

## LETTER OF AGREEMENT

This is a Letter of Agreement (“Agreement”) between the **City of Killeen** (referred to herein as “City”) and **KAYA Associates, Inc.** (referred to herein as “Contractor”), collectively the “Parties”. This Agreement is made this 19<sup>th</sup> day of July 2016.

In consideration of the premises and of the mutual covenants and agreements contained in this Agreement, the Parties hereby agree as follows:

Scope of Agreement. The purpose of this Agreement is to enlist the services of Contractor to perform the tasks set forth in the contract proposal which is attached as Exhibit ‘A’ and incorporated herein for all purposes.

Term of Agreement. This Agreement shall commence on or about the 15<sup>th</sup> day of August 2016, and terminate 410 calendar days after commencement of work on the Project.

Consideration. Contractor agrees to provide the services stated above sum of **\$733,598.00**. Contractor will request progress payments, and the City will pay Contractor on a monthly basis, based upon invoices submitted by Contractor to the City indicating the estimated proportion of the work accomplished.

Independent Contractor. Contractor shall act as an Independent Contractor. Under no circumstances shall Contractor be deemed an employee or partner of City.

Applicable Laws: Contractor shall follow all applicable local, State, and Federal laws, regulations, and requirements for the abatement and disposal of lead, asbestos, and other routinely encountered hazardous substances. If any unusual substances or extraordinary amounts of the aforementioned substances are encountered, the Contractor will contact the City to contact the State and the relevant agency with authority for regulation of the substance. Contractor shall follow all applicable clauses and assurances in the Agreement for the Defense Economic Adjustment Assistance Grant attached as Exhibit ‘B’.

Standard of Care. The standard of care for all professional engineering and related services performed or furnished by Contractor under this Agreement will be the care and skill ordinarily used by members of the Contractor’s profession practicing under similar circumstances at the same time and in the same locality.

Insurance. Contractor shall procure and maintain insurance in the following amounts:

Worker’s Compensation	Statutory
Automobile Liability	\$500,000 Combined single Limit for each accident (Bodily injury and property damage).

General Liability	\$1,000,000 each occurrence (Bodily injury and property damage).
Professional Liability	\$1,000,000 general aggregate.

On all policies, except Worker's Compensation, City shall be listed as an additional insured with a full waiver of subrogation. A certificate of coverage shall be provided to the City prior to commencing work on the Project.

Subcontracts and Assignments. Contractor's rights and obligations hereunder are deemed to be personal and may not be transferred or assigned. Any assignments shall be void and of no effect.

Indemnification. To the fullest extent permitted by law, City or Contractor, as applicable, shall indemnify and hold harmless the other party, and the other party's officers, directors, partners and employees from and against any and all costs, losses and damages (including, without limitation, all fees and charges of attorneys and other professionals, and all court or dispute resolutions costs) caused by the negligent acts or omissions of the City or Contractor, as applicable, or their respective officers, directors, partners, employees and consultants with respect to the performance under this Agreement or the Project.

Termination. This Agreement may be terminated by either party for cause upon thirty (30) calendar days' written notice, provided such cause cannot be reasonably cured within such thirty (30) day period. City may terminate this Agreement for convenience effective upon receipt of written notice declaring the same and Contractor shall be compensated for all work completed at that time in accordance with this Agreement.

Texas Law. This Agreement shall be subject to and governed by the laws of the State of Texas. The Parties agree that for venue purposes, any and all lawsuits, disputes, or causes of action shall be in Bell County, Texas.

Severability. If any provision of this Agreement shall, for any reason, be held to violate any applicable law, then the invalidity of such a specific provision in this Agreement shall not be held to invalidate the remaining provisions of this Agreement.

Survival. Any provision of this Agreement providing for indemnity, insurance or a duty that necessarily will not be completed until after the expiration or termination of this Agreement shall continue in full force and effect until such a time as all duties have been fully performed.

Non-waiver. Failure to enforce any provision of this Agreement by either party shall not constitute a waiver of that provision for purposes of the subsequent enforcement of that provision or the remainder of this Agreement.

*Entire Agreement.* This Agreement shall represent the entire agreement by and between the Parties and it may not be changed except by written amendment duly executed by all Parties.

*Amendment.* This Agreement may be modified or amended if such amendment is made in writing and is signed by both parties.

**SIGNED, ACCEPTED AND AGREED TO** this \_\_\_\_ day of \_\_\_\_\_, 2016, by the undersigned Parties who acknowledge that they have read and understand this Agreement and that the Agreement is issued in accordance with local, State, and Federal laws, and the undersigned Parties hereby execute this legal document voluntarily and of their own free will.

City

Contractor

\_\_\_\_\_  
Lillian Ann Farris, Interim City Manager  
City of Killeen

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Printed: Steven R. Johnson  
Title: Operations Manager