



**2.2 Schedule of Work.** Totem shall prepare a schedule of work for the Project (to be approved by the Owner) in accordance with the terms identified in **EXHIBIT "C"-Schedule of Work**, attached hereto and made a part of this Agreement.

**2.3 PS&E and Related Engineering.** If grant funding is awarded for the Project, Totem shall subcontract provision of all engineering services including PS&E for work under the grant to S&B Infrastructure, Ltd., and such engineering services shall be compensated at S&B Infrastructure, Ltd.'s regular and reasonable rates, consistent with and upon sole approval of owner. Totem shall provide a detailed list of such services and the fees for same, for owner's approval prior to implementation of any project made subject to a grant obtained herein.

**ARTICLE 3. Period of Service.** After execution of this Agreement, Totem shall not proceed with the work outlined under Article 2 hereof until authorized in writing by the Owner to proceed as provided in Article 7 hereof.

**3.1 Termination Date.** This Agreement shall terminate 90 days after final completion of any projects subject to a grant obtained by Totem herein, (hereinafter referred to as the "Termination Date"), unless extended by written supplemental agreement, as provided in Article 8 hereof, duly executed by Totem and the Owner prior to the Termination Date, or otherwise terminated as provided in Article 3.4 herein and below. The Owner assumes no liability or obligation for payment to Totem for work performed or costs incurred by Totem prior to the date authorized by the Owner for Totem to begin work, during periods when work is suspended, or subsequent to the Termination Date.

**3.2 Extension of the Termination Date.** Totem shall notify the Owner in writing as soon as possible if it is determined, or reasonably anticipated, that the work under this Agreement cannot be completed before the Termination Date, and the Owner may, at the Owner's sole discretion, extend the Termination Date by written supplemental agreement as provided in Article 8 hereof. Totem shall allow adequate time for review and approval by the Owner of the written notice and request by Totem to extend the Termination Date.

**3.3 Suspension of Work.** Should the Owner desire to suspend the work under this Agreement, but not terminate this Agreement, the Owner shall provide thirty (30) calendar days verbal notification to Totem, followed by written confirmation from the Owner to Totem to that effect. The thirty-day notice may be waived as agreed in writing by both the Owner and Totem. The work under this Agreement may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from the Owner to Totem. The sixty-day notice may be waived as agreed in writing by both the Owner and Totem.

If the Owner suspends the work, the Termination Date as identified above is not affected, and this Agreement will terminate on the date specified, unless extended by written supplemental agreement, as provided in Article 8 hereof, duly executed by Totem and the Owner prior to the Termination Date.

**3.4 Termination of Agreement.** This Agreement may be terminated before the stated Termination Date identified in Article 3.1 herein by any of the following conditions:

- (1) **Commitment of Current Revenues.** In the event that, during any term hereof, the Owner does not appropriate sufficient funds to meet to the obligations of this Agreement, the Owner may terminate this Agreement upon ninety (90) days written notice to Totem. The Owner agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of the Owner pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903 (Vernon Supp.1995).
- (2) By mutual agreement and consent, in writing, of both Totem and the Owner.
- (3) By the Owner, upon failure of Totem to fulfill Totem's obligations set forth herein in a satisfactory manner as determined by the Owner and in sole opinion of the Owner, after the Owner provides written notice to Totem of such failure and Totem has not corrected such failure within (30) days of such written notice by the Owner.

- (4) By Totem, upon failure of the Owner to fulfill the Owner's obligations set forth herein, after Totem provides written notice to the Owner of such failure and the Owner has not corrected such failure within thirty (30) days of such written notice by Totem.
- (5) By the Owner without cause upon ninety (90) days written notice to Totem.
- (6) By satisfactory completion of all services and obligations described herein.

Should the Owner terminate this Agreement as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to Totem notwithstanding anything herein to the contrary. In determining the value of the work performed by Totem prior to termination, the Owner shall be the sole judge of the value of such work performed. Compensation for work at termination will be based on a percentage of the work completed at that time.

If the termination of this Agreement is due to the failure of Totem to fulfill Totem's obligations under this Agreement, the Owner may take over the Project and prosecute the work to completion. In such case, Totem shall be liable to the Owner for any additional cost occasioned by the Owner.

If Totem defaults in the performance of this Agreement or if the Owner terminates this Agreement for fault on the part of Totem, the Owner will give consideration to payment of an amount in settlement to include: the actual costs incurred by Totem in performing the work to the date of default, the amount of work required which was satisfactorily completed to date of default, the value of the work which is usable to the Owner, the cost to the Owner of employing another consultant and/or firm to complete the work required and the time required to do so, and other factors which affect the value to the Owner of the work performed at the time of default. This Agreement shall not be considered as specifying the exclusive remedy for any default by Totem, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

The termination of the Agreement and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the Owner and Totem under this Agreement, except the obligations set forth in Articles 11.2, 12, 13, 15, 16, 17, 19, 22, and 26, hereto.

**ARTICLE 4. Progress and Coordination.** Totem shall, from time to time during the progress of the work, confer with the Owner. Totem shall prepare and present such information as may be pertinent and necessary, or as may be requested by the Owner, in order to evaluate features of Totem's services and work.

At the request of the Owner or Totem, conferences shall be provided at Totem's office, the office of the Owner, or at other locations designated by the Owner. These conferences shall also include evaluation of Totem's services and work when requested by the Owner.

All applicable study reports shall be submitted in preliminary form for approval by the Owner before the final report is issued. The Owner's comments regarding Totem's preliminary report will be addressed by Totem in the final report.

If funds by other agencies or entities are to be used for the development of the Project under this Agreement, Totem's services and work may be subject to periodic review and approval by other agencies or entities, including those of the city, county, state, and/or federal agencies.

Should it be determined that the progress in the production of Totem's services and work does not satisfy the requirements of the approved Project Schedule as provided by **EXHIBIT "C"**, attached hereto, the Owner shall review the approved Project Schedule with Totem to determine the corrective action needed by either the Owner or Totem.

Totem shall promptly advise the Owner in writing of events which have a significant impact upon the progress of Totem's services and work and the approved Project Schedule, including:

- (1) problems, delays, adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the timely completion and submittal of Project deliverables by Totem within established time periods; this disclosure will be accompanied by a statement by Totem of recommended or immediate action taken, or contemplated, and any Owner or other agency or entity assistance needed to resolve the situation; and

(2) favorable developments or events which enable meeting the Project Schedule goals sooner than anticipated.

**ARTICLE 5. Compensation and Fees.** For and in consideration of the services to be rendered by Totem, the Owner shall compensate Totem with a Fee equal to 3.3% of the amount of the project, but in no event more than \$250,000, and as otherwise consistent with the requirement of CERTZ, provided that owner shall be responsible for the payment of all engineering services. In the event that Totem successfully obtains a grant for a project that owner decides not to implement, or in the event that Totem is unsuccessful in obtaining a grant for a project submitted by Totem under this contract, owner agrees to pay Totem a lump sum of \$60,000 to cover Totem's expenses in executing the grant application process of this contract on behalf of owner, which shall include, without limitation, any and all engineering fees and costs.

**ARTICLE 6. Method of Payment.**

**6.1 Request for Payment.** Payments to Totem for services rendered will be made while work is in progress as executed through a lump sum fee assigned to each work authorization (hereinafter referred to as "Work Authorization") in accordance with Article 7 herein. For each Work Authorization, Totem shall prepare and submit to the Owner monthly progress reports in sufficient detail to support the progress of the work and in support of a request for payment (hereinafter referred to as "Request for Payment"). The progress report shall indicate the percent completion of the work accomplished by Totem during the billing period and to the date of the Request for Payment. On or before noon of the first Monday of each month during the performance of the services, Totem shall submit to the Owner for approval a Request for Payment. Payment of the lump sum fee for each Work Authorization identified in the Request for Payment will be in proportion to the percent completion of the work tasks identified in such Work Authorizations. The Owner shall review each such Request for

Payment and may make such exceptions as the Owner reasonably deems necessary or appropriate under the circumstances then existing. About thirty (30) working days after the Commissioners Court of the Owner meets approving such payment, the Owner shall make payment to Totem in the amount approved as aforesaid subject to Article 6.3 herein and below.

Upon the award of the Project by the Owner for construction by a Construction Contractor, the Owner will reconcile and determine the final maximum amount payable for the Fees, identified in Article 5 hereof. This reconciliation and determination by the Owner will be performed within thirty days of the Owner's acceptance of the Construction Contractor's bid. Payment due to Totem or credit owed to the Owner by Totem in the amount of this reconciliation and determination shall be applied to the next applicable Request for Payment.

If the Project, or any portion(s) thereof, are deleted or otherwise *not awarded for construction within five years of Totem's submittal of the 100% PS&E*, compensation to Totem for Fee by the Owner for the Project or such portions of the Project shall be subject to Article 5 of this Agreement.

**6.2 Final Payment.** After final completion of the work and acceptance thereof by the Owner, Totem shall submit a final request for payment ("Final Request for Payment") which shall set forth all amounts due and remaining unpaid to Totem and upon approval thereof by the Owner, the Owner shall pay to Totem the amount due ("Final Payment") under such Final Request for Payment in accordance with the provisions of Article 6.1 hereof. The Final Payment shall not be made until Totem delivers to the Owner an affidavit that so far as Totem has knowledge or information any and all amounts due for materials and services over which Totem has control have been paid.

**6.3 Qualification on Obligations to Pay.** Any provision hereof to the contrary notwithstanding, the Owner shall not be obligated to make any payment (whether a payment under Article 6.1 hereof or Final Payment) to Totem hereunder if any one or more of the following conditions precedent exist:

- (1) Totem is in default of any of its obligations hereunder or otherwise is in default under this Agreement or under any contract documents related to this Agreement;

- (2) Any part of such payment is attributable to Totem's services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to Totem's services which were performed in accordance with this Agreement;
- (3) Totem has failed to make payments promptly to consultants or other third parties used in connection with the Project for which the Owner has made payment to Totem;
- (4) If the Owner, in good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete Totem's services in accordance with this Agreement, no additional payments will be due Totem hereunder unless and until Totem, at its sole cost, performs a sufficient portion of Totem's services so that such portion of the compensation then remaining unpaid is determined by the Owner to be sufficient to so complete Totem's services.

**6.4** No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of Totem's services to which such partial payment related or relieves Totem of any of its obligations hereunder with respect thereto.

**6.5** Totem shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of Totem's services.

**6.6 Waiver.** The making of the Final Payment shall constitute a waiver of all claims by the Owner except those arising from (1) faulty or defective services of Totem appearing after completion of the Project, (2) failure of Totem's services to comply with the requirements of this Agreement or any contracts or Agreements related to the Project, or (3) terms of any special warranties required by this Agreement or provided at law or in equity. The acceptance of Final Payment shall constitute a waiver of all claims by Totem except those previously made in writing and identified by Totem as unsettled at the time of the Final Request for Payment.

**ARTICLE 7. Work Authorization.** After execution of this Agreement, Totem shall proceed with the work outlined under Article 2 hereof, only as authorized by the Owner through an agreed Work Authorization document in the form identified in **EXHIBIT "E" – Work Authorization Form**, attached hereto and made a part of this Agreement. Totem will identify, as approved by the Owner, the needed services for the Project, as required through the course of the development of the Project. The Owner shall authorize Totem to perform one



or more of the agreed tasks identified in **EXHIBIT "B"**, attached hereto, in the form of individual work authorizations. Upon authorization from the Owner, Totem will prepare a Work Authorization document, which will include a description of the work to be performed, including a description of the tasks and milestones, a work schedule, and an estimated cost proposal agreed upon by the Owner and Totem. The estimated cost proposal shall set forth in detail the computation of the cost of each work task, including the hourly rates established and identified in accordance with the owner's prior written approval as submitted by S&B Infrastructure, Ltd. The Work Authorization shall not waive the Owner's and Totem's responsibilities and obligations established in this Agreement.

The estimated cost proposal for each Work Authorization, developed by Totem and approved by the Owner, shall be used by the Owner to appropriate a purchase order for the Work Authorization. The estimated cost proposal does not waive or alter the Owner's obligation established in this Agreement regarding the Basic Services Fee and/or Special Services Fee, as identified in Articles 5.1 and 5.2, respectively and hereof.

Each executed Work Authorization shall become a part of this Agreement. Upon satisfactory completion of the Work Authorization, Totem shall submit the Project's deliverables as specified in the executed Work Authorization to the Owner for review and acceptance.

Work included in a Work Authorization shall not begin until the Owner and Totem have signed the Work Authorization. All work must be completed on or before the completion date specified in the Work Authorization, unless extended by written agreement by Totem and the Owner. Totem shall promptly notify the Owner of any event that will affect completion of the Work Authorization. All Work Authorizations must be executed and completed by both Totem and the Owner within the period established for this Agreement as specified in Article 3 hereof.

The final acceptance by the Owner of each Work Authorization for the Project shall serve as evidence of completion, on the part of Totem, of all services under this Agreement insofar as they pertain to that portion of work on the **Project** identified in the applicable work authorization.

**ARTICLE 8. Supplemental Agreements.** The terms of this Agreement may be amended by supplemental agreement if the **Owner** determines that (1) there is a need to extend the Termination Date identified in Article 3.1 hereof, (2) there has been a significant change in the scope, complexity or character of the services to be performed by Totem, and/or (3) for any other reason agreeable to the Owner and Totem. All supplemental agreements will be developed in the form identified in **EXHIBIT "F" – Supplemental Agreement Form**, attached hereto and made a part of this Agreement, and incorporated herein by reference as "Supplemental Agreement".

If determined appropriate by the Owner, additional compensation to Totem for (1), (2) and/or (3) above shall be paid as a negotiated lump sum fee at the Contract Rates specified in **EXHIBIT "D"**, attached hereto. The negotiated lump sum fee shall be incorporated into the Supplemental Agreement.

Any **Supplemental Agreement** must be executed by both Totem and the Owner prior to the Termination Date specified in Article 3 hereof.

It is distinctly understood and agreed that no claim by Totem for additional work, as identified in Article 9 hereof, or changes or revisions in work, as identified in Article 10 hereof, shall be made by Totem until full execution of the Supplemental Agreement and authorization to proceed is granted by the Owner. The Owner reserves the right to withhold payment to Totem pending verification of satisfactory work performed by Totem.

**Article 9. Additional Work.** If Totem is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, Totem shall promptly notify the Owner in writing. In the event the Owner finds that such work does constitute extra work or requests that Totem provide services for extra work, the Owner shall so advise Totem and a written supplemental agreement will be executed between the Owner and Totem as provided herein. Totem shall not perform any proposed additional work or incur any additional costs prior to the execution by both Totem and the Owner of a supplemental agreement. Additional compensation from the Owner to Totem shall be paid as a negotiated lump sum fee at the Contract Rates specified in **EXHIBIT "D"**, attached hereto. The negotiated lump sum fee shall be incorporated into the

supplemental agreement as specified in Article 8 hereof. The Owner shall not be liable or under any obligation to compensate Totem for work performed or costs incurred by Totem relating to additional work not directly associated with the performance of the work authorized in this Agreement or as amended through supplemental agreement.

**ARTICLE 10. Changes or Revisions in Work.** If the Owner finds it necessary to request changes to the work, and the changes are within the applications of sound engineering principles, Totem shall make such revisions if requested and directed by the Owner.

**10.1 Preliminary Work.** Totem will make, without expense to the Owner (unless previously approved as identified in Article 10.2 herein), such revisions of any preliminary reports or drawings as may be required to meet the needs of the Owner and the applications of sound engineering principles

**10.2 Previously Approved or Satisfactorily Completed Work.** If the Owner finds it necessary to request Totem to make changes to work previously approved by the Owner or work satisfactorily completed for which the Owner approves or, after a definite plan has been approved by the Owner, if a decision is subsequently made by the Owner, which for proper execution involves extra services and expenses for changes in or additions to the drawings, specifications or other documents, this will be considered as additional work, and compensation from the Owner to Totem will be in accordance with Article 9 hereof.

**10.3 Project Delays.** If Totem is required to perform additional work due to delays by the imposition of causes not within Totem's control, such as by the re-advertisement of bids or by the delinquency or insolvency of contractors, such work associated with these delays approved by the Owner shall be considered additional work, and Totem shall be compensated by the Owner for such extra services and expense in accordance with Article 9 hereof.

**10.4 Reduction of Project Cost.** Notwithstanding any provision herein to the contrary, in the event it is necessary for the Owner to require changes in the final plan of the Project to enable it to reduce the construction

cost of the Project, Totem will be required to make such revisions or changes. Payment for this additional work will then be made to Totem in accordance with Article 9 hereof.

**ARTICLE 11. Ownership and Release of Documents.**

**11.1 Ownership of Documents.** Original drawings and specifications are the property of Webb County. The Project is the property of the Owner, and Totem may not use the drawings and specifications thereof for any purpose not relating to the Project without the Owner's consent. The Owner shall be furnished with such reproductions of drawings and specifications as the Owner may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article 3.4 hereof, Totem will revise drawings to reflect changes made during construction and will promptly furnish the Owner with one complete set of reproducible record prints. Prints shall be furnished by Totem, as an additional service, at any other time requested by Owner. All such reproductions shall be the property of the Owner who may use them without Totem's permission for any proper purpose relating to the Project, including, but not limited to, additions to or completion of the Project. Any additions or revisions by the Owner to a drawing signed, sealed, and dated by a registered professional engineer, shall be made in accordance with the Texas Engineering Practice Act and the Rules of the State Board of Registration for Professional Engineers.

All documents furnished to Totem by the Owner shall be delivered to the Owner upon completion or termination of this Agreement. Totem, at Totem's own expense, may retain copies of such documents or any other data under this Agreement.

**11.2 Release of Documents or Information.** Release of information to the public or others regarding the Project will be in accordance with the Texas Public Information Act.

**ARTICLE 12. Discounts, Rebates, Refunds.** In connection with procurement services rendered by Totem, if procurement services are required of Totem hereunder, all discounts, rebates and refunds shall accrue to the Owner. For some purchases, Totem may deem that payment within the discount period is not safe; and/or

inspection, guarantees, or other considerations may dictate delay. In such cases, Totem shall promptly notify the Owner so that a course of action may be mutually agreed upon by the Owner and Totem.

**ARTICLE 13. Records, Accounting, Inspection.** Totem shall keep full and detailed records and accounts in a manner approved by the Owner. Totem shall afford the Owner's authorized personnel and independent auditors, if any, full access to the work performed by Totem regarding the Project and to all of Totem's books, records, correspondence, instructions, drawings, receipts, vouchers and other documents relating to such work under this Agreement, and Totem shall preserve all such records for three (3) years after final payment. Totem shall deliver to the Owner upon completion of such work, a statement of the cost of such work detailed according to the accounting procedures of the Owner.

**ARTICLE 14. Subcontracting and Assignment.** Totem shall bind every subconsultant by written subcontract to observe all the terms of this Agreement to the extent that they may be applicable to such subconsultants.

Totem, and the Owner, do hereby bind themselves, their successors, executors, administrators and assigns to each other party of this agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this contract. Totem shall not assign, subcontract or transfer its interest in this contract without the prior written consent of the Owner.

**ARTICLE 15. Patents.** Totem shall indemnify and save the Owner harmless from all liability for alleged or actual infringement of any patent resulting from the use of apparatus or equipment furnished or designed by Totem or from the use of any process designed by Totem or effected by said apparatus or equipment, and Totem shall indemnify and save the Owner harmless from and against all costs, legal fees, expenses and liabilities incurred in or about any claim of or action for such infringement; provided, however, that the Owner shall promptly transmit to Totem all papers served on the Owner in any suit involving such claim of infringement, and provided further, that the Owner permits Totem to have entire charge and control of the defense of any such suit. If because of actual infringement the use of such apparatus, equipment, or process is

enjoined, Totem shall refund the purchase price thereof in proportion to the length of service uncompleted, the life of such apparatus or equipment being assumed as five years. Totem hereby grants to the Owner a non-exclusive, royalty-free license under patents now or hereafter owned by Totem covering any machines, apparatus, processes, articles, or products included in Totem's work hereunder.

**ARTICLE 16. Confidential Information, Inventions and Other Restrictions.**

**16.1 Confidential Information.** Totem shall not use in any way, commercial or otherwise, except to the extent required by the proper performance of this Agreement; and shall hold in confidence and not disclose to any person, for any reason or at any time, any information relating to the secret processes, products, compositions, machinery, apparatus or trade secrets of the Owner, or any other confidential information given to Totem by any of the Owner's commissioners, elected officials, employees, or representatives or acquired by Totem during the term of or as a result of this Agreement. Any information not generally available to the public shall be considered secret and confidential for the foregoing purposes; provided, however, that any technical information which was lawfully in Totem's possession prior to such disclosure to Totem by the Owner or which is or shall lawfully be published or become part of general knowledge from sources other than Totem or which otherwise shall lawfully become available to Totem from a source other than the Owner, shall not be subject to these provisions. All the foregoing stipulations shall apply to such information and work hereunder as well as to any information and ideas originated or developed by Totem in performing such work. Such information may, of course, be disclosed to the proper officials or employees of the Owner if necessary to perform the work hereunder. Totem shall, however, inform each of its employees who receive such information of these restrictions and Totem shall take all reasonable precautions and exert all reasonable efforts to assure conformance with such restrictions by all of its officers, employees, and agents, obtaining from them if necessary, agreements satisfactory to the Owner, effectuating the purposes of this Article.

**16.2 Inventions.** Totem shall communicate to the Owner at once, and require Totem's employees assigned to this Project to communicate to the Owner all inventions and improvements which any of Totem's

employees, either alone or in conjunction with any of the Owner's employees may conceive, make or discover during the course of or as a result of work on this Project under this or any ensuing agreement with the Owner that relates to the processes, products, compositions, machinery or plants of the Owner, or relating in any way to any of the operations in which the Owner has been or is engaged at the time, and such inventions and improvements shall become the sole, exclusive property of the Owner without any obligation on its part to make any payment therefor in addition to any sums which the Owner may be obligated to pay to Totem as compensation for services rendered by Totem under contract with the Owner. Totem shall require its employees to execute patent applications and assignments thereof to the Owner or its nominees, and powers of attorney relating thereto for any country the Owner may designate, and shall take all other actions as the Owner may request to maintain and protect such inventions and improvements. The Owner shall pay all costs or charges incurred in protecting such inventions and improvements if the Owner desires to protect them. Before assigning any of Totem's employees to work under any contract with the Owner concerning this Project, Totem shall obtain from them agreements satisfactory to Owner complying in all respects with the terms and provisions of this Article.

**16.3** The rights and obligations set forth in Article 16 shall survive the performance of this Agreement, or any termination, discharge or cancellation thereof.

**ARTICLE 17. Engineer's Seal, Responsibility and Warranties.**

**17.1 Engineer's Seal.** Totem shall require its subcontractor, S&B Infrastructure, Ltd. to assign a responsible engineer or engineers licensed to practice in the State of Texas, who shall sign, seal and date all appropriate engineering submissions to the Owner in accordance with the Texas Engineering Practice Act and the Rules of the State Board of Registration for Professional Engineers.

**17.2 Warranties.**

(a) Totem shall require S&B Infrastructure, Ltd to warrant that engineering design work performed by S&B Infrastructure, Ltd. hereunder shall be in accordance with sound engineering design

practices and in conformance with applicable code and standards established for such work.

(b) Notwithstanding anything to the contrary contained in this Agreement, the Owner and Totem agree and acknowledge that the Owner is entering into this Agreement in reliance on Totem's experience and abilities with respect to performing Totem's services hereunder. Totem accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Totem covenants with the Owner to use Totem's best efforts, skill, judgment and abilities to design the Project and to further the interests of the Owner in accordance with the Owner's requirements and procedures, in accordance with all professional standards, and in compliance with all applicable national, federal, state, county and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Prior to the commencement of construction, Totem shall require its subcontractor— S&B Infrastructure, Ltd. - to certify in writing to the Owner that the plans, specifications, and estimates (“PS&E”) for the Project, as identified in Article 2.1 hereof, and the improvements when built in accordance therewith conform to all applicable governmental regulations, statutes and ordinances then in effect. Totem represents, covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of Totem's services.

(c) Totem represents, covenants and agrees that all of Totem's services to be furnished by Totem under or pursuant to this Agreement from the inception of the Agreement until the Project has been fully completed, shall be of the standard and quality which prevail among engineers of similar experience, knowledge, skill and ability engaged in engineering practice throughout Texas under the same or similar circumstances involving the design and construction of a Project such as the Project with all the amenities as set forth in the PS&E.

(e) In connection with Totem's performance of procurement services hereunder, if any, Totem shall use its best efforts to obtain from all vendors of equipment and materials, fullest possible warranties against defective materials and workmanship for the benefit the Owner.



**ARTICLE 18. Totem's Resources.** Totem shall furnish and maintain, at Totem's own expense, office space for the performance of all services, skilled and sufficient personnel, as well as adequate and sufficient equipment to perform the services as required under this Agreement.

**18.1 Project Manager.** Totem shall provide a Project Manager for the Project. In addition, Totem shall require that S&B Infrastructure, Ltd. provide a manager for the Project that is a registered professional engineer in the State of Texas. Totem's Project Manager shall have such knowledge and experience as will enable the Project Manager to perform the duties required for the services under this Agreement. Totem may not change the Project Manager during the course of the Project without prior consent of the Owner. If, due to situations beyond the control of Totem, Totem must change the Project Manager prior to the completion and acceptance of the Project, Totem will submit a request to change the Project Manager to the Owner for approval.

**18.2 Employees of Totem.** All employees of Totem shall have such knowledge and experience as will enable them to perform the duties assigned to them and required for the services under this Agreement. Any employee of Totem who, in the opinion of the Owner, is incompetent, or whose conduct becomes detrimental to the work required under this Agreement, shall immediately be removed from association with the Project when so instructed by the Owner. Totem certifies that Totem presently has employed sufficient and qualified personnel, and will maintain sufficient and qualified personnel for performance of the services under this Agreement.

**18.3 Documents/Information Exchange.** The purpose of this Article is to define the required automated resources, format for graphics files, and information exchange pertaining to the Project. Recognizing that there will be several members of the Project Team participating in the development of the Project, and taking into consideration that the Owner has a significant investment in the development of the Project, there is a need for Totem to provide consistency in document development for information exchange. Consistency in document development for information exchange and production will help facilitate an economically efficient Project. Therefore, Totem shall provide the Owner with documents and information in accordance with the

special requirements outlined in **EXHIBIT "G"- *Computer Documents and Information Exchange***, attached hereto and made a part of this Agreement.

**ARTICLE 19. Indemnification.** To the fullest extent permitted by applicable law, Totem and its agents, partners, subcontractors, and consultants (collectively "Indemnitors") shall and do agree to indemnify, protect, defend and hold harmless the Owner, the Owner's respective directors, elected officials, employees and agents (collectively "Indemnitees") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind or description (collectively "Liabilities") of any person or entity whomsoever arising out of, caused by or resulting from the performance of Totem's services through activities of Totem, its agents, partners, subcontractors and/or consultants performed under this Agreement, and which are caused by or result from error, omission, or negligent act of Totem or of any person employed or contracted by Totem provided that any such Liabilities (1) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to the injury to or destruction of tangible personal property including the loss of use and consequential damages resulting therefrom and (2) are caused in whole or in part by any negligent act or omission of Totem, anyone directly or indirectly employed by Totem or anyone for whose acts Totem may be legally liable. Totem shall also save harmless the Owner from any and all expense, including, but not limited to, attorney fees which may be incurred by the Owner in litigation or otherwise resisting said claim or liabilities which may be imposed on the Owner as a result of such activities by Totem, its agents, partners, subcontractors and/or consultants. In this connection, it is agreed and understood that Totem shall not be responsible for any portion of the liability proximately caused by the Owner's negligence.

**ARTICLE 20. Insurance.** Totem shall obtain and maintain insurance in the limits of liability for each of the types of insurance coverage identified as follows:

- (1) Workers' Compensation, endorsed with a waiver of subrogation in favor of the Owner in limits of liability equal to the benefits allowed under the Texas Workers' Compensation Law ("Statutory Texas").

- (2) Commercial General Liability, endorsed with the Owner as an additional insured to the extent to the liabilities assumed by Totem and endorsed with a waiver of subrogation in favor of the Owner, in limits of liability of one million dollars (\$1,000,000) combined single limit each occurrence and in the aggregate for bodily injury and property damage.
- (3) Totem shall require S&B Infrastructure, Ltd. to have Professional Liability insurance of one million dollars (\$1,000,000) on a claims-made basis.
- (4) Texas Business Automobile Policy, endorsed with the Owner as an additional insured and endorsed with a waiver of subrogation in favor of the Owner, in limits of liability of five hundred thousand dollars (\$500,000) each person for bodily injury, one million dollars (\$1,000,000) each occurrence for bodily injury, and one million dollars (\$1,000,000) each occurrence for property damage.

Totem covenants and agrees to maintain an insurance policy in the limits of liability for each of the types of insurance coverage identified above. Totem shall furnish the Owner with a certificate of insurance showing the said policy to be in full force and effect during the period of service, identified in Article 3 hereto, for this Agreement. Totem will be considered in breach of contract should Totem fail to maintain an insurance policy in the limits of liability and requirements identified above while performing services for and under this Agreement, and will be subject to default and termination of the Agreement as outlined in Article 3.4 hereto. .

The insurance limits listed in this Article are established as contractual requirements and are not to be considered indicative of the ultimate amounts and types of insurance that Totem maintains. Any additional insurance that Totem maintains for its own purposes will not apply to additional insured or subrogation requirements nor cover Company, an Affiliate or User for matters for which Totem does not provide defense or indemnity as reflected in Article 19.

**ARTICLE 21. Compliance with Laws.** Totem shall comply with all applicable Federal, State and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or

administrative bodies or tribunals in any manner affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, Totem shall furnish the Owner with satisfactory proof of its compliance therewith.

**ARTICLE 22. Noncollusion.** Totem warrants that Totem has not employed or retained any company or persons, other than a bona fide employee working solely for Totem, to solicit or secure this Agreement, and that Totem has not paid or agreed to pay any company, engineer or any other person or entity any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or execution of this Agreement. For breach or violation of this warranty, the Owner shall have the right to annul this Agreement without liability or, in the Owner's discretion, to deduct from the Basic Services Fee and/or Special Services Fee, as identified in Articles 5.1, and 5.2, hereto and respectively, or otherwise recover, the full amount of each fee, commission, percentage, brokerage fee, gift or contingent fee.

**ARTICLE 23. Gratuities.** The Owner mandates that employees of the Owner shall not accept any benefits, gifts or favors from any person doing business or who reasonably speaking may do business with the Owner under this Agreement; the only exceptions allowed are ordinary business meals. Any person doing business with or who may reasonably seeking to do business with the Owner under this Agreement may not make any offer of benefits, gifts or favors to Owner employees, except as mentioned herein above. Failure on the part of Totem to adhere to this provision may result in the termination of this Agreement.

**ARTICLE 24. Payment of Franchise Tax.** Totem hereby certifies that Totem is not delinquent in Texas franchise tax payments, or that Totem is exempt from, or not subject to, such a tax. A false statement concerning corporation's franchise tax status shall constitute grounds for termination of the Agreement at the sole option of the Owner.

**ARTICLE 25. Disputes.** Totem shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by Totem in support of the services under this Agreement.

**ARTICLE 26. Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**ARTICLE 27. Notices.** All notices to either party by the other required under this Agreement shall be personally delivered or mailed to such party at the following respective addresses:

**OWNER:**      *WEBB County*

**TOTEM:**      *Totem, LLC.*

*1000 Houston Street*

*1719 Matamoros St., Suite 100*

*Laredo, Texas 78040*

*Laredo, Texas 78040*

The address may be changed by either party by written notice, and notice so mailed shall be effective upon mailing.

**ARTICLE 28. Miscellaneous Provisions.**

(a) This Agreement constitutes the entire Agreement between Totem and the Owner relating to the work herein described, and supersedes any prior understanding or written or oral contracts between the parties respecting the subject matter defined herein. There are no previous or contemporary representations or warranties of the Owner or Totem not set forth herein.

(b) Except as specifically provided herein, no modification, waiver, termination, rescission, discharge, or cancellation of this Agreement or of any terms thereof shall be binding on the Owner unless in writing and executed by an officer or employee of the Owner specifically authorized to do so.

(c) No waiver of any provision of or a default under this Agreement shall affect the right of the Owner thereafter to enforce said provision or to exercise any right or remedy in the event of any other default, whether or not similar.

(d) No modification, waiver, termination, discharge or cancellation of this Agreement or of any terms thereof shall impair the Owner's rights with respect to any liabilities, whether or not liquidated, of Totem to the Owner theretofore accrued.

(e) All rights and remedies of the Owner specified in this Agreement are in addition to the Owner's other rights and remedies.

(f) Totem shall remain an independent contractor and shall have no power, nor shall Totem represent that Totem has any power, to bind the Owner or to assume or to create any obligation express or implied on behalf of the Owner except as specifically authorized in advance by the Owner.

(g) The Agreement shall be construed under the laws of the State of Texas and is performable in WEBB County, Texas.

(h) This Agreement may only be amended by a written document executed by the Owner and Totem as provided by Article 8 herein.

**ARTICLE 29. Signatory Warranty.** The undersigned signatory or signatories for Totem hereby represent and warrant that the signatory is an officer of the organization for which he or she has executed this Agreement, and that he or she has full and complete authority to enter into this Agreement on behalf of Totem. The above-stated representations and warranties are made for the purpose of inducing the **Owner** to enter into this Agreement.

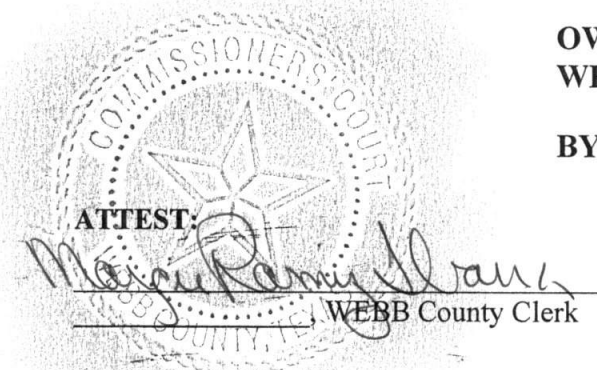
IN WITNESS WHEREOF, Totem and the Owner have caused this Agreement for Professional Services to be effective as of the 4<sup>th</sup> day of April, 2014.

**TOTEM:**  
**TOTEM, LLC.**

BY: [Signature]  
Jose Ceballos, Owner

**OWNER:**  
**WEBB COUNTY**

BY: [Signature]  
Danny Valdez, County Judge



**ATTACHMENTS:**

- EXHIBIT A**-Scope of Services to be Provided by the Owner
- EXHIBIT B**-Scope of Services to be Provided by Totem
- EXHIBIT C**-Schedule of Work
- EXHIBIT D**-Contract Rates

- EXHIBIT E**-Work Authorization Form
- EXHIBIT F**-Supplemental Agreement Form
- EXHIBIT G**-Computer Graphics Files

**EXHIBIT "A"**  
**Services to be Provided by the Owner**

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

**GENERAL**

The Owner will provide to Totem the following:

- (1) Authorization to Totem to begin work in accordance with Article 7 of this Agreement.
- (2) Payment for work performed by Totem and accepted by the Owner in accordance with Article 5 and Article 6, both of this Agreement.
- (3) Assistance to Totem, as necessary, to obtain the required data and information from other local, regional, State and Federal agencies that Totem cannot easily obtain.
- (4) Provide any available relevant data the Owner may have on file concerning the Project.
- (5) Provide timely review and decisions in response to Totem's request for information and/or required submittals and deliverables, in order for Totem to maintain the agreed-upon work schedule prepared in accordance with EXHIBIT "C" attached to this Agreement.
- (6) Attend and participate in progress meetings as required and as coordinated and conducted by Totem.



**EXHIBIT "B"**  
**Services to be Provided by Totem**

Totem shall render specific management and administrative services for the development of the Project and fulfillment of this Agreement as follows:

Totem agrees to use its expertise in grant writing, knowledge of road improvement needs in Webb County with impact on safety, its experience and understanding with investment zones, including Senate Bill 1747, and to subcontract with an experienced lead engineer and obtain appropriate engineering services, including the provision of plans, specifications and estimates, to prepare and submit owner's grant application(s) related to the CETRZ in the most expeditious manner designed to obtain funding of owner's application, and to provide supervision and management for any road projects funded through owners's application(s).

**EXHIBIT “C”**  
**Schedule of Work**

Totem shall develop, and provide to the Owner, a project schedule for each Work Authorization. The schedule will identify milestones and deliverables for the development of the Work Authorization.

Totem will diligently pursue the completion of the Project and each Work Authorization as defined by the milestones and deliverable due dates outlined in each associated schedule of work.

Totem will inform the Owner (in reasonable advance of the delay) should Totem encounter delays that would prevent the performance of all work in accordance with the established schedule(s) of work.

## **EXHIBIT “D”**

### **Contract Rates**

The rates for the professional engineering services under this agreement for implementation of any projects funded by grants pursuant to this agreement shall be determined according to a separate schedule of fees and costs to be agreed to by owner and Totem consistent with the reasonable and customary fees of S&B Infrastructure, Ltd.

**EXHIBIT "E"**  
**Work Authorization Form**

**WORK AUTHORIZATION NO.**

THIS WORK AUTHORIZATION is made pursuant to the terms and conditions of Article 7 of the Agreement made by and between WEBB COUNTY, acting herein by and through the COMMISSIONER'S COURT, hereinafter called the "Owner", and Totem, LLC., of Laredo, Texas, hereinafter called "Totem".

PART 1.      Scope of Work. The purpose of this Work Authorization is

The scope of services to be provided by the Owner is identified in ATTACHMENT "A" - Scope of Services to be Provided by the Owner attached hereto.

The scope of services to be provided by Totem is identified in ATTACHMENT "B" -Scope of Services to be Provided by Totem attached hereto.

PART 2.      Estimated Cost. The estimated cost for services under this Work Authorization is \_\_\_\_\_. This amount is based upon the costs outlined in the Estimated Cost Proposal attached hereto as ATTACHMENT "D".

PART 3.      Payment. Compensation and payment to Totem for the services established under this Work Authorization shall be made in accordance with Articles 5, 6, and 7 of the Agreement.

PART 4.      Period of Service. This Work Authorization shall become effective on the date of final acceptance of the parties hereto, and all work associated with this Work Authorization shall be performed within the time period identified in the Project Schedule attached hereto as ATTACHMENT "C".

PART 5.      Responsibilities and Obligations. This Work Authorization does not waive the parties' responsibilities and obligations provided under the Agreement.

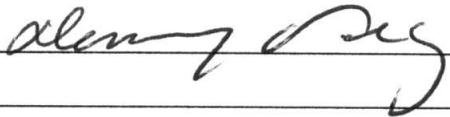
PART 6. Acceptance and Acknowledgement. This Work Authorization is hereby accepted and acknowledged as indicated below and effective as of day of \_\_\_\_\_, 201\_.

TOTEM:  
Totem, LLC



BY: Jose L. Ceballos

THE OWNER: WEBB COUNTY



BY: \_\_\_\_\_

LIST OF ATTACHMENTS

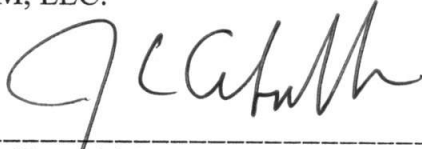
- ATTACHMENT "A"- Services to be Provided by the Owner
- ATTACHMENT "B"- Services to be Provided by Totem
- ATTACHMENT "C"- Project Schedule
- ATTACHMENT "D"- Estimated Cost Proposal



All other provisions are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, Totem and the Owner have caused this Supplemental Agreement to the Agreement for Professional Services to be executed as of the 24<sup>th</sup> day of April, 2014.

TOTEM:  
TOTEM, LLC.




BY: (officer/title) owner

OWNER:  
WEBB COUNTY



BY: Danny Valdez, County Judge

ATTEST:



Margie Rainey Hance Webb County Clerk

LIST OF ATTACHMENTS (as required)

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read 'M. Montemayor', written over a horizontal line.

Marco A. Montemayor  
Webb County Attorney

**\*By law, the county attorney's office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).**



## EXHIBIT "G"

### Computer Documents and Information Exchange

**PURPOSE.** The purpose of this special provision is to define the format files and information exchange pertaining to automated/electronic/digital files. It is the intent of Totem and this Agreement to secure automated/electronic/digital files from all project team members, which are composed of elements of the same precision, integrity, singularity and attributes. In general, Totem shall provide to the Owner electronic files that can be reviewed and printed without additional conversion or modifications.

**FORMAT OF ELECTRONIC FILES FURNISHED TO OWNER BY TOTEM.** Totem shall deliver, as an end product, both reproducible prints as required as well as electronic files. These electronic files shall be furnished on a CD-ROM created utilizing DOS software and/or in a format compatible with Totem's hardware and software. Delivery documentation relating to file storage on the designated delivery media must be provided.

**COMPATIBLE SOFTWARE.** The following software are acceptable in the development of the Project:

a Word Processing	Microsoft Word
li Spreadsheets	Microsoft Excel
IM Presentations	Microsoft Powerpoint
IF Scheduling	Microsoft Projects
Graphics	Microstation (dgn file format)

**PHOTOGRAPHS.** All photographs, if required to be provided by Totem in a report or otherwise, shall be provided in an electronic / digital format (jpeg).