

CONTRACT  
FORT HOOD JOINT LAND USE STUDY

by and between  
Benchmark CMR, Inc. and City of Killeen, Texas

THIS CONTRACT ("Contract") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 effective immediately by and between Benchmark CMR, Inc. ("CONSULTANT") and the CITY OF KILLEEN, TEXAS, a municipal corporation of the State of Texas ("CITY"). For convenience, the CONSULTANT and the CITY may sometimes be referred herein collectively as "parties" and individually as a "party".

WITNESSETH

WHEREAS, CITY desires to engage the CONSULTANT to provide consulting services to the CITY for Fort Hood Joint Land Use Study and other work and services all as described on the CITY's Request for Proposals which is attached hereto as Exhibit "A".

WHEREAS, CONSULTANT agrees to provide such work and services for the CITY in accordance with the terms of this Contract;

NOW, THEREFORE, for the mutual promises set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

**1. Employment of Consultant:**

A. CITY agrees to engage the CONSULTANT and the CONSULTANT hereby agrees to perform the services described in the CITY's Request for Proposals dated August 26, 2015 which is hereby incorporated into this Contract as Exhibit "A" and as described in the CONSULTANT's response dated August 26, 2015, which is hereby incorporated into this Contract as Exhibit "B".

B. Notwithstanding anything to the contrary contained in this Contract, CITY and CONSULTANT agree and acknowledge that CITY is entering into this Contract in reliance on CONSULTANT's special and unique abilities with respect to Fort Hood Joint Land Use Study. CONSULTANT accepts the relationship of trust and confidence established between it and the CITY by this Contract. CONSULTANT covenants with CITY to use its best efforts, skill, judgment, and abilities to perform the work in the Project and to further the interests of CITY in accordance with CITY's requirements, in accordance with the highest standards of CONSULTANT's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. The CONSULTANT warrants, represents, covenants, and agrees that all of the work to be performed by the CONSULTANT under or pursuant to this Contract shall be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances. CONSULTANT warrants, represents, covenants, and agrees that the work it performs will be accurate and free from any material errors.

2. **T e r m:** The term of this Contract shall be no more than two (2) years, commencing on \_\_\_\_\_, 2015 and ending no later than \_\_\_\_\_, 2017.
3. **Compensation:** The CITY agrees to pay the CONSULTANT a fee of \$ 255,860 as described in the CONSULTANT's Response (attached hereto as Exhibit "B"). CONSULTANT agrees to provide all services required under this Contract for said sum.
4. **Method of Payment:** The CONSULTANT shall bill monthly for services completed to date. Total payments shall not exceed the amount shown in (3), above. CITY shall pay invoices within 30 days of receipt; provided, however, that in the event CITY requests any supporting documentation for charges, payment shall be made within 30 days of receipt of the supporting documentation.
5. **Changes:** City may, from time to time, require changes in the scope of services of the CONSULTANT to be performed hereunder. Such changes, which are mutually agreed upon by and between CITY and the CONSULTANT, shall be incorporated in written amendment to this Contract.
6. **Services and Materials to be Furnished by CITY:** CITY shall furnish the CONSULTANT with all available information, data, and material CONSULTANT requests pertinent to the execution of this Contract. CITY shall cooperate with the CONSULTANT in carrying out the work herein and shall provide adequate staff for liaison with the CONSULTANT.
7. **Termination:**
  - a. If, for any cause, the CONSULTANT shall fail to fulfill in timely and proper manner its obligation under this Contract, CITY shall thereupon have the right to terminate this Contract by giving written notice to the CONSULTANT of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination.
  - b. Either Party has the right to terminate this Contract for any reason, with or without cause, upon ten (10) business days' notice to the other Party. Upon termination pursuant to this paragraph, the CONSULTANT shall be entitled to payment of such amount as shall compensate CONSULTANT for the services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Contract, provided the CONSULTANT shall have delivered to CITY such statements, accounts, reports and other materials as required herein, and provided that CONSULTANT shall have delivered to CITY all reports, documents and other materials prepared by CONSULTANT prior to termination. CITY shall not be required to reimburse CONSULTANT for any services performed or expenses incurred preformed or expenses incurred after the date of the termination notice.
  - c. **Non-appropriation.** If the governing body of the CITY fails to specifically appropriate sufficient funds to make the payments due in any Fiscal Year under this Contract, an event of non-appropriation ("Event of Non-appropriation") will have occurred, the terms of this Contract will not be renewed, and CONSULTANT or

CITY may terminate this Contract at the end of the then current Fiscal Year, whereupon CITY will be obligated to pay those amounts then due subject to the provisions herein. Nothing in this Section or elsewhere in this Contract will be deemed in any way to obligate the CITY or create a debt of CITY beyond its current Fiscal Year. CONSULTANT HAS NO RIGHT TO COMPEL CITY TO LEVY OR COLLECT TAXES TO MAKE ANY PAYMENTS REQUIRED HEREUNDER, OR TO EXPEND FUNDS BEYOND THE AMOUNT PROVIDED FOR IN THE THEN CURRENT FISCAL YEAR OF CITY.

The City agrees to use its best efforts to obtain authorization and appropriation of such funds and if such funds are appropriated, the governing body of the CITY shall, for each ensuing Fiscal Year in which payments are due to be made, make all such payments subject to the terms of this Contract.

8. **Information of Reports:** The CONSULTANT shall, at such time and in form as CITY may require, furnish such periodic reports concerning the status of the services provided hereunder, and copies of proposed and executed plans and other information relative to the Project as may be requested by CITY. The CONSULTANT shall furnish CITY, upon request, with copies of all documents and other material prepared or developed in relation with or as part of the services provided hereunder. The CONSULTANT shall furnish CITY with an electronic copy of all materials prepared or developed in relation with or as part of the services provided hereunder.
9. **Records and Inspections:** CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Contract for a period of two years after the termination of the Contract, or if litigation relating to any aspect of this Contract is commenced within the two-year period, until there is a final, non-appealable judgment or a settlement agreement has been executed between all the parties. CITY shall have free access at all proper times to such records, and the right to examine and audit the same and to make transcripts there from, and to inspect all program data, documents, proceedings, and activities.
10. **Completeness of Contract:** This Contract and the documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. If there is any conflict between the terms of this Contract and the documents attached hereto, the terms of this Contract shall control. This Contract may not be subsequently modified except in writing signed by both parties.
11. **CITY Not Obligated to Third Parties:** CITY shall not be obligated or liable hereunder to any party other than the CONSULTANT.
12. **When Rights and Remedies Not Waived:** In no event shall the making by CITY of any payment to the CONSULTANT constitute or be construed as a waiver by CITY of any breach of covenant, or any default which may exist on the part of the CONSULTANT and the making of any such payment by CITY while any such breach or default shall exist in no way impairs or prejudices any right or remedy available to CITY in respect to such breach or default.

13. **Indemnification:** The CONSULTANT agrees to indemnify and hold harmless the CITY and all of its officers, employees, council members and agents from any and all claims by third parties, including, but not limited to, claims for damages, judgments, attorney's fees, expenses, injunctive or equitable relief, interest, personal injury, and death, that may arise from the CONSULTANT's performance under this Contract, provided that CONSULTANT shall not be required to indemnify or hold the CITY harmless for the intentional or negligent acts or omissions of the CITY to the extent that such acts cause the injuries or damages complained of.
14. **Insurance:** Consultant agrees to maintain insurance for comprehensive general liability, automobile liability insurance, workers' compensation and professional liability during the term of this Contract in the amounts not less than those required of other professional consultants retained by CITY. CONSULTANT shall provide CITY with evidence of such coverage in a form which is acceptable to the CITY. Such policies shall name the CITY, its officers, and employees as an additional insured and shall provide for a waiver of subrogation against the CITY.
15. **Personnel:** The CONSULTANT has all personnel required in performing the services under this Contract. All of the services required hereunder will be performed by the CONSULTANT or under CONSULTANT's supervision, and all personnel engaged in the work shall be qualified to perform such services.
16. **Assignability:** The parties hereby agree that Consultant may not assign, convey or transfer its interest, rights and duties in this Contract without the prior written consent of CITY.
17. **Notices:** Any notices or reports required by this Contract shall be sufficient if sent by the parties via personal delivery, facsimile, or via United States certified mail, postage paid, to the addresses noted below:
- To City:** City of Killeen  
P.O. Box 1329  
Killeen, TX 76541
- To Contractor:** Benchmark CMR, Inc.  
10735 David Taylor Dr., Ste. 180  
Charlotte, NC 28262
18. **Governing Law Venue:** This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action brought to interpret or enforce the terms of this Contract shall lie in Bell County, Texas.
19. **Attorney's Fees/Costs:** If any legal proceeding is brought to interpret or enforce the terms of this Contract, the prevailing party in such action shall be entitled to recover from the non-prevailing party, in addition to the prevailing party's actual damages, reasonable attorney's fees and court costs.
20. **Authority to Sign:** The parties hereby warrant and represent that the undersigned persons have full authority and are duly authorized to sign on behalf of their respective principals and that such principals have duly authorized the transaction contemplated by this Contract.

21. IN WITNESS WHEREOF, CITY and the CONSULTANT have executed this Contract as of the date first written above.


CITY OF KILLEEN, TEXAS;

By (Signed): \_\_\_\_\_ JB

Print Name: Glenn Morrison

Title: City Manager

CONSULTANT:

By (Signed): 

Print Name: JASON M. EPLEY

Title: PRESIDENT