



THE CITY OF Edinburg

REQUEST FOR QUALIFICATIONS

The City of Edinburg is soliciting sealed Request for Qualifications; hereinafter referred to as RFQ, to be received by the City Secretary's Office located at 415 W. University Drive, Edinburg, Texas 78541. City of Edinburg normal business days are Monday through Friday between the hours of 8:00 a.m. to 5:00 p.m. and shall be closed on recognized holidays.

RFQ'S will be received until **3:00 p.m. Central Time**, on **Tuesday, June 1, 2021**, shortly thereafter all submitted RFQ'S will be gathered and taken to the Edinburg City Hall Community Room, 1st Floor, to be publicly opened and read aloud. Any RFQ received after the closing time will not be accepted and will be returned to the submitter unopened. It is the responsibility of the submitter to see that any RFQ submitted shall have sufficient time to be received by the City Secretary's Office prior to the RFQ opening date and time. The receiving time in the City Secretary's Office will be the governing time for acceptability of the RFQ's. RFQ's will not be accepted by telephone or facsimile machine. All RFQ'S must bear original signatures and figures. The RFQ shall be for:

RFQ No. 2021-006
EDINBURH ARTS, CULTURE & EVENTS CENTER

Respondents receiving a "NOTICE TO RESPONDENTS" and/or "REQUEST FOR QUALIFICATIONS" notice in the mail or reading same in the newspaper are advised that the solicitation documents can be downloaded from the City of Edinburg web page address: www.cityofedinburg.com, or may obtain copies of same by contacting the office of:
LORENA FUENTES, PURCHASING AGENT, LOCATED AT 415 W. UNIVERSITY DRIVE, EDINBURG, TX 78541 by calling (956) 388-1895 Ext. 8972 or by e-mailing your request to the following e-mail address: lfuentes@cityofedinburg.com

If you have any questions or require additional information regarding this RFQ, please contact Mr. Mardoqueo Hinojosa, P.E., CFM, CPM, City Engineer at (956) 388-8211.

Hand Delivered RFQ'S: 415 W. University Drive
C/o City Secretary Department (1st Floor)

If using Land Courier (i.e. FedEx, UPS): City of Edinburg
C/o City Secretary
415 W. University Drive
Edinburg, Texas 78541

If Mailing Qualifications: City of Edinburg
C/o City Secretary
P.O. Box 1079
Edinburg, Texas 78540-1079

The City of Edinburg reserves the right to refuse and reject any or all RFQ's and to waive any or all formalities or technicalities and to accept the RFQ deemed most advantageous to the City, and hold the RFQ's for a period of **90** days without taking action.

RFQ's must be submitted in an envelope sealed with tape and prominently marked on the lower left hand corner of the envelope with corresponding RFQ number and title.

Please read your requirements thoroughly and be sure that the RFQ offered complies with all requirements/specifications noted. Any variation from the solicitation requirements/specifications must be clearly indicated by letter, on a point by point basis, attached to and made a part of your RFQ. If no exceptions are noted, and you are the successful respondent, it will be required that the service(s) be provided as specified.

PURPOSE

The purpose of these solicitation documents is seeking Qualifications from Architectural and Engineering teams to provide professional consulting services for schematic, design, preparation of bid documents and construction support for the Edinburg Arts, Culture, & Events Center including a 40,000 sft multi-purpose building including events, conventions, arts, classroom and office space.

INTENT

The services to be provided under this RFQ shall be in accordance with and shall meet all specifications and/or requirements as shown in this solicitation for RFQ. There is no intention to disqualify any respondent who can meet the requirements.

SUBMITTAL OF RFQ

RFQs shall be submitted in sealed envelopes as called referenced on the attached solicitation. Six (6) complete sets of the response One (1) original marked "**ORIGINAL**," and five (5) copies marked "**COPY**". In addition, a **USB** with a PDF file of response must be provided. RFQs submitted by facsimile (fax) or electronically shall **NOT** be accepted. Submittal of an RFQ in response to this solicitation constitutes an offer by the respondent. Once submitted, RFQ's become the property of the City of Edinburg and as such the City reserves the right to use any ideas contained in any RFQ regardless of whether that respondent/firm is selected. Submission of a RFQ in response to this solicitation, by any respondent, shall indicate that the respondent(s) has/have accepted the conditions contained in the RFQ, unless clearly and specifically noted in the RFQ submitted and confirmed in the contract between the City and the successful respondent otherwise. RFQs which do not comply with these requirements may be rejected at the option of the City. RFQs must be filed with the City of Edinburg before the deadline day and hour. No late RFQs will be accepted. They will be returned to respondent unopened (if properly identified). Failure to meet RFQ requirements may be grounds for disqualification.

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TIME ALLOWED FOR ACTION TAKEN

The City of Edinburg may hold RFQ/s 90 days after deadline without taking action. Respondents are required to hold their RFQ/s firm for same period of time.

RIGHT TO REJECT/AWARD

The City of Edinburg reserves the right to reject any or all RFQs, to waive any or all formalities or technicalities, and to make such awards of contract as may be deemed to be the best and most advantageous to the City of Edinburg.

ASSIGNMENT

Respondents are advised that the City of Edinburg shall not allow the successful respondent to sell, assign, transfer, or convey any part of any contract resulting from this RFQ in whole or in part, to a third party without the written approval of the City of Edinburg.

AWARD

Respondents are advised that the City of Edinburg is soliciting RFQs and award shall be made to the respondent that in the opinion of the City of Edinburg is the best qualified.

NUMBER OF CONTRACTS

THE CITY reserves the right to award one, more than one, or no contract(s) in response to this RFQ.

STATUTORY REQUIREMENTS

It shall be the responsibility of the successful respondent to comply with all applicable State & Federal laws, Executive Orders and Municipal Ordinances, and the Rules and Regulations of all authorities having jurisdiction over the work to be performed hereunder and such shall apply to the contract throughout, and that they will be deemed to be included in the contract as though written out in full in the contract documents.

ALTERATIONS/AMENDMENTS TO RFQ

RFQ **CANNOT** be altered or amended after opening time. Alterations made before opening time must be initialed by respondent guaranteeing authenticity. No RFQ may be withdrawn after opening time without acceptable reason in writing and only after approval by the City of Edinburg.

NO RESPONSE TO RFQ

If unable to submit a RFQ, respondent should return inquiry giving reasons.

LIST OF EXCEPTIONS

The respondent shall attach to his/her RFQ a list of any exceptions to the specifications/ requirements.

PAYMENT

The City of Edinburg will execute payment by mail in accordance with the State of Texas Pay Law after SERVICES have been completed, introduced to the City, and found to meet City of Edinburg specifications/requirements. No other method of payment will be considered.

SYNONYM

Where in this solicitation package Edinburg Arts, Culture, & Events Center is used, its meaning shall refer to the request for Schematic and Design of Edinburg Arts, Culture, & Events Center as specified.



RESPONDENT'S EMPLOYEES

Neither the Respondent nor his/her employees engaged in fulfilling the terms and conditions of this Service Contract shall be considered employees of the City. The method and manner of performance of such undertakings shall be under the exclusive control of the vendor on contract. The City shall have the right of inspection of said undertakings at any time.

INDEMNIFICATION CLAUSE

The Respondent agrees to indemnify and save harmless the City, from all suits and actions of every nature and description brought against them or any of them, for or on account of the use of patented appliances, products or processes, and he shall pay all royalties and charges which are legal and equitable. Evidence of such payment or satisfaction shall be submitted upon request of the Purchasing Agent, as a necessary requirement in connection with the final estimate for payment in which such patented appliance, products or processes are used

INTERPRETATIONS

Any questions concerning the project and/or specifications/requirements with regards to this solicitation for statement(s) of qualifications shall be directed to the designated individuals as outlined in the RFQ. Such interpretations, which may affect the eventual outcome of this request for statements of qualifications, shall be furnished in writing to all prospective Respondents via Addendum. No interpretation shall be considered binding unless provided in writing by the City of Edinburg in accordance with paragraph entitled "**Addenda and Modifications**".

VERBAL THREATS

Any threats made to any employee of the City, be it verbal or written, to discontinue the providing of item/material/services for whatever reason and/or reasons shall be considered a breach of contract and the City will immediately sever the contract with the Respondent/Consultant on contract.

CONFIDENTIAL INFORMATION

Any information deemed to be confidential by the respondent should be clearly noted on the pages where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under Texas Public Information Act, since information deemed to be confidential by the respondent may not be considered confidential under Texas Law, or pursuant to a Court order.

PAST PERFORMANCE

Respondent's past performance shall be taken into consideration in the evaluation of RFQ submittal.

JURISDICTION

Contract(s) executed as part of this solicitation shall be subject to and governed under the laws of the State of Texas. Any and all obligations and payments are due and performable and payable in Hidalgo County, Texas.

RIGHT TO AUDIT

The City of Edinburg reserves the right to audit the vendor's books and records relating to the performance of this contract. The City of Edinburg, at its own expense, shall have the right at all reasonable times during normal business hours and upon at least twenty-four (24) hours' advance notice, to audit, to examine, and to make copies of or extracts from the books of account and records maintained by the vendor(s) with respect to the Supply/Service and/or Purchase Contract. If such audit shall disclose overpayment by City to vendor, written notice of such overpayment shall be provided to the vendor and the amount of overpayment shall be promptly reimbursed by vendor to the City. In the event any such overpayment is not paid within ten (10) business days after receipt of such

notice, the unpaid amount of such overpayment shall bear interest at the rate of one percent (1%) per month from the date of such notice until paid.

VENUE

The parties agree that venue for purposes of any and all lawsuits, cause of action, arbitration, and/or any other dispute(s) shall be in Hidalgo County, Texas.

CONFLICT OF INTEREST

CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person’s affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of Edinburg not later than the 7th business day after the date the person becomes aware of facts that require the statement be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. For more information or to obtain Questionnaire CIQ visit the Texas Ethics Commission web page at www.ethics.state.tx.us/forms/CIQ.pdf.

IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT. AN OFFENSE UNDER CHAPTER 176 IS A CLASS “C” MISDEMEANOR.

CONFIDENTIALITY OF INFORMATION AND SECURITY

Should the successful respondent become the holder of and have access to confidential information in the process of fulfilling its responsibilities in connection with an awarded contract the successful respondent agrees that it shall keep such information confidential and will comply fully with the laws and regulations of the State of Texas, ordinances and regulations of the City, and any applicable federal laws and regulations relating to confidentiality.

TERMINATION OF CONTRACT

The City of Edinburg reserves the right to terminate the contract if, in the opinion of the City of Edinburg, the successful vendor’s performance is not acceptable, no funds are available, or if the City wishes, without cause, to discontinue this contract. Termination will be in written form allowing a 30-day notice.

RESPONSE DEADLINE

Responses to the RFQ must be addressed to City Secretary, City of Edinburg, 415 W. University Drive by **Tuesday, June 1, 2021 until 3:00 p.m.** for consideration. An original and five (5) complete sets of the response must be submitted no later than this date and time in a **sealed envelope** indicating that its contents are in response to the RFQ for “Edinburg Arts, Culture, & Events Center”. **In addition, a USB with a PDF file of response must be provided. Respondents are advised that all confidential records must be submitted in a separate sealed envelope and marked accordingly.**

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ADDENDA AND MODIFICATIONS

Any changes, additions, or clarifications to the RFQ are made by amendments (addenda). Any respondent in doubt as to the true meaning of any part of the RFQ or other documents may request an interpretation from the Purchasing Division. At the request of the respondent, or in the event the Purchasing Division deems the interpretation to be substantive, the interpretation will be made by written addendum. Said Addenda shall be mailed, e-mailed, hand delivered and/or faxed, to all prospective respondents. All Addenda issued in respect to this RFQ shall be considered official changes to the original documents. Verbal statements in response to inquiries and/or requests for explanations shall not be authoritative or binding. It shall be the respondent's responsibility to ensure that they have received all Addenda in respect to this project. Furthermore, respondents are advised that they must recognize, comply with, and attach a signed copy of each Addendum which shall be made part of their RFQ Submittal. Respondent(s) signature on Addenda shall be interpreted as the respondent's "recognition and compliance to" official changes as outlined by the City of Edinburg and as such are made part of the original solicitation documents. Failure of any respondent to receive any such addendum or interpretation shall not relieve such respondent from its terms and requirements. The City may issue a written addendum no later than five calendar days prior to the date bids must be received. Addendums are available online at www.cityofedinburg.com.

RFQ PREPARATION COSTS

The City of Edinburg shall not be held liable for any costs incurred by any respondent for work performed in the preparation of and production of a RFQ or for any work performed prior to execution of contract.

EQUAL EMPLOYMENT OPPORTUNITY

Respondent agrees that they will not discriminate in hiring, promotion, treatment, or other terms and conditions of employment based on race, sex, national origin, age, disability, or in any way violate Title VII of 1964 Civil Rights Act and amendments, except as permitted by said laws.

AUTHORIZATION TO BIND RESPONDENT TO RFQ

RFQs MUST give full firm name and address of respondent, and be manually signed. Failure to do so will disqualify your RFQ. Person signing bid must show title or AUTHORITY TO BIND HIS/HER FIRM IN A CONTRACT. Firm name and authorized signature must appear on each page that calls for this information. The legal status of the Respondent whether corporation, partnership, or individual, shall also be stated in the RFQ. A corporation shall execute the RFQ by its duly authorized officers in accordance with its corporate by-laws and shall also list the state in which it is incorporated. A partnership Respondent shall give full names and addresses of all partners. All partners shall execute the RFQ. Partnership and Individual Respondent shall state in the proposal the names and addresses of all persons with a vested interest therein. The place of residence of each Respondent, or the office address in the case of a firm or company, with county and state and telephone number, shall be given after the signature.

Confidential Information Respondents are advised that all confidential records must be submitted in a separate sealed envelope and marked accordingly.

INSURANCE REQUIREMENTS



Staff may waive insurance requirements for contracts \$0 - \$4,999.99, including but not limited to contracts for food, materials, supplies, and construction. Workers' Compensation in amounts which satisfy statutory coverage shall be required for construction projects.

The following insurance requirements will be included in all City contracts of \$5,000 - \$14, 999.99. In contracts not involving building and construction projects, as that activity is defined in TEX. LABOR CODE §406.096, contractors may obtain alternative form of worker accident insurance with minimum limits of liability of \$100,000 per claim.

Minimum Insurance Requirements	
Type of Coverage	Limits of Liability
Worker's Compensation	Statutory Coverage
Comprehensive General Liability (City named as additional insured) Bodily Injury	\$250,000 each person/\$500,000 each occurrence
Property Damage	\$100,000 each occurrence /\$100,000 aggregate or \$500,000 combined single limits

The following insurance requirements will be included in all City contracts of \$15,000 or more.

The successful bidder will be required to carry the following insurance coverage and limits of coverage, as well as list the City as an additional insured to liability coverage as requested by the City. In addition, the successful bidder shall provide the City with evidence of coverage and furnish acceptable proof of payment of insurance premiums.

The successful bidder will be required to secure and/or have insurance coverage in force with an admitted property and casualty insurance company licensed by the State of Texas to conduct business in the State of Texas.

In contracts not involving building and construction projects, as that activity is defined in TEX. LABOR CODE §406.096, contractors may obtain alternative form of worker accident insurance with minimum limits of liability of \$100,000 per claim.

Minimum Insurance Requirements	
Type of Coverage	Limits of Liability
Worker's Compensation	Statutory Coverage
Employer's Liability	Bodily Injury by Accident: \$100,000 each accident
	Bodily Injury by Disease: \$100,000 each employee/\$500,000 policy limit
Comprehensive General Liability Bodily Injury	\$250,000 each person/\$500,000 each occurrence
Property Damage	\$100,000 each occurrence/\$100, 000 aggregate or \$500,000 combined single

Comprehensive Auto Liability Bodily Injury	\$100,000 each person/\$500,000 each occurrence
Property Damage	\$100,000 each occurrence/\$100,000 aggregate or \$500,000 combined single limits
City's Protective Liability Bodily Injury	\$250,000 each person/\$500,000 each occurrence
Property Damage	\$100,000 each occurrence/ \$100,000 aggregate or \$500,000 combined single limits

Policies must name the City of Edinburg as an Additional Insured.

Certificates of insurance naming the CITY as an additional insured shall be submitted to the CITY for approval prior to any services being performed by Contractor. Each policy of insurance required hereunder shall extend for a period equivalent to, or longer than the term of the Contract, and any insurer hereunder shall be required to give at least thirty (30) days written notice to the CITY prior to the cancellation of any such coverage on the termination date, or otherwise. This Contract shall be automatically suspended upon the cancellation, or other termination, of any required policy of insurance hereunder, and such suspension shall continue until evidence that adequate replacement coverage is provided to the CITY. If replacement coverage is not provided within thirty (30) days following suspension of the Contract, the Contract shall automatically terminate.

I. PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS:

1. RFQ Response:

In order to be considered for selection, proposers must submit a complete response to this RFQ. One (1) original and five (5) copies of each proposal must be submitted to the issuing agency. In addition, a USB with a PDF file of response must be provided. No other distribution of the proposal shall be made by the proposer.

2 Proposal Preparation:

Qualifications shall be signed by an authorized representative of the proposer. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Qualifications which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation. Qualifications should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFQ. Emphasis should be placed on completeness and clarity of content.

Qualifications should be organized in the order in which the requirements are presented in the RFQ. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFQ. It is also helpful to cite the paragraph number, sub-letter, and repeat the text of the requirement as it appears in the RFQ. If a response covers more than one page, the paragraph number and sub-letter should be repeated at the top of the next page. The proposal should contain a table of contents which cross-references the RFQ requirements. Information which the proposer desires to present that does not fall within any of the requirements of the RFQ should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Qualifications that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFQ requirements are specifically addressed.

As used in this RFQ, the terms "must", "shall", "should" and "may" identify the criticality of requirements. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFQ, some individual "must" and "shall" items may not be fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of a Proposer to satisfy a "must" or "shall" requirement does not automatically remove that Proposer from consideration; however, it may seriously affect the overall rating of the Proposers' proposal.

Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.

Oral Presentation: Proposers who submit a proposal in response to this RFQ may be required to give an oral presentation of their proposal to the committee. This provides an opportunity for the proposer to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. The issuing agency will schedule the time and location of these presentations. Oral presentations are an option of the purchasing agency and may or may not be conducted.

1.3 Specific Proposal Instructions:

Qualifications should be as thorough and detailed as possible so that the City may properly evaluate your capabilities to provide the required goods/services. Proposers are required to submit the following items as a



complete proposal:

Return the RFQ cover sheet and all addenda acknowledgments, if any, signed and filled out as required.

Proposer Data Sheet, included as an attachment to the RFQ (Section V of the RFQ), and other specific items or data requested in the RFQ.

Acknowledgment Form, included as an attachment to the RFQ (Section V of the RFQ), and other specific items or data requested in the RFQ

A written narrative statement to include:

1. Proposer's complete name, business address, and telephone number and the name, mailing address, and telephone number of the person that the Project Committee should contact regarding the proposal, as well as the location of the office(s) where work will be carried out.
2. A description of the proposer's organization, including names of principals, number of employees, longevity, client base, areas of specialization and expertise and any other pertinent information in such a manner that proposal evaluators may reasonably formulate an opinion about the stability and financial strength of the organization
3. Provide similar experience of the key team members illustrating similar projects or work related to the capabilities in designing multi-purpose building including events, conventions, arts and entertainment and processes described in the scope of work. Include sub-consultant (if any) capabilities as related to the scope of work. Cite specific projects of a similar nature to the Project described herein and list a reference with primary contact information for each project cited.
4. Project Approach and Schedule: A detailed description of how your firm proposes to approach this Project. Include sufficient discussion of proposed methodologies, techniques, and procedures for each work item. Provide a breakdown and description of tasks assigned per project team member. Describe the hierarchy of project management. Provide suggestions for any additional services, which may enhance the value and/or affect the overall economy and effectiveness of the Project.
 - Project Schedule: Note any unique services the design team can provide and any changes to the schedule in order to complete the project. Any suggestions on how to accelerate the design process to allow construction to begin in a quicker timeframe are encouraged.
5. Project Team(s): Provide an Organization Chart of the project team specifying the dedicated Project Manager, key personnel, and sub-consultants assigned to the team and the availability of backup personnel that will support this Project. Include a brief summary identifying roles and responsibilities and general qualifications (i.e., professional registrations, certifications and/or licenses) of each team member (including sub-consultants) in disciplines appropriate to the Project, as well as education, availability to work on this Project, experience, years of experience (with current firm and other firms). Please do not list firm staff members that are not directly working on the Project team. If more than one Project Manager or team is desired, please include this information and describe why this is necessary and how it is anticipated to work.
 - Project Manager Qualifications: Experience of the project manager with event/arts/conventions/entertainment center planning including education and relevant experience. Experience should include public meetings, design and master planning, project management and construction. Please list references and contact information for these projects.
6. Insurance and Contract Statement: Provide a statement that the firm has reviewed and is willing to meet the requirements as specified in Appendix A - Standard Clauses for City of Edinburg Contracts, and provide insurance as specified in Appendix B – Minimum Insurance Standards for City of Edinburg Contracts.
7. Identification of Lawsuits and Administrative Claims/Fine): Consultants must identify all lawsuits;



administrative claims or fine proceedings Consultant has been a party to in the past five (5) years. Include any fines levied by any governmental unit relating to the proposed work in this RFQ such as fines from the DEC, Department of Labor or other units of government.

II. SPECIFICATIONS

2.1 Purpose

The City of Edinburg is seeking Qualifications from Architectural and Engineering teams to provide professional consulting services for design, preparation of bid documents and construction support for the Edinburg Arts, Culture, & Events Center including a 40,000 sq. ft. multi-purpose building including events, conventions, arts and entertainment. The final budgeted amount will be shared once a firm is selected.

2.2 Background

The existing site, host of the Sam Houston Elementary School was built in the 1920s. The current structure was not built for the proposed use we ask of it today. However, the elements that made the site special are asked to be maintained. The intent for this building is to feature local artists, host family-friendly cultural events, and attract more visitors to the city. In addition, several City departments will be hosted in this multi-purpose building.

2.3 Project Location

The entire site is located at 315 W McIntyre Street. This area is being master planned to become a downtown arts and entertainment area able to host many city events, conventions, arts and entertainment. The area is located northwest of the Hidalgo County Courthouse and east of City Hall.

2.4 Project Goal

The goal of the project is to make design a 40,000 sf ft. multi-purpose building for events, conventions, arts and entertainment for residents and to attract visitors. The project will include the design and construction of the new building. City will provide selected consultant with the FOUNDATION/BUILDING ENVELOPE/ STRUCTURAL ASSESSMENT prepared for existing building.

2.5 Project Components

1. Arts, Culture, and Event Space

The Arts, Culture, and Event space component is intended to accommodate a wide-variety of large gatherings and events. This area should feature one large multi-purpose convention, ballroom, performance area of approximately 15,000 sq. ft. that can be divided into classroom, studio, and gallery art spaces. An additional space of 5,000 sq. ft. shall be a lobby area for events and arts display, a café, and storage areas.

2. Office and Auxiliary Space

This Office and Auxiliary space component will feature approximately 20,000 sq. ft. of office space, meeting rooms, a multi-media video and film production studio, and storage areas.

3. Outdoor Space

The outdoor space shall feature an outdoor terrace and/or plaza to serve as outdoor event space.

III. SCOPE OF WORK



City of Edinburg desire to engage a qualified Professional Architect, Landscape Architect, and Engineering Firms to provide Design Services and Project Management for the Project, from conception to completion. Major tasks shall include the following:

3.1 Architectural/Landscape Architectural Design:

1. Complete a site visit to meet with key park personnel, local officials, and other stakeholders to learn about the project and the public engagement process that has occurred to date.
2. Register project with Texas Department of Licenses and Regulations (TDLR) and coordinate all inspections.
3. Provide no less than two (2) design alternatives and preliminary construction estimates for each funded component outlined in the project details. The alternatives will be reviewed by the public and city management. The final alternative will be presented to the Edinburg City Council for final approval.
4. Deliver the items to the City of Edinburg, after City Council's Approval:
 - a. All Final Rendering plans (36"x48") and provide PDF version.
 - b. AutoCAD Files
 - c. Project report – in PDF Format and include site inventory and analyses, conceptual alternatives, and changes to the existing City of Edinburg Master Parks Plan.

3.2 Construction Documents Services:

1. Prepare construction drawings and specifications (project manual).
 - a. Reviews by the Project Committee of both the drawings and project manual at 60% completion, 90% completion and at 100% completion.
 - b. The design team will meet with the Project Committee to discuss review comments at the, 60% and 90% stages of completion.
2. Prepare construction cost estimates and keep them up-to-date thru the life of the project. Critical times will be, 60%, 90% & 100%. This project will be bid as a unit price bid so the cost estimate should be set up in this manner with certain elements (ex. pavilion building) bid as a lump sum line item.
3. Complete all environmental testing and review.
4. Complete pre-design geotechnical services. At a minimum, borings should occur under all paved areas and building locations and any other structural elements with critical footings proposed. The exact amount will be agreed upon once a layout is known.
5. Provide for all necessary utilities including water, sewer, electrical.
6. As-built – At the completion of the construction project provide a digital set (AutoCAD) and one set of PDF's of as-built plans.
7. Management Plan – At the completion of the construction project compile all product information including all warranties into a concise document (digital and 1 paper copy) for the City of Edinburg Staff to use. A separate landscape maintenance document for all plant material specified shall also be provided. This landscape maintenance document will need to be developed during the CD phase of the project and reviewed with Project Committee and City of Edinburg staff prior to bidding the project, and finalized once the project is complete. This will assist City staff in determining how areas are to be maintained in order to properly budget operating funds.

3.3 Project Construction Management:

Due to the unique funding for the project and project reporting requirements from multiple funding agencies, the construction management and reporting will be a critical component of this project. Project/ Construction management will be provided by the selected firm from conception to completion. Management to include regular meetings with contractors and subcontractors; regular site visits and site monitoring; regular reporting to the City Council; regular review of the budget and timeline; attendance and participation in all public meetings and



hearings; tracking of all invoices and payments; solicitation, compliance, and reporting; contractor payment review and reporting, and other specific reporting as required by the individual funding agencies.

3.4 Project Schedule:

Below is a recommended schedule. Any changes to this process should be included in the design team proposal.

Project Initiation/Kick Off: June 2021.

Construction Complete: No later than June of 2023.

In the schedule, time should be identified for solicitation, required public input meetings and hearings. Ideas on how to accelerate the design process to allow for early construction are encouraged.

IV. EVALUATION AND AWARD CRITERIA:

Requests for Qualifications will be evaluated based on the criteria below, by the City of Edinburg Staff which is comprised of the three (3) Assistant City Managers, City Engineer, Director Library and other City Management staff.

1. Firm experience/reputation/workload: The firm's experience in similar work and the record of successful results of that work. Consideration will be given to the firm's ability to take on additional work, demonstrate understanding of the City's goals and purposes of this Project, specific management approach, how well the firm's organization structure shows sufficient depth of its present workload, approach to managing the project's budget and time, and the firm's ability to offer the breadth and quality of services required for this Project.
2. Response to the project objectives outlined in the scope of work: The proposed approach for performing the work for this Project, including demonstrated understanding of the scope of work for this Project and Project deliverables. Ideas that are innovative, cost-effective, sustainable and feasible for the Project will be given additional weight.
3. Experience of the personnel assigned to this project team: A firm provides the resources but the individuals assigned to a project are how the job gets done. The Committee will give weight to the individual qualifications of the project team members who will be assigned to do a majority of the work on the Project. Consideration will include the Project Manager's individual qualifications, experience, and location, which key personnel will be assigned to the Project, and any sub-consultants individual experience, qualifications, and location. Preference will be given to those firms demonstrating a strong ability to meet the State of Texas requirements.
4. Schedule: Consideration will be given to the firm's ability to meet schedules and responsiveness to the Project Committee. Once a contract is awarded, the selected firm must be in a position to begin work immediately and move quickly towards completion.

The foregoing criteria will be rated on the following 100 Point scale:

Firm Experience/reputation/workload	1-25 points
Response to the project objectives outlined	1-25 points
Experience of the personnel assigned	1-25 points
Schedule	<u>1-25 points</u>
	100 points



V. AWARD OF CONTRACT:

The City may select one (1) or more firms to provide services based on this evaluation or it may choose to follow up with an interview on **Wednesday, June 10, 2021 IF NECESSARY**. This process will result in the selection of a firm or firms to provide services. The City reserves the right to reject any and all RFQ's for any reason whatsoever. The City may waive informalities or irregularities in the RFQ's received where such is merely a matter of form and not substance, and the correction or waiver thereof is deemed by the City not prejudicial to other RFQ's.

Selection shall be made of one or more proposers deemed to be fully qualified and best suited among those submitting Qualifications on the basis of the evaluation factors included in the Request for Qualifications, if so stated in the Request for Qualifications. Negotiations shall be conducted with the proposers so selected. After negotiations have been conducted with each proposer so selected, the agency shall select the proposer which, in its opinion, has made the best proposal, and shall award the contract to that proposer. The City may cancel this Request for Qualifications or reject Qualifications at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed the most advantageous. Should the City determine in writing and in its sole discretion that only one proposer is fully qualified, or that one proposer is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that proposer. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated. After the selection of the most qualified firm(s), scope of services and billing rates will be negotiated and used as attachments to the City's Professional Services Agreement. This Agreement will then be submitted to the City Council for approval. If the City and the selected firm cannot successfully negotiate an agreement, then the City will enter into negotiations with the next best qualified firm on the evaluation rating list. This procedure may be repeated until one (1) or more firms has been selected and approved by the City Council.

The City currently anticipates conducting the selection process proceeding in accordance with the following list of milestones. This schedule is subject to revision and the City reserves the right to modify this schedule as necessary, in its sole discretion.

RFQ Issued	May 15, 2021
Publish RFQ	May 15 and 22, 2021
RFQ Submission Deadline (Post Marked or Delivered)	June 1, 2021
RFQ Review	June 1 – 10, 2021
Firms Interviews, if required	June 10, 2021
City Council Selects Firm(s)	June 15, 2021

VI: CITY CONTACT

If you should have any questions regarding the preparation of the RFQ contact Mr. Tomas D. Reyna, Assistant City Manager at (956) 388-8210 or treyna@cityofedinburg.com or Mr. Mardoqueo Hinojosa, P.E., City Engineer at (956) 388-8212 or mhinojosa@cityofedinburg.com.

Responses to the RFQ must be addressed to City Secretary's Office, City of Edinburg, and received at City Hall, at 415 W. University Drive, Edinburg, Texas 78541 by **June 1, 2021 and no later than 3:00 pm**. Six (6) complete sets of the response no larger than 30 bound pages must be submitted no later than this date and time. The RFQ is to be placed in a sealed envelope indicating that its contents are in response to the Request for Qualifications for the **Edinburg Arts, Culture, & Events Center**

STATE OF TEXAS	§	AGREEMENT BETWEEN THE CITY OF EDINBURG AND SELECTED ARCHITECTURAL CONSULTANT(S) FOR ARCHITECTURAL CONSULTING SERVICES PURSUANT TO RFQ No. 2021 – 006 EDINBURG ARTS, CULTURAL & EVENTS CENTER
COUNTY OF HIDALGO	§	
CITY OF EDINBURG	§	

The City of Edinburg, Hidalgo County, Texas, a municipal corporation, (hereinafter “**City**”) and Selected Architectural Consultant(s). (hereinafter “**Consultant**”), are the parties to this Agreement.

RECITALS

WHEREAS, City has authorized staff to request proposals for Architectural Services, the Consultant shall provide services as defined, scheduled, and authorized. Services may include, but not be limited to Architectural Services, and other as-needed services as stated in Exhibit “A”, and

WHEREAS, Consultant has the professional knowledge and abilities to perform the Architectural Services; and

WHEREAS, City desires to engage Consultant to render services in connection therewith:

NOW, THEREFORE, City and Consultant do mutually agree as follows:

**SECTION I
EMPLOYMENT OF CONSULTANT**

A. City agrees to employ Consultant to furnish and provide the Services, as stated in this agreement and **Exhibit “A”**. Upon receipt of Services to the City’s satisfaction, the City agrees to pay Consultant as stated in this Agreement.

**SECTION II
SERVICES OF CONSULTANT**

A. The Consultant shall, in the scope of his work, perform the Services identified in **Exhibit “A”** of this document. City shall provide Consultant with authorization to proceed, after execution of this Agreement.

B. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall

in any way assume any of the liability of the other for acts of the other or obligations of the other.

SECTION III **RESPONSIBILITY OF THE CITY**

- A. City will facilitate Consultant's work with the following tasks:
1. Provide Consultant with its requirements for the Services.
 2. Assist Consultant by providing information reasonably available to the City and pertinent to the Services.
 3. Facilitate access to and make provisions for Consultant to enter upon public property as reasonably required for Consultant to perform its Services.
 4. Examine all reports, sketches, estimates, drawings, proposals, and other documents presented by Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the Services of the Consultant.
 5. Give prompt written notice to Consultant whenever City observes or otherwise becomes aware of any defect in Services.
 6. City's representative with respect to interpretation and implementation of the Services and this Agreement will be the City Engineer or such other representative that the City may appoint by written notice to Consultant with whom Consultant will communicate regarding all matters pertaining to this Agreement. Said representative will make all arrangements for consultation by Consultant with employees or designees of City. In addition, said representative shall have authority and responsibility to define and agree upon the scope and specification of the Services, require and receive reports regarding the progress of the Services, and terminate the performance of the Services or any phase thereof in accordance with the provisions of this Agreement.

SECTION IV **RESPONSIBILITIES OF CONSULTANT**

- A. Consultant shall perform the Services described in **Exhibits "A"**.
- B. Consultant shall perform its services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by its profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, plans, information, and other items and Services furnished under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, ordinances, codes, and regulations in performing the Services. If Consultant fails to meet applicable professional standards, Consultant shall

without additional compensation correct or revise any errors or deficiencies, with or without request to do so by the City.

C. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of Services furnished by Consultant under this Agreement. Consultant shall keep the City informed of the Services performed under this Agreement. In connection with the performance of the Services by Consultant, Consultant agrees to promptly and fully disclose to City any information regarding the Services as City may request.

D. Consultant will develop and maintain a detailed schedule for completion of the Services. The schedule will be a work plan showing activities to be performed and their sequence; and, in addition, activities will contain duration, manpower required, and estimated cost. A preliminary schedule shall be submitted to the City within ten (10) days after execution of this Agreement for review and establishment of the level of detail to be included.

E. Consultant will submit monthly progress data for the reporting period which will include the percentage complete and actual start date and actual finish date for all activities worked on by the Consultant during the period. Any changes in delivery dates will be reported. Other information, such as actual hours expended, will be furnished monthly, or as requested, by the City. If requested by the City, schedule update meetings will be held to discuss the results of schedule analysis and necessary action to meet the requirements of the schedule.

F. Consultant shall perform Services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement.

G. City's review or approval of reports, and other services furnished hereunder shall not in any way relieve Consultant of responsibility for the technical adequacy of the work. Neither City's review, approval, or acceptance of, nor payment for any of the Services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

H. Consultant shall be and shall remain liable, in accordance with applicable law, for all damages to City caused by Consultant's negligent performance of any of the Services furnished under this Agreement. Consultant shall not be responsible for any time-delays in the project caused by circumstances beyond Consultant's control.

I. Consultant's obligations under this clause are in addition to the Consultant's other expressed or implied obligations under this Agreement or state law and in no way diminish any other rights that City may have against Consultant for consultant's errors or omissions.

J. All reports, drawings, plans, and other documentation pertaining to the Services become the property of City.

SECTION V
PAYMENT AND FEES

City agrees to pay Consultant for recommendations, reports, design, specifications, and such other services herein contracted for as follows:

A. City hereby agrees to pay a sum not to exceed that which is included in a specific Task Order and authorized by a Notice to Proceed, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered on a lump sum basis pursuant to any specific Task Order and in the manner set forth therein. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person. Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

B. City is entitled to impose a set-off against payment based on any of the following:

a. Claims have been made against City based on Consultant's conduct in the performance or furnishing of Services, or City has incurred costs, losses, or damages resulting from Consultant's conduct in the performance or furnishing of Services, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, and non-compliance with Laws and Regulations;

b. Consultant has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with Services and related work;

c. Consultant has failed to provide and maintain required insurance;

d. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

e. City has incurred extra charges or Architectural costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

- f. Any Services are defective, requiring correction or replacement;
- g. City has been required to correct defective Services or has accepted defective Services;
- h. Liens have been filed in connection with the Services; or
- i. Other items entitle City to a set-off against the payment amount.

C. If City imposes any set-off against payment, City will give Consultant immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Consultant any amount remaining after deduction of the amount so withheld. City shall promptly pay Consultant the amount so withheld, or any adjustment thereto agreed to by City and Consultant, if Consultant remedies the reasons for such action. The reduction imposed will be binding on Consultant unless it duly submits written notice contesting the reduction within 30 days of receiving City's written notice.

D. All fees payable to Consultant under this Agreement shall be made in full, and without any withholding, deduction, or offset of any state or federal withholding taxes, FICA, SDI, or income taxes, nor shall the City be obligated to pay any of Consultant's employees' taxes. Consultant hereby covenants and agrees that it shall be solely responsible for all taxes, withholding, FICA, SDI, and other similar items (both employee and employer portions) with respect to all fees paid by the City under this Agreement, and agrees to indemnify and hold the City harmless with respect to such taxes and withholding.

E. Consultant and its employees shall not be eligible for, participate in, or be entitled to compensation in lieu of any insurance, benefit, retirement, or other plan or program provided by the City to its employees.

F. Consultant shall provide an invoice in accordance with City regulations. Payment terms shall be net thirty (30) days from receipt of invoice.

G. The City may, at any time, request Consultant to make changes within the scope of the Services or to perform extra work. If any request by the City for a change or extra work causes an increase or decrease in the cost or the time required for performance of the work, or any change to this Agreement, Consultant shall, within fourteen (14) days from the date it receives the City's request, unless the City Engineer grants additional time in writing, submit in writing a proposal for accomplishing such changed or extra work. This proposal shall define, if applicable, any increase or decrease in cost or time of completion or other change to this Agreement. The governing body of the City must approve any change orders, pursuant to the City's Code of ordinances and policies and procedures and any other applicable laws of this State, before making the changes. The City will not be liable for any costs incurred by Consultant from performance of a change or extra work prior to issuance of a change order to this Agreement.

H. The total contract price may not be increased because of the changes unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants.

I. Prior to and as a condition of final payment to the Consultant following termination or expiration of this Agreement as defined below, the Consultant shall deliver to the City a release in form and substance satisfactory to the City, discharging it and its officers, agents, and employees of all liabilities, obligations, and claims arising out of this Agreement and the performance thereof.

SECTION VI **TERM OF AGREEMENT**

A. Except as provided below, this Agreement, and the Services to be performed under it, shall commence on the date this Agreement is executed by both parties, and shall continue thereafter through and the earlier of (i) two (2) years from the date of execution or (ii) until the Services are declared complete in a written instrument signed by the City Engineer and the City Manager. The City shall have the right, in its sole discretion, to extend the term of this Agreement for an additional year upon approval from the City. If approved by City, City shall provide Consultant with a written notice of the approval of the extension.

B. City may terminate this Agreement upon giving 30 days' prior written notice thereof to Consultant. In addition, City shall have the right, upon written notice, to cancel this Agreement immediately if, in the City's sole judgment, the Services rendered by Consultant breach or violate any of the provisions of this Agreement.

C. Upon termination or completion of this Agreement, City shall have no liability to Consultant except for charges for Services performed by Consultant and accepted by the City prior to receipt of notice of termination or cancellation. The terms and conditions in this Agreement that by their sense and context are intended to survive the performance hereof by either or both parties hereunder shall so survive the termination, cancellation, or completion of performance of this Agreement.

D. Upon termination or completion of Consultant's Services hereunder or at such other time as may be requested by City, Consultant shall return to City within ten (10) days of termination, completion, or request all documents, records, notebooks, including copies thereof, whether prepared by Consultant or others, in Consultant's possession and related to the Services.

E. The City reserves the right to suspend work on the Services, with or without cause, in whole or in part, upon giving notice to Consultant. Consultant shall resume the Services so suspended when directed to do so by the City. The City shall have no liability to Consultant except for charges for Services performed by Consultant and accepted by the City prior to receipt of notice of suspension of Services. If only a portion of the Services

are suspended, Consultant shall be compensated only for Services of which are not suspended and are actually performed during such suspension.

F. Upon termination of this Agreement or suspension of Services under this Section, the City may take over the work and may obtain the services of another entity to complete the work under this Agreement.

SECTION VII
MINIMUM INSURANCE REQUIREMENTS

Consultant shall be adequately insured and carry liability, workers compensation, automobile insurance and professional liability for injury to its employees and others incurring loss or injury as a result of the acts of Consultant or its employees. In accordance with City ordinances, Consultant shall be required to hold the following minimum insurance coverage throughout the duration of this agreement:

- A. Workers Compensation
In accordance with State statute.
- B. Comprehensive General Liability
 - 1. Bodily Injury
\$250,000 each person
\$500,000 each occurrence
 - 2. Property Damage
\$100,000 each occurrence
\$100,000 each aggregate

or \$500,000 combined single limits
- C. Comprehensive Auto Liability
 - 1. Bodily Injury
\$100,000 each person
\$500,000 each occurrence
 - 2. Property Damage
\$100,000 each occurrence
\$100,000 aggregate

or \$500,000 combined single limits
- D. City's Protective Liability
 - 1. Bodily Injury
\$250,000 each person
\$500,000 each occurrence
 - 2. Property Damage

\$100,000 each occurrence
\$100,000 each aggregate

or \$500,000 combined single limits

E. Professional Liability

1. Professional

\$1,000,000 per claim and in the aggregate

F. Evidence of the above insurance coverage is attached as Exhibit "B" and the City of Edinburg shall be listed as an additional insured.

G. If at any time and for any reason Consultant fails to provide, maintain, keep in force and effect, or deliver to the City proof of, any of the insurance required and such failure continues for ten (10) days after Notice thereof from City to Consultant, City may, but shall have no obligation to, procure single interest insurance for such risks covering City (or, if no more expensive, the insurance required by this Agreement), and Consultant shall, within ten (10) days following City's demand and Notice, pay and reimburse City therefor with interest at Prime Rate plus 2%, the Prime Rate being that in place on the date of Notice, from the date of payment by the City until repayment of City in full by Consultant.

H. With respect to each and every one of the insurance policies required to be obtained, kept, or maintained under the terms of this Agreement, on or before the date on which each such policy is required to be first obtained and at least fifteen (15) days before the expiration of any policy required hereunder previously obtained, Consultant shall deliver evidence reasonably acceptable to City showing that such insurance is in full force and effect.

I. Consultant hereby agrees as follows:

1. To punctually pay or cause to be paid all premiums and other sums payable under each insurance policy required to be obtained, kept, and maintained pursuant to this Lease;

2. To maintain in full force and effect the policies required to be carried to the extent so required to be carried pursuant to the terms hereof;

3. To ensure that all Casualty Proceeds are paid to the Party entitled to receive same;

4. Not, at any time, to take any action (or omit to take action) which action (or omission) would cause any insurance policies required to be obtained, kept, and maintained under this Lease to become void, voidable, unenforceable, suspended,

or impaired in whole or in part or which would otherwise cause any sum paid out under any such insurance policy to become repayable in whole or in part; and

5. Promptly deliver Notice to City of any facts or circumstances of which it is aware which, if not disclosed to its insurers or re-insurers, is likely to affect adversely the nature or extent of the coverage to be provided under any insurance policy required hereunder.

SECTION VIII **ALTERNATE DISPUTE RESOLUTION/NEUTRAL PARTY**

A. If any dispute, controversy, or claim between or among the Parties arises under this Agreement or is related in any way to this Agreement or the relationship of the Parties hereunder (a "Dispute"), the Parties shall first attempt in good faith to settle and resolve such Dispute by meeting at a mutually agreeable time and place to discuss the Dispute within seven (7) days following the original written notice of any Dispute by the party making such a claim. The Parties shall seek to resolve the Dispute in writing within fourteen (14) days following the original written notice of any Dispute by the party making such a claim.

B. If a mutual resolution and settlement are not obtained at the meeting, the Parties shall participate in good faith in formal mediation, within thirty (30) days following the original written notice of any Dispute, with a mutually agreeable mediator at a mutually agreeable time and place. No settlement reached under this provision shall be binding on the Parties until reduced to a writing signed by a representative of Contractor and the City Manager. Unless the parties expressly agree otherwise, each party shall bear its own costs and legal and expert fees incurred in the mediation, and evenly share the costs of the mediator. If after proceeding in good faith the parties, with the assistance of a neutral mediator, do not resolve the dispute within forty-five (45) days following the original written notice of any Dispute, the parties may proceed in accordance with Section IX below.

SECTION IX **CONTROLLING LAW, MANDATORY VENUE, AND FEES AND EXPENSES**

A. After exhausting the procedures set forth above, either party may initiate litigation to resolve the dispute. The Law of the State of Texas shall control the Dispute. Venue is mandatory in in State courts located in Hidalgo County, Texas.

B. In the event of any litigation between the parties, the City shall be entitled to its attorneys' fees, costs, and expenses.

SECTION X **INDEMNIFICATION**

A. To the maximum extent allowed by law, Consultant agrees to and shall indemnify, hold harmless, and defend City, its officers, agents, and employees from any

and all claims, losses, causes of action and damages, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees for injury to or death to any person or for damage to any property arising out of or directly connected with the negligent or willful conduct of Consultant, its agents, officers and employees, carried out in furtherance of this Agreement.

B. Consultant agrees to assist City in defense of claims or litigation brought against the City related to this project, including any claims related to design or any other services provided by consultant regarding this agreement.

SECTION XI **LIMITATION OF LIABILITY**

A. Consultant agrees to limit the City's liability arising from City's acts, errors, or omissions such that the total liability of City shall not exceed Consultant's total fees paid by the City to Consultant for the Services rendered pursuant to the Task Order which is the subject matter of the claim. Consultant agrees that City will not be liable for any indirect, incidental, special, or consequential punitive or multiple damages, including without limitation any damages resulting from loss of use, loss of business, loss of revenue, loss of profits, or loss of data, arising in connection with this Agreement, Consultant's performance of Services, or of any other obligations relating to this Agreement, even if City has been advised of the possibility of such damages. The foregoing limitation of liability shall apply to the maximum extent allowed by law for limitation of City's liability, regardless of the cause of action under which such damages are sought.

SECTION XII **AGREEMENT CONSTRUCTION**

A. The headings of the Sections contained in this Agreement are for reference purposes only, and shall not affect the meaning or interpretation of this Agreement. The parties have been advised by counsel in connection with this Agreement. This Agreement shall be construed and interpreted in accordance with the plain meaning of its language, and not for or against either party, and as a whole, giving effect to all of the terms, conditions, and provisions of this Agreement. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any person who is not a party to this Agreement.

SECTION XIII **NO PENDING LITIGATION**

A. Consultant represents that there is no action, proceeding, inquiry, or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending to the best knowledge of Consultant threatened against or affecting the Consultant or any subsidiaries of the Consultant, questioning the validity or any action

taken or to be taken by the Consultant in connection with the execution, delivery, and performance by the Consultant of this Agreement to which the Consultant may be a party or seeking to prohibit, restrain, or enjoin the execution, delivery, or performance by the Consultant hereof or thereof, where in an unfavorable decision, ruling, or finding (i) would adversely effect the validity or enforceability of, or the authority or ability of the Consultant to perform, its obligations under this Agreement to which the Consultant may be party or (ii) would have an adverse effect on the consolidated financial condition or results of operations of the Consultant or on the ability of the Consultant to conduct its business as presently conducted or as proposed or contemplated to be conducted.

SECTION XIV
SEVERABILITY

A. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION XV
NOTICE

A. Any notices to be given under this Agreement shall be in writing, (i) sent by registered or certified mail, postage prepaid, return receipt requested or (ii) sent by nationally recognized overnight courier (e.g. Federal Express) with electronic tracking, and addressed to such party as follows:

(a) Notices to the City:

City of Edinburg
415 W. University Drive
Edinburg, Texas 78539
Attn.: City Manager

With a copy to:

City of Edinburg
415 W. University Drive
Edinburg, Texas 78539
Attn.: City Attorney

(b) Notices to Consultant:

Selected Architectural Consultant(s)
Address
City, State Zip Code
Attn.: Consultant Representative

B. Such Notices shall be deemed delivered (i) in the case of U.S. mail in the manner provided above, three (3) business days after posting or (ii) if sent by nationally recognized overnight courier with electronic tracking service, the next business day after depositing same with such overnight courier before the overnight deadline and if deposited with such courier after such deadline, then the next succeeding business day.

SECTION XVI NON-APPROPRIATIONS

A. Notwithstanding anything in the Agreement to the contrary, any and all payments which the City is required to make under this Agreement shall be subject to annual appropriation or other availability of funds, as certified by the Director of Finance.

B. If the City cannot appropriate sufficient funding, then either party has the right to terminate the Agreement by providing ten (10) days' written notice to the other party.

SECTION XVII SUCCESSORS AND ASSIGNS

City and Consultant each bind themselves, their partners, successors, executors, administrators, and assigns to the other party of the Agreement in respect to all covenants of this Agreement. Neither City nor Consultant shall assign, sublet, or transfer interest in this Agreement without written consent of the other.

SECTION XIX CONFLICT OF TERMS

If any of the terms of this Agreement conflict in any respect with any of the terms of the attached Exhibits or any current or future Task Orders, the terms of this Agreement shall be controlling.

SECTION XX NO WAIVERS OR ACCORD AND SATISFACTION

A. This Agreement may be amended only by written instrument signed by all parties.

B. No failure or delay of any Party, in any one or more instances (i) in exercising any power, right, or remedy under this Agreement or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations, or agreements under this Lease, shall operate as a waiver, discharge, or invalidation thereof, nor shall any single or partial exercise of any such right, power, or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power, or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right,

power, or remedy. The covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act, or omission.

C. Without limiting the generality of the above, the receipt by City of any Services with knowledge of a breach by Consultant of any covenant, obligation, or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach. No acceptance of Services or payment to Consultant shall be deemed to be other than on account of the earliest installment of the amounts due under this Agreement, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. City may accept services or make payment without prejudice to its rights under this Agreement or pursue any remedy provided in this Agreement or provided otherwise by law or equity.

EXECUTED by the parties in triplicate originals on this _____ day of _____, 2020.

CITY OF EDINBURG:

BY: _____
Ron Garza, City Manager
City of Edinburg
415 W. University Dr.
P.O. Box 1079
Edinburg, Texas 78540
Phone: (956) 388-8207
Fax: (956) 383-7111

ATTEST:

BY: _____
Myra L. Ayala, City Secretary

APPROVED AS TO FORM:

Omar Ochoa Law Firm, P.C.

BY: _____
Omar Ochoa
City Attorney

**SELECTED ARCHITECTURAL
CONSULTANT(S)**

BY: _____

Consultant Representative

Address

City, State Zip Code

Phone: XXX-XXX-XXXX

Email:

**Attachments: Exhibit "A" Scope of Services and Proposal
Exhibit "B" Insurance**

SAMPLE

EXHIBIT "A" AGREEMENT BETWEEN THE CITY OF EDINBURG AND SELECTED ARCHITECTURAL CONSULTANT(S) FOR ARCHITECTURAL SERVICES

SAMPLE

EXHIBIT “B” AGREEMENT BETWEEN THE CITY OF EDINBURG AND SELECTED ARCHITECTURAL CONSULTANT(S) FOR ARCHITECTURAL SERVICES

SAMPLE