



4601 Padre Blvd
South Padre Island, Texas 78597
www.MySPI.org

Request for Qualifications
Architectural, Engineering or Surveying Services

GEOPW-817-23
Geotechnical Services for Citywide Projects

Statement of Qualifications
must be received before:
August 17, 2023
2:00 p.m. central time
City of South Padre Island
ATTN: City Secretary
4601 Padre Blvd.
South Padre Island, TX 78597

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GENERAL

The City of South Padre Island seeks to enter into an agreement with a qualified Individual(s), Firm or Corporation (Proposer) with substantial and relevant experience and expertise to provide **Geotechnical Services for City Projects**.

DEFINITIONS

The following definitions shall be used to identify terms throughout this Request for Qualifications:

A. AGREEMENT/CONTRACT

A mutually binding legal document obligating the Firm to furnish the professional services specified within this solicitation and obligating the City to pay for the professional services provided.

B. PROPOSAL/RESPONSE/OFFER

A complete, properly signed response to this solicitation that, if accepted, would bind the Respondent to perform the resulting contract.

C. PROPOSER/RESPONDENT/OFFERER

The Individual, Firm or Corporation (Proposer) that considers themselves qualified to provide the services specified herein, and are interested in making an offer to provide the services to the City.

D. CITY

The City of South Padre Island, located in Cameron County, Texas.

E. CITY COUNCIL

The elected officials of the City of South Padre Island, Texas, given the authority to exercise such powers and jurisdiction of all City business as conferred by the City Charter and State Constitution and Laws.

F. FIRM

The successful Proposer of this request for proposal.

G. PURCHASE ORDER

A purchase order records the financial obligation of the City to pay for services properly received; therefore, a purchase order is also required for all contracts with an expenditure of funds entered into by the City Manager or City Council.

H. REQUEST FOR QUALIFICATIONS (RFQ)

This Solicitation document issued by the City containing terms, conditions and request for qualifications for the services to be procured.

I. STATEMENT OF QUALIFICATIONS (SOQ)

A Firm's response to this solicitation

J. VENDOR/CONTRACTOR

Person or business enterprise providing professional services to the City as fulfillment of obligations arising from an agreement pursuant to this request for qualifications.

NOTICE TO PROPOSERS

A. NOTICE

Statement of Qualifications are due at **2:00 p.m. on August 17, 2023** after which time all qualified responses will be opened and acknowledged at 4601 Padre Blvd, South Padre Island, Texas 78597. Proposals received after the specified deadline will be returned unopened.

Sealed SOQs shall be clearly marked with the RFQ number and title and addressed to the City of South Padre Island – City Secretary. Proposals shall be delivered using one of the following:

Hand-deliver to:	Mail to:	Ship to (FedEx, UPS, DHL):
4601 Padre Blvd South Padre Island, TX 78597	4601 Padre Blvd. South Padre Island, TX 78597	4601 Padre Blvd. South Padre Island, TX 78597

Potential Respondents may receive notice of solicitations from the City of South Padre Island from a variety of channels. Approved methods of dissemination include: City of South Padre Island website or the City of South Padre Island Public Works Director. The receipt of solicitations through any other means may result in the receipt of incomplete specifications or addenda which could ultimately render your proposal non-compliant. City of South Padre Island accepts no responsibility for the receipt or notification of solicitations through any other source.

B. QUESTIONS and INQUIRIES

Questions and inquiries about this Solicitation shall be submitted in writing to the following individual:

Alejandro Sanchez, P.E., CFM.
Public Works Director
csanchez@myspi.org

The deadline for written questions is **July 14, 2023 at @ 12:00 p.m.** central time. This deadline has been established in order to provide adequate time for City staff to prepare responses to questions from Proposers to the best of their ability in advance of the Pre-Proposal Conference meeting.

Proposers shall not attempt to contact City Council members, City staff or Management directly during the pre-proposal or post-proposal period. The City intends to respond to all appropriate questions or concerns; however, the City reserves the right to decline to respond to any question or concern. All material modifications, clarifications or interpretations will be incorporated into an addendum which will be publically posted. All addenda issued prior to the due date and time for responses are incorporated into the RFQ and must be acknowledged in the SOQ response. Only written information provided shall be binding. Oral or other interpretations shall not be binding and are held without legal effect.

C. SCHEDULE OF IMPORTANT DATES

The City will generally comply with the following schedule for the selection process, subject to changes necessary to ensure fairness and to accommodate unanticipated events:

Release RFQ		June 22nd & 29th, 2023
Pre-Proposal Conference	10:30 AM CST	July 17, 2023
Deadline for Questions and Inquiries	12:00 PM CST	July 21, 2023
Proposals Closing Date and Time	2:00 PM CST	August 17, 2023
Earliest Award by City		September 6, 2023

D. PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference will be conducted in the Executive Conference Room at City Hall located at 4601 Padre Blvd., beginning at 10:30 AM central time on **July 17, 2023**. This meeting is not mandatory. Any questions and answers addressed during the conference meeting will be issued in an addendum and all known parties will be notified.

E. CERTIFICATION

This Solicitation includes a certification page. Respondent must:

1. Furnish complete name, mailing address, telephone number and email of the individual duly authorized to execute contractual documents on behalf of the Respondent.
2. Furnish name of individual(s), along with respective telephone numbers and email addresses, who will be responsible for answering all questions.
3. Certify that they have not conspired with any other potential Respondents in any manner to attempt to control competitive pricing.
4. Certify that they are duly qualified, capable and otherwise qualified business entity not in receivership or contemplating same, and has not filed bankruptcy.

F. EXCEPTIONS

Any deviations from terms, conditions or request for qualifications contained herein must be clearly indicated in the Response to this Solicitation in writing at or before the due date and time. Any deviations or exceptions are subject to review by the City and may deem the Response disqualified or non-responsive. If no exceptions are stated, it will be understood that all general terms and conditions and specific requirements will be complied with, without exception.

G. DISCLOSURE OF INTERESTED PARTIES

Contracting hereunder may require compliance with §2252.908 Texas Government Code/Disclosure of Interested Parties for contracts that (1) require an action or vote by the City Council before the contract may be signed; or (2) has a value of at least \$1 million. The law provides that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity or state agency.

The process as implemented by the Texas Ethics Commission (“TEC”) is as follows:

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission’s electronic filing application](#) listing each interested party of which the business entity is aware on Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the City.
2. The copy of Form 1295 submitted to the City must contain the unique certification number from the TEC. The form must be filed with the City pursuant to §2252.908 Texas Government Code, “at the time the business entity submits the signed contract” to the City.

The City, in turn, will submit a copy of the disclosure form to the TEC not later than the 30th day after the date the City receives the disclosure of interested parties from the business entity.

STANDARD TERMS and CONDITIONS

A. ADDENDA

If it becomes necessary to revise any part of this Solicitation, prior to the due date and time, a written addendum will be provided clarification to all known interested Respondents. The City is not bound by any oral representations, clarifications, or changes made in the Request for Qualifications by the

City's employees, unless such of change is provided to Respondents in written addendum form from the City.

Addenda will be transmitted to all that are known to have received a copy of the Request for Qualification. However, it shall be the sole responsibility of the Respondent to verify issuance of any addenda and to check all avenues of document availability prior to the opening date and time. Respondent shall provide written acknowledgment of all addenda.

B. ADVERTISING and PUBLICITY

Firm shall not advertise or otherwise publicize, without the City's prior written consent, the fact that the City has entered into the Agreement, except to the extent required by applicable law.

C. ASSIGNMENTS

The Agreement shall be binding upon and inure to the benefit of the City and the Firm, and their respective successors and assignees, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Firm without the prior written consent of the City. Any attempted assignment or delegation by the Firm shall be void unless made in conformity with this Paragraph. The Agreement is not intended to confer any rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there is no third party beneficiaries to the Agreement.

D. BUSINESS PRACTICES

Minority business enterprises and/or historically underutilized businesses will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

E. CANCELLATION or TERMINATION

1. Termination For Cause:

In the event of default by the Firm, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Firm, within such ten (10) day period cures such default, or provides evidence sufficient to prove to the City's satisfaction that such default does not, in fact, exist. In addition to any other remedies available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses incurred by the City as a result of the Firm's default, including without limitation, cost of cover, reasonable attorneys' fees, court costs and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of default by the Firm, the City may remove the Firm from the City's Vendor List and any Offer submitted by the Firm may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and not exclusive of any other right or remedy provided by law.

2. Termination Without Cause:

The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Firm shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Firm, to the extent of funds appropriated or otherwise legally available for such purposes, for all products actually delivered and obligations incurred prior to the date of termination in accordance with the terms hereof.

3. Non-Appropriation:

The resulting Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate the Agreement if, for any reason, funds are not appropriated to continue this Agreement.

4. Cancellation:

The City reserves the right to cancel the Agreement for default for all or any part of the delivered portion of the deliverables if the Firm breaches any term hereof including warranties, or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which the City may have in law or in equity.

F. CLAIMS

If a claim, demand, suit or other action is asserted against the Firm which arises under or concerns the Agreement, or which could have a material adverse effect on the Firm's ability to perform thereunder, the Firm shall give written notice to the City within ten (10) calendar days after receipt of notice by the Firm. Such notice to the City shall state the date of notification of any such claim, demand, suit or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted. Such notice shall be delivered to the City Manager, 4601 Padre Blvd, South Padre Island, TX 78597.

G. CODES, PERMITS, LICENSES

Firm shall comply with all federal, state and local standards, codes and ordinances, as well as other authorities that have jurisdiction pertaining to the products delivered and their application. None of the terms or provisions of the Agreement shall be construed as waiving any rules, regulations or requirements of these authorities. Firm shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the City.

H. COLLUSION

Advanced disclosures of any information to any particular Respondent which gives that particular Respondent any advantage over any other interested Respondent in advance of the due date, whether in response to advertising or an informal request for proposals, made or permitted by a member of the governing body or an employee or representative thereof, will cause to void all responses to that particular solicitation or request.

I. COMMUNICATION

To insure the proper and fair evaluation of this Proposal, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Respondent to the City Official or Employee evaluating or considering the Responses prior to the time an award has been made. Communication between Respondents and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Statement(s) of Qualification. Ex parte communication may be grounds for disqualifying the offending Respondent from consideration or award, or any future Solicitation.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed as provided herein.

J. CONFIDENTIALITY

In order to provide the deliverables to the City, Firm may require access to certain of the City's and/or its licensors' confidential information (including, but not limited to, 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"). Firm acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors, and any unauthorized use, disclosure, dissemination or other release of the Confidential Information will substantially injure the City and/or its licensors. The Firm (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 the Agreement, unless the Confidential Information is required to be disclosed by

law or as a result of an order of any court or other governmental authority with proper jurisdiction, provided the Firm promptly notifies the City prior to disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Firm agrees to use protective measures no less stringent than the Firm 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.

K. DEFAULT

Firm shall be in default under the Agreement if the Firm (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to fully, timely and faithfully perform any of its material obligations under any agreement Firm has with the City, (c) fails to timely pay any fees or taxes owed to the City, (d) becomes insolvent or seeks relief under the bankruptcy laws of the United States, or (e) makes a material misrepresentation in Respondent's Proposal, or in any report or deliverable required to be submitted by Firm to the City.

L. DELAYS

The City may delay scheduled deliveries or other due dates by written notice to the Firm if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, the City and the Firm shall negotiate an equitable adjustment for costs incurred by the Firm in the Agreement price and execute an amendment to the Agreement. The Firm must assert its right to an adjustment within ten (10) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Process specified herein. However, nothing in this provision shall excuse the Firm from delaying the deliveries as notified.

M. DISCLOSURE

At the due date and time there will be no disclosure of contents of any Proposal to competing Proposers, and all Proposals will be kept confidential during the negotiation process. Except for trade secrets and confidential information which the Firm identifies as proprietary, all Proposals will be open for public inspection after the contract award.

N. DISCLOSURE OF PENDING LITIGATION:

Each Respondent shall include in its proposal a complete disclosure of any material civil or criminal litigation or pending investigation which involves the Respondent or in which the Respondent has been judged guilty.

O. DISPUTE RESOLUTION

If either the Firm or the City has a claim, dispute or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

P. FORCE MAJEURE

Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond reasonable control. In the event of default or delay in performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

Q. FRAUD

Fraudulent statements by the Respondent in the Proposal or in any report or deliverable required to be submitted by the Firm to the City shall be grounds for termination of the Agreement for cause by the City and may result in legal action.

R. GRATUITIES

The City may, by written notice to the Firm, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Firm or any agent or representative of the Firm to any officer or employee of the City with the intent of securing the Agreement or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to performance of the Agreement. In the event the Agreement is cancelled by the City pursuant to this Section, the City shall be entitled, in addition to any other rights and remedies, to recover the benefits or payments to the Firm, as a result of the gratuities.

S. INDEPENDENT CONTRACTOR

Nothing in this Request for Qualifications is intended to be construed as creating an employer/employee relationship, a partnership or joint venture. The Firm's services shall be those of an independent contractor. The Firm agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Firm shall not be within protection or coverage of the City's Worker Compensation Insurance, Health Insurance, Liability Insurance or any other insurance that the City, from time to time, may have in force.

T. INDEMNITY

FIRM SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY THE CONTRACTOR UNDER THIS CONTRACT.

U. INFRINGEMENT

Firm represents and warrants to the City that: (a) Firm shall provide the City good and indefeasible title to the deliverables and (b) the deliverables supplied by the Firm in accordance with the specifications of the Agreement shall not infringe, directly or contributory, any 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 an person or entity with respect to the ownership or operation of the deliverables and the Firm does not know of any basis for any such claims. Firm 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: (a) any claim that the City exercises anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverable infringes the intellectual property rights of any third party; or (b) Firm's breach of any of the Firm's representations or warranties stated in this Agreement. 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, Firm agrees that the City's specifications regarding the deliverables shall in no way diminish Firm's warranties or obligations under this Paragraph, and the City makes no warranty that the products, development or delivery of such deliverables will not impact such warranties of Firm.

V. INSURANCE REQUIREMENTS

Upon request, Firm shall provide a copy of its insurance policies to the City.

W. INTERPRETATION

The Agreement is intended by both parties as the final, complete and exclusive statement of the terms of their Agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner fair to both parties, reading no provision more strictly against one party of the other. Whenever a term defined by the Uniform Commercial Code (the "UCC"), as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control unless otherwise defined in the Agreement.

X. INVALIDITY

The invalidity, illegality or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace the stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

Y. LIABILITY

Any person, firm or corporation party to the Agreement shall be liable for all damages incurred while in the performance of the Agreement. Firm assumes full responsibility for the terms contained herein and hereby releases, relinquishes, and discharges the City, its officers, agents and employees from all claims, demands and causes of action of any nature including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third party, supplier or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties, caused by or alleged to have been caused by, arising out of or in connection with the issuance of the Agreement to the Firm and the negligence of the Firm, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. Certificates of insurance may be required for, but not limited to, Commercial General Liability, Business Auto Liability, Workers Compensation and Professional Liability Insurance.

Z. LIENS

Firm shall defend, indemnify and hold the City harmless from and against any and all liens and encumbrances for all services delivered under this Agreement. At the City's request, the Firm or its subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

AA. MANAGEMENT

Should there be a change in ownership or management, the Agreement may be canceled unless a mutual Agreement is reached with the new owner to continue the Agreement with its present terms, conditions and pricing. The Agreement is nontransferable by either party.

BB. NOTICES

Unless otherwise specified, all notices, requests or other communications required or appropriate to be given under the Agreement shall be in writing and deemed delivered three (3) business days after postmarked if sent by US Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, fax, or other commercially accepted means. Notices to the Firm shall be sent to the address specified in the Firm's Statement of Qualifications or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to: City of South Padre Island, 4601 Padre Blvd., South Padre Island, TX 78597 and marked to the attention of the City Manager.

CC. OVERCHARGES

Firm hereby assigns to the City any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and/or which arise under the antitrust laws of the State of Texas, *Business and Commerce Code Ann.*, Section 15.01, et seq.

DD. PAYMENT TERMS

1. Tax Exempt Status:

The City is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The City claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates are furnished upon request. Firm will not charge for such taxes. If billed, the City will not remit payment until a corrected invoice is received.

2. Invoicing Requirements:

Unless otherwise specified, all invoices shall be submitted to City of South Padre Island, Accounts Payable, 4601 Padre Island, South Padre Island, TX 78597, and issued as required by the Purchase Order or Agreement. ***Each invoice must reference the unique Purchase Order number, and include the Firm's complete name and remit to address.*** If applicable, transportation and delivery charges must be itemized on the each invoice.

3. Payment Terms:

All payments will be processed in accordance with Texas Prompt Payment Act, *Texas Government Code*, Subtitle F, Chapter 2251. The City will pay Firm within thirty days after acceptance of goods or services delivered, or the day of receipt of a correct invoice, whichever is later. The Firm may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Firm concerning the goods or services delivered, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Firm and a subcontractor and its suppliers concerning deliveries made, which caused the payment to be late; or (d) the invoice is not mailed to the City in strict accordance with instructions on the Purchase Order or Agreement, or other such contractual agreement.

4. Right To Audit:

The Firm agrees that the representatives of the City shall have access to, and the rights to audit, examine, or reproduce, any and all records of the Firm related to the performance under this Agreement. The Firm shall retain all such records for a period of four (4) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of the Firm are resolved, whichever is longer. The Firm agrees to refund to the City any overpayments disclosed by any such audit.

5. Firm Pricing:

The price shall remain firm for the duration of the Agreement, or any extension period, unless expressly approved in writing. No separate line item charges shall be permitted for any extraneous charges. Firm further certifies that the cost proposal has been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other Respondent or with any competitor.

6. Price Warranty:

The Firm warrants the prices quoted are not materially higher than the Firms current prices on services provided to others for like deliverables under similar terms of purchase. In addition to any other remedy available, the City may deduct from any amounts owed to the Firm, or otherwise recover, any amounts paid for services materially in excess of the Firm's current prices on services to others for like deliverables under similar terms of purchase.

7. Travel Expenses:

All travel, lodging and/or per diem expenses associated with providing the services specified must be included in the Agreement. All travel expenses are subject to review by the City and documentation of actual itemized expenses may be requested. No reimbursement will be made without prior authorization, or for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

EE. PERSONAL INTEREST

No employee or City Council Member of the City may have any financial interest, directly or indirectly, in any proposed or existing agreement, purchase, work, sale or service to, for, with or by the City.

FF. PRIORITY OF DOCUMENTS

In the event there are inconsistencies between the general provisions and special (or other) terms and conditions contained herein, the latter will take precedence.

GG. PROHIBITED FIRMS

The City of South Padre Island prohibits conducting business with Firms under the following conditions:

1. Respondents who have failed to comply with their state contracts and have been debarred from doing business with the State of Texas.
2. Respondent who boycott Israel. By signing and submitting this bid, Respondent certifies that:
 - a. Respondent does not boycott Israel; and
 - b. Respondent will not boycott Israel during the term of the agreement.

HH. PUBLIC INFORMATION

All Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information.

II. REIMBURSEMENTS

There is no expressed or implied obligation for the City of South Padre Island to reimburse responding Firms for any expenses incurred in preparing SOQs in response to this Request for Qualification and

the City will not reimburse responding Firms for these expenses, nor will the City pay any subsequent costs associated with the provision of additional information or presentation, or to procure a contract for these goods or services.

A. REPRESENTATIONS and RESPONSIBILITIES

By submitting a SOQ in response to this RFQ, Proposer represents that it has carefully read and understands all elements of this RFQ; has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, progress, or performance of the work; and has full knowledge of the scope, nature, quality and quantity of services to be performed.

The failure or omission of Proposer to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with existing conditions or other details shall in no way relieve any Proposer from any obligations with respect to its proposal or to the contract.

JJ. RESERVATIONS

The City reserves the right to request clarification or additional information specific to any response after all Responses have been received and the solicitation due date has passed. Additionally, the City reserves the right to accept or reject all or part of any Response, waive any formalities or technical inconsistencies, delete any portion of the Scope of Work, or terminate the Solicitation when deemed to be in City's best interest.

KK. RESPONSES BECOME PROPERTY OF THE CITY

Submissions received in response to this Request for Qualification become the sole property of the City.

LL. RIGHT TO ASSURANCES

In the event the City, in good faith, has reason to question the intent of the Firm to perform, the City may demand written assurances of the intent to perform. In the event no written assurance is given within the time specified, the City may treat this failure as an anticipatory repudiation of the Agreement.

MM. SEVERABILITY

The invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision.

NN. SURVIVABILITY OF OBLIGATIONS

All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

OO. FIRM'S OBLIGATION

Firm shall fully and timely provide all deliverables described in this Solicitation, Firm's response must be in strict accordance with the terms, covenants and conditions of the Agreement and all applicable federal, state and local laws, rules and regulations.

PP. VENUE

This Agreement is fully performable in South Padre Island, Texas, and the venue for any action related to this Agreement shall be South Padre Island, Texas. All issues arising from this Agreement shall be resolved in the courts of Cameron County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or the ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein and does not waive the City's defense of sovereign immunity.

QQ. WAIVER

No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Firm or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default(s), whether of similar or different character.

RR. WITHDRAWAL

Respondents may request withdrawal of a sealed Statement of Qualifications prior to the scheduled opening time, provided the request for withdrawal is submitted to the City in writing.

BACKGROUND and CURRENT CIRCUMSTANCES

A. CITY of SOUTH PADRE ISLAND

Infrastructure: The Public Works Department continues to improve infrastructure and provide safer streets for all modes of travel. The PR 100 Median, Boardwalk, Sidewalk, and Traffic Signal Improvements project is 100% complete. The project cost a grand total of approximately \$8,000,000 and provides increased pedestrian and traffic mobility along Padre Boulevard. A total of 3.7 miles of center medians were built which included the installation of new 6-inch irrigation water meters. Crosswalk lighting upgrades were also made to improve motorist visibility. This project is a component of the Venue Tax Project approved by voters in 2016. In 2017, the City embraced a comprehensive approach to assess all City streets through the Master Thoroughfare Plan. This plan was finalized in October 2018 and included Laguna Boulevard as the top priority. The initial 2019 concept was to improve lanes, drainage, and all intersections while incorporating low impact development to allow the City to become more resilient. In 2020, preliminary engineering commenced with in-house staff. This would be the City's first major improvement that has been designed in-house, saving a total of approximately \$478,000 on the project design. Multiple workshops and open houses were held through the design process. During the fiscal year, the reconstruction of Laguna Boulevard project planning was completed. Construction began February 25, 2022 and will take approximately 24 months to complete, weather permitting.

Parks: The City of South Padre Island partnered with the Texas Department of Parks and Wildlife to complete Phase II of John L. Tompkins Park. The park includes a skate park, a basketball court, a soccer field, a walking trail, exercise stations, two playgrounds, a bocce ball court, benches, shade structures, and restrooms. Phase II was completed in July of 2022. In 2021, an additional grant for Phase III of John L. Tompkins was awarded from Texas Parks and Wildlife to add solar lighting and a shade pavilion over the basketball court to the park. Phase III is currently in the planning process.

B. CURRENT CIRCUMSTANCES

The City is in the process of reconstructing all rural streets to urban sections which will take multiple years and in the process of improving parks, beach access and other improvement projects. In making these improvements the City will require geotechnical testing to ensure

the quality of work. In an effort to provide continuous service, the City will select all geotechnical firms that submitted on a rotation basis starting with the highest point firm. Firms with points less than 70% will not be selected for rotation.

SCOPE OF WORK

Materials testing for the Citywide Projects shall conform to all TxDOT requirements. Reference the *TxDOT Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, Adopted by the Texas Department of Transportation November 1, 2014*. Reference the appropriate Specification Items for materials testing for the various types of work included in this project. For example, Item 132 Embankment, includes testing requirements under paragraph 3.4.2 Density Control outlining the TEX-114-E method for determining maximum dry density and optimum moisture content. Paragraph 3.4.2 also identifies parameters for different soil types, testing requirements for each layer of embankment placed, and the acceptable values for placed materials.

The successful materials testing firms shall be listed on the TxDOT Directory of Active Accredited Laboratories demonstrating accreditation for all areas of materials testing applicable to the project.

SUBMISSION REQUIREMENTS

The City will not accept oral proposals, or proposals received by telephone or FAX machine. Proposals must be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet all requirements and specifications of this RFQ. Emphasis should be focused on completeness, clarity of content and responsiveness to all requirements of this RFQ.

The SOQ must be submitted in hard copy. Proposer shall submit 1 original and 3 copies of the entire proposal, plus 1 digital copy (thumb drive).

The City of South Padre Island requires comprehensive responses to every section within this RFQ. To facilitate the review of the responses, Respondents shall follow the described format. The intent of the proposal format is to expedite review and evaluation. It is not the intent to constrain Respondents with regard to content, but to assure that the specific requirements set forth in this RFQ are addressed in a uniform manner amenable to review.

Any SOQ that does not meet all of the minimum requirements contained herein will be considered non-responsive and will not be evaluated. These minimum requirements are considered pass or fail criteria and includes:

- 1. SOQ must be received by the due date and time;**
- 2. Certification must be signed and returned with SOQ; including acknowledgement of any addenda issued.**

SOQ's that pass the minimum requirements listed above will be evaluated, rated, and ranked, in accordance with the criteria provided below. The City may request additional information, site visits, interviews, or presentations from the Firm as part of the evaluation process.

The proposal format shall be clearly identified in the responses and conform to the criteria as outlined in "A" through "I" of each the criteria listed below.

Firm Introduction (5 points)

Briefly introduce your firm, providing a summary of the administration, organization and staffing of your firm, including multiple offices, if applicable. Provide an organizational chart indicating the positions and names of the core management team which will undertake this engagement.

A. Demonstrate the competence and qualifications of the individual who will be directly responsible for the management and delivery of the proposed work (15 points)

City is interested in the individual's experience as a project manager on projects similar to that described in the solicitation. Only one individual should be designated and must be a licensed architect, engineer, or surveyor in the State of Texas at the time of submission and must be employed by the Firm and not by a sub-consultant. Demonstrate project management experience, technical competency, qualifications and compliance with legal requirements.

- (a) documented specialized design expertise demonstrating such specialized capabilities pertinent to similar work experience as described in the solicitation by the individual;
- (b) descriptions and examples of specific projects or studies of a similar nature by the individual as described in the solicitation and their role in the work.
- (c) educational background;
- (d) license status, to include Texas registration number and expiration date of architect, engineer, or surveyor assuming professional responsibility on the project or study;
- (e) formal project management training and any certifications or accreditations offered by the Project Management Institute;
- (f) technical publications including books, papers or presentations.

B. Demonstrate the technical adequacy of the personnel and sub-consultants to be utilized for the proposed work (15 points)

City is interested in the technical qualifications and experience of the individual project team members of the Firm or sub-consultant firms who will actually be performing work on the project or study described in the solicitation. Demonstrate technical competency, qualifications and compliance with legal requirements.

- (a) documented specialized design expertise demonstrating such specialized capabilities pertinent to similar work experience as described in the solicitation by the individuals;
- (b) descriptions and examples of specific projects or studies of a similar nature by the individuals as described in the solicitation and their role in the work;
- (c) educational background;
- (d) license status, to include Texas registration number and expiration date of architects, engineers, or surveyors performing work and supervising subordinates in the production of design or study efforts;
- (e) technical publications including books, papers or presentations.

C. Demonstrate the experience of the Firm based upon previous work similar to that of the type considered (20 points)

City is interested in the Firm's history with similar projects or studies as described in the solicitation. **List no more than five projects or studies meeting these criteria which have been completed within the last five years.** Include the project or study description, name of the team leader, description of the Firm's role, cost of the project or study, year of the work, and name and phone number of the agency contact who can respond to questions about the work.

- (a) applicability of projects or studies similar in nature as described in the solicitation;
- (b) role of firm with the project or study.

D. Demonstrate the success of the Firm based upon the record of performance on other projects (both City of South Padre Island projects and projects for other entities) (20 points)

City is interested in the Firm's success and performance record related to projects or studies for the City of South Padre Island or other entities. List no more than five projects total. Projects other than those listed in Consideration Item (D) may be submitted which are not necessarily similar in nature to those described in the solicitation. For other projects or studies to be considered, include the project or study description, name of the team leader, and description of the Firm's role.

- (a) number of change orders;
- (b) examples of innovative solutions that resulted in a cost savings during construction and/or operation;
- (c) responsiveness during construction and commitment to continued involvement throughout the life of the project.

E. Demonstrate the Firm's history of accuracy of cost estimates and ability to perform within budget constraints (10 points)

City is interested in the accuracy and dependability of projected cost estimates and the ability of the Firm to be sensitive and responsive to project or study budget constraints. List project budgets, pre-bid cost estimates and bid ranges from low to high bid for projects listed in Consideration Item (D) or Consideration Item (E). Also provide a summary of the measures taken by the Firm to ensure the project was realized within the project budget.

F. Workload Capacity And History Of Performing Work Within A Specified Schedule (10 points)

City is interested in the ability of the Firm to dedicate the necessary resources to the work described in the Scope of Work. City reserves the right to visit the location of the Firm to verify the capabilities and resources. Include projects listed in Consideration Item (D) or Consideration Item (E) to demonstrate the firm's ability to deliver projects within a specified schedule.

- (a) capabilities of the proposed project team and approach for handling multiple projects simultaneously at various stages of development;
- (b) demonstrate the Firm's ability to deliver projects within a specified schedule;
- (c) contingency plan and ability of the Firm to sustain a loss of a key team member without compromising project quality, schedule or budget considerations.

H. Proposed Approach For The Design Project Or Study (5 points)

City is interested in the team's organizational structure and work plan for accomplishing the work as described in the Scope of Work.

- (a) organization and structure of the project team including percentage of work proposed to be done by sub-consultants;
- (b) work plan indicating detailed approach for accomplishment of project, identified options, and proposed solutions;
- (c) approach to project management;
- (d) proposed project schedule should be supplied identifying the beginning and ending of each phase of the work proposed for this project.

I. COMMENTS/CHANGE REQUESTS to STANDARD FORM of AGREEMENT

A copy of the City's Standard Form of Agreement is attached to the RFQ. Please provide any comments or change requests to the Agreement with the proposal submittal. Failure to submit requested changes will affirm that the Firm willing to execute the Agreement without modification.

EVALUATION and SELECTION PROCESS

The City has attempted to provide a comprehensive Request for Qualifications through this solicitation for the work contemplated. Written proposals must present Proposer's qualifications and understanding of the work to be performed. Respondents are asked to address each evaluation criteria and to be specific in presenting their qualifications. Proposals must be as thorough and detailed as possible so that the City may properly evaluate capabilities to provide the requested services.

The City will first select the most highly qualified provider for the services on the basis of demonstrated competence and qualifications; and then attempt to negotiate with that provider a contract at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified provider for the services, the City will formally end negotiations with that provider; select the next most highly qualified provider; and attempt to negotiate a contract with that provider at a fair and reasonable price. The City will continue this process to select and negotiate with providers until a contract is entered into.

The City has established specific, weighted criteria for selection. This section presents the evaluation criteria, description, and relative weight assigned to each (100 points maximum). The City will evaluate each Proposer's responses to the requirements contained in this RFQ.

Clarity and Quality of Proposal

Pass/Fail

Firms must provide comprehensive responses to every section within this RFQ in the described format. It is not the intent of the City to constrain Firms with regard to content, but to assure that the specific requirements set forth in this RFQ are addressed in a uniform manner amenable to review and evaluation. Failure to do so may result in your Proposal being disqualified from further review and consideration.

- | | |
|-----------------------|--|
| A. (5 points) | Firm Introduction |
| B. (15 points) | Demonstrated competence and qualifications of the individual who will be directly responsible for the management and delivery of the proposed work. |
| C. (15 points) | Demonstrated technical adequacy of the personnel and sub-consultants to be utilized for the proposed work. |
| D. (20 points) | Demonstrated experience of the Firm based upon previous work similar to that of the type considered. |
| E. (20 points) | Demonstrated success of the Firm based upon the record of performance on other projects (both City of South Padre Island projects and projects for other entities). |
| F. (10 points) | Demonstrated Firm's history of accuracy of cost estimates and ability to perform within budget constraints. |
| G. (10 points) | Workload Capacity And History Of Performing Work Within A Specified Schedule |
| H. (5 points) | Proposed Approach For The Design Project Or Study |

100 POINTS

TOTAL POINTS AVAILABLE

By submission of a proposal, Proposer acknowledges acceptance of the evaluation process, the evaluation criteria, scope of work, approach and methodology, and all other terms and conditions set forth in this RFQ. Further, Firms acknowledge that subjective judgements must be made by the City during this process.

The City makes no guarantees or representations that any award will be made and reserves the right to cancel this solicitation for any reason, including:

- Reject any and all SOQs received as a result of this RFQ.

- Waive or decline to waive any informality and any irregularities in any proposal or responses received.
- Negotiate changes in the Scope of Work or services to be provided.
- Withhold the award of contract(s).
- Select Proposer(s) it deems to be most qualified to fulfill the needs of the City.
- Terminate the RFQ process.

CERTIFICATION and ACKNOWLEDGMENT

The undersigned affirms that they are duly authorized to submit this Proposal, that this Proposal has not been prepared in collusion with any other Respondent, and that the contents of this Proposal have not been communicated to any other Respondent prior to the official opening. To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Respondent certifies that it: i) does not boycott Israel; and ii) will not boycott Israel during the term of the Agreement.

Signed By: _____ Title: _____

Typed Name: _____ Company Name: _____

Phone No.: _____ Fax No.: _____

Email: _____

Bid Address: _____
 P.O. Box or Street City State Zip

Order Address: _____
 P.O. Box or Street City State Zip

Remit Address: _____
 P.O. Box or Street City State Zip

Federal Tax ID No.: _____

DUNS No.: _____

Date: _____

EXHIBIT A: STANDARD FORM OF AGREEMENT

CONSULTATION AGREEMENT WITH THE CITY OF SOUTH PADRE ISLAND

This Consultation Agreement (the "Agreement") is entered into and made effective on the _____ day of _____, _____ by and between _____ ("Consultant") and the City of South Padre Island, Texas ("City").

- 1. Scope of Services.** Consultant agrees to provide such services as further described in **Exhibit A**, which is attached and incorporated herein. Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in paragraph three of this Agreement shall be made and approved by the City prior to the Consultant providing such services, or the right to payment for such additional services shall be **waived**. If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Agreement, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.
- 2. City Terms Prevail.** In the event there is a conflict between a term in **Exhibit A** and a term in this agreement, the terms of this agreement shall prevail.
- 3. Total Compensation.** The total compensation paid by the City to the Consultant, including expenses, under this agreement shall not exceed \$ _____. Payment schedule will be made in accordance with **Exhibit B**, which is attached and incorporated herein.
- 4. Term.** The term of this Agreement shall be in effect until the services have been completed by Consultant, but in no event shall the term extend beyond five year.
- 5. Amendments.** Any changes to the terms of this agreement will not be effective unless in writing and signed by both parties.
- 6. Insurance.** Consultant shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subcontractors. The policies, limits and endorsements required are set forth in **Exhibit C**. Consultants insurance certificate satisfying the City insurance requirements is attached as **Exhibit D**.
- 7. Indemnity.** **THE CONSULTANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CAUSES OF ACTION, CLAIMS, DEMANDS, DAMAGES, JUDGMENTS, LOSSES, LIENS, COSTS, EXPENSES, ATTORNEYS' FEES AND ANY AND ALL OTHER COSTS, FEES AND/OR CLAIMS OF ANY KIND OR DESCRIPTION ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THE AGREEMENT OR SERVICES PROVIDED UNDER THE AGREEMENT or from its negligence or willful act whether such act be by the Consultant or its designee. The city, as a governmental entity in the state of Texas, shall not indemnify the consultant.**

8. **Release by Consultant.** The Consultant releases, relinquishes and discharges the City, its elected officials, officers, directors, agents, employees, representatives and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense, for any injury to or death of any person (whether employees of either party or other third parties) and any loss or damage to any property that is caused by or alleged to be caused by, arising out of, or in connection with the work it performed under this Agreement. This release shall apply regardless of whether the claims, demands and/or causes of action are covered in whole or in part by insurance.
9. **Dispute Resolution.** If either the Consultant or the City has a claim or dispute, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.
10. **Payment Terms.** All payments will be processed in accordance with Texas Prompt Payment Act, Texas Government Code, Subtitle F, Chapter 2251. The City will pay Consultant within thirty days after of receipt of a correct invoice for services. The Consultant may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Consultant concerning the goods, supplies, materials, equipment delivered, or the services performed, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Consultant and a subcontractor and its suppliers concerning goods, supplies, material or equipment delivered, or the services performed, which caused the payment to be late; or (d) the invoice is not mailed to the City in accordance with Agreement.
11. **Termination for Convenience.** The City shall have the right to terminate this Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Consultant shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Consultant, to the extent of funds appropriated or otherwise legally available for such purposes, for all services performed and obligations incurred prior to the date of termination.
12. **Termination for Cause.** In addition to the termination rights described above, either party may terminate this Agreement effective upon written notice to the other if the other breaches any of the terms and conditions of this Agreement and fails to cure that breach within thirty (30) days after receiving written notice of the breach. In the event of an incurable breach, the non-breaching party may terminate this Agreement effective immediately upon written notice to the breaching party.
13. **Notices.** Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in the first class mail of the

United States properly, or sent via electronic means, addressed to the appropriate party at the address set forth below:

Notice to the Consultant:

Notice to the City:

City of South Padre Island
ATTN: City Manager
4601 Padre Blvd.
South Padre Island, Texas 78597

14. **Independent Contractor.** The Agreement shall not be construed as creating an employer/employee relationship, a partnership or joint venture. The Consultant’s services shall be those of an independent contractor. The Consultant agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Consultant shall not be within protection or coverage of the City’s Worker Compensation insurance, Health Insurance, Liability Insurance or any other insurance that the City, from time to time, may have in force.
15. **Force Majeure.** The City and the Consultant will exert all efforts to perform the tasks set forth herein within the proposed schedules. However, neither the City nor the Consultant shall be held responsible for inability to perform under this Agreement if such inability is a direct result of a force substantially beyond its control, including but not limited to the following: strikes, riots, civil disturbances, fire, insurrection, war, embargoes, failures of carriers, acts of God, or the public enemy.
16. **No Waiver.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach hereof.
17. **Nondiscrimination.** The Consultant, with regard to the work performed by it after award and prior to completion of this Agreement, shall not discriminate on the basis of race, color, sex, or national origin in the selection and retention of Sub-consultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by any federal, state or local law.
18. **Confidential Information.** Each party agrees not to use, disclose, sell, license, publish, reproduce or otherwise make available the Confidential Information of the other party except and only to the extent necessary to perform under this Agreement or as required by the Texas Public Information Act or other applicable law. Confidential Information shall be designated and marked as such at the time of disclosure. Each party agrees to secure and protect the other party’s Confidential Information in a manner consistent with the maintenance of the other party’s confidential and proprietary rights in the information and to take appropriate action by instruction or agreement with its employees, consultants, or other agents who are permitted access to the other party’s Confidential Information to satisfy its obligations under this Section. The provisions of this paragraph shall survive the term of the Agreement.

19. **Severability.** This Agreement is severable and if any one or more parts of it are found to be invalid, such invalidity shall not affect the remainder of this Agreement if it can be given effect without the invalid parts.
20. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Texas. Venue shall be located in Cameron County, Texas.
21. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and any subsequent successors and assigns. The Consultant shall not subcontract or assign responsibility for performance of any portion of this Agreement without the prior written consent of the City.
22. **Third Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the Consultant.
23. **Verification No Boycott Israel.** To the extent this Contract is considered a contract for goods or services subject to § 2270.002 Texas Government Code, Consultant verifies that it i) does not boycott Israel; and ii) will not boycott Israel during the term of this Contract.
24. **Entire Agreement.** This Agreement, with all exhibits, includes the entire agreement of the City and the Consultant and supersedes all prior and contemporaneous agreements between the parties, whether oral or written, relating to the subject of this agreement.

THE CITY OF SOUTH PADRE ISLAND

{NAME OF CONSULTING FIRM}

Signature

Name: William R. Smith

Title: City Manager

Date Signed: _____

Signature

Name: _____

Title: _____

Date Signed: _____

EXHIBIT B: SCOPE OF SERVICES

Materials testing for the Geotechnical Services for Citywide Projects shall conform to all TxDOT requirements. Reference the *TxDOT Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, Adopted by the Texas Department of Transportation November 1, 2014*. Reference the appropriate Specification Items for materials testing for the various types of work included in this project. For example, Item 132 Embankment, includes testing requirements under paragraph 3.4.2 Density Control outlining the TEX-114-E method for determining maximum dry density and optimum moisture content. Paragraph 3.4.2 also identifies parameters for different soil types, testing requirements for each layer of embankment placed, and the acceptable values for placed materials.

The successful materials testing firm shall be listed on the TxDOT Directory of Active Accredited Laboratories demonstrating accreditation for all areas of materials testing applicable to the project.

EXHIBIT C: PAYMENT TERMS

[SELECT ONE OF FOLLOWING OPTIONS]:

Compensation is based on **actual** hours of work/time devoted to providing the described services. The Consultant will be paid at a rate per hour, or at the rates per service or employee shown below. The City will reimburse the Consultant for **actual**, non-salary expenses at the rates set forth below. Unless amended by a duly authorized written change order, the total payment for all invoices on this job, including both salary and non-salary expenses, shall not exceed the amount set forth in paragraph 3 of this Agreement (\$_____).

The Consultant must submit **monthly** invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such invoices according to its normal payment procedures.

Expenses shall be reimbursed as follows:

[INSERT SPECIFIC PROVISION FOR EXPENSES]

EXHIBIT D: INSURANCE REQUIREMENTS

- I. The Consultant agrees to maintain the types and amounts of insurance required in this Agreement throughout the term of the Agreement. The following insurance policies shall be required:
 - a. Commercial General Liability
 - b. Business Automobile Liability
 - c. Workers' Compensation
 - d. Professional Liability
- II. For each of these policies, the Consultant's insurance coverage shall be primary with respect to the City, its officials, agents, employees and volunteers. Any insurance or self-insurance carried or obtained by the City, its officials, agents, employees or volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Agreement shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit D, and approved by the City *before* work commences.
- III. General Requirements Applicable to All Policies.
 - a. Only licensed insurance carriers authorized to do business in the State of Texas shall be accepted.
 - b. Deductibles shall be listed on the certificate of insurance and are acceptable only on an "occurrence" basis.
 - c. "Claims made" policies are not accepted, except for Professional Liability insurance.
 - d. Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of South Padre Island.
 - e. The Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties:
 - i. The insurance company is licensed and authorized to do business in the State of Texas
 - ii. The insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO
 - iii. All endorsements and coverages are included according to the requirements of this Agreement
 - iv. The form of notice of cancellation, termination, or change in coverage provisions is specified in this attachment
 - f. The City of South Padre Island, its officials, agents, employees, and volunteers are to be listed as Additional Insureds on the Commercial General Liability and Business Automobile Liability Policies. The coverages shall contain no special limitations on the scope of protection afforded the City, its officials, employees, and volunteers.
- IV. **Commercial General Liability** requirements:
 - a. Coverage shall be written by a carrier rated "A: VIII" or better in accordance with the current A. M. Best Key Rating Guide.

- b. Minimum Combined Single Limit of \$1,000,000 per occurrence per project for bodily injury and property damage with a \$2,000,000 annual aggregate limit.
 - c. Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
 - d. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
 - e. The coverage shall not exclude: premises/operations; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein); and where exposures exist, Explosion, Collapse and Underground coverage.
 - f. The City shall be listed as Additional Insured, and the policy shall be endorsed to waive rights of subrogation, to be primary and non-contributory with regard to any self-insurance or insurance policy held by the City.
- V. **Business Automobile Liability** requirements:
- a. Coverage shall be written by a carrier rated "A: VIII" or better in accordance with the current Best Key Rating Guide.
 - b. Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
 - c. The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
 - d. The coverage shall include owned, leased or rented autos, non-owned autos, any autos and hired autos.
- VI. **Workers' Compensation Insurance** requirements:
- a. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, *all* employees of the Consultant, the Consultant, *all* employees of any and all subconsultants, and all other persons providing services on the Project must be covered by a workers compensation insurance policy, either directly through their employer's policy (the Consultant's, or subconsultant's policy) or through an executed coverage agreement on an approved DWC form. Accordingly, if a subconsultants does not have his or her own policy and a coverage agreement is used, Consultants and subconsultants *must* use that portion of the form whereby the hiring Consultant agrees to provide coverage to the employees of the subconsultant. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent Consultant may not be used.
 - b. The workers compensation insurance shall include the following terms:
 - i. Employer's Liability limits of \$1,000,000 for each accident is required.
 - ii. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - iii. Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- VII. **Professional Liability** requirements:
- a. Coverage shall be written by a carrier rated "A: VIII" or better in accordance with the current A. M. Best Key Rating Guide.
 - b. Minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate, with a maximum deductible of \$100,000.00. Financial statements shall be furnished to the City upon request.
 - c. For "claims made" policies, the availability of a 24-month extended reporting period is necessary. The retroactive date shall be shown on the certificate of liability insurance.

EXHIBIT E: CERTIFICATE OF INSURANCE