bid is not accepted by the owner, the **ENGINEER**, at its expense, will make all necessary revisions to the plans and specifications to lower the construction to an amount acceptable to **OWNER** and re-bid the project. The project cost is defined as the **ENGINEER**'s final estimate of the probable cost of construction delivered with the completed PS&E. The **OWNER** agrees to give the **ENGINEER** the latitude to make the required changes to the plans and specifications to achieve the required reduction in construction costs; however, the **ENGINEER** shall consult with the **OWNER** on all necessary changes.

EXHIBIT "A"

Services to be provided by the OWNER

The following provides an outline of the services to be provided by the **OWNER** in the development of the Project.

The **OWNER** will provide to the **ENGINEER** the following:

- (1) Authorization to the **ENGINEER** to begin work in accordance with Section 3 of this Agreement.
- (2) Payment for work performed by the **ENGINEER** and accepted by the **OWNER** in accordance with Section 6 of the Agreement.
- (3) Assistance to the **ENGINEER**, as necessary, to obtain the required data and information from other local, regional, State and Federal agencies that the **ENGINEER** cannot easily obtain.
- (4) Provide any available relevant data the **OWNER** may have on file concerning the project.
- (5) Provide timely review and decisions in response to the **ENGINEER'S** request for information and/or required submittals and deliverables, in order for the **ENGINEER** to maintain the agreed-upon work schedule prepared in accordance with Exhibit "C" of this Agreement.
- (6) Attend and participate in progress meetings as required and as coordinated and conducted by the **ENGINEER**.
- (7) Assist the **ENGINEER** in the preparation of the project mailing list; provide representation, a site and stenographer for all public meetings; additionally:

Public Meetings

- (a) Approve agenda and all exhibits prior to public meeting.
 - (b) Approve date and location of the meeting.
 - (c) Review/approve Public Meeting Report.
- (8) Attend the Preliminary Concept Conference coordinated and conducted by the **ENGINEER** and more particularly identified in Attachment "B" of the

Agreement.

- (9) Assist the ENGINEER as required in the coordination with the Hidalgo Urban County and any other coordinating agency or entity.
- (10) Review and approve the Project design criteria.
- (11) Review and approve change orders as required and prepared by the ENGINEER.

EXHIBIT B

-Scope of Services to be provided by the Engineer

PREPARED BY:

M2 ENGINEERING, PLLC.

(M2E)

The City of Mission plans to undertake a street improvement project for 22nd Street, which encompasses approximately 1,350 linear feet (LF) of roadway. The scope of work will include new street infrastructure to ensure improved functionality, durability, and safety for vehicular and pedestrian traffic. The project will address an estimated total area of approximately 5,650 square yards (SY), with slight adjustments (+/-) based on field measurements. The project aligns with the city's goals to improve urban mobility, extend the lifespan of transportation infrastructure, and enhance overall community connectivity from Taylor Road to Shary Road.

Task 1 – Project Orientation and Startup

M2 Engineering, PLLC (M2E) proposes an initial project orientation meeting be scheduled so that both the City of Mission, and the engineer may have a clear understanding of the design and construction process, parameters to be used and the final product desired. Additionally, data field collection will be developed by drone flyover and topography for design.

Task 2 – Preliminary and Final Plans

M2E will provide City of Mission staff with preliminary and final plans during this task. As part of the final plans, M2E will provide a project manual with technical specifications during this task. The output of this task will be the documents necessary for bidding and constructing the project.

Task 3 – Bidding and Award

A pre-bid meeting will be scheduled if necessary, in order to brief potential bidders and suppliers on the project. Necessary clarifications or addendum will be issued. M2E will attend the bid opening and assist as the City desires.

Task 4 – Construction

M2E will periodically observe ongoing work, identify survey control for the contractor (Construction Staking not included) and assist the City of Mission with certifying periodic payment requests. Upon completion by the contractor, a final inspection will be scheduled with the contractor and City of Mission staff. The outcome of these final inspections will be a Certificate of completion or a punch list of items for the contractor to complete, prior to issuance of a Certificate of Completion.

EXHIBIT C
CITY OF MISSION
22nd Street Expansion Project

ID	Task Name	Duration	Start	Finish	Predecessors	Resource Names	1st Quarter			
							Jan	Feb	Mar	Apr
1	Approval of Consultant Contracts	1 day	Mon 1/13/25	Mon 1/13/25						
2	Contract Notice to Proceed	2 days	Tue 1/14/25	Wed 1/15/25	1					
3	Task 1 - Project Orientation and Startup	10 days	Thu 1/16/25	Wed 1/29/25	2					
4	Startup Meeting	1 day	Thu 1/16/25	Thu 1/16/25	1					
5	Survey	5 edays	Thu 1/16/25	Tue 1/21/25	4					
6	Preliminary Alignment and Options	5 days	Wed 1/22/25	Tue 1/28/25	5					
7	Stakeholder's Coordination	1 day	Wed 1/29/25	Wed 1/29/25	6					
8	Task 2 - Preliminary Plans (30%)	5 days	Wed 1/29/25	Tue 2/4/25						
9	Plans 30%	5 days	Wed 1/29/25	Tue 2/4/25						
10	Task 3- Design (60-100%)	15 days	Tue 2/4/25	Mon 2/24/25						
11	Plans 60%	5 days	Tue 2/4/25	Mon 2/10/25						
12	Plans 90% & Updated EOPCC	10 days	Tue 2/11/25	Mon 2/24/25	11					
13	Task 4 - Final Plans and Specifications (100%)	5 days	Mon 2/24/25	Fri 2/28/25						
14	Final Plans and Specifications	5 days	Mon 2/24/25	Fri 2/28/25						
15	Task 5 - Bidding and Award	45 edays	Fri 2/28/25	Mon 4/14/25	14					




















Date: Thu 12/19/24	Task		Project Summary		Inactive Summary		Manual Summary		External Milestone	
	Split		External Tasks		Manual Task		Start-only		Progress	
	Milestone		External MileTask		Duration-only		Finish-only		Split	
	Summary		Inactive Milestone		Manual Summary Rollup		External Tasks			

Exhibit "D"
Cost Proposal
CIVIL SERVICES for
CITY OF MISSION – 22nd STREET EXPANSION PROJECT

PREPARED BY:
M2 ENGINEERING, PLLC.
(M2E)

The City of Mission plans to undertake a street improvement project for 22nd Street, which encompasses approximately 1,350 linear feet (LF) of roadway. The scope of work will include new street infrastructure to ensure improved functionality, durability, and safety for vehicular and pedestrian traffic. The project will address an estimated total area of approximately 5,650 square yards (SY), with slight adjustments (+/-) based on field measurements. The project aligns with the city's goals to improve urban mobility, extend the lifespan of transportation infrastructure, and enhance overall community connectivity from Taylor Road to Shary Road.

Survey:	\$ 5,000.00
Civil Construction Plans:	\$ 28,000.00
Construction Management:	\$ 10,500.00
<hr/>	
Total Contract Amount:	\$43,500.00