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STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

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AMERICAN SOCIETY OF CIVIL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition). For guidance on the completion and use of this Agreement, see EJCDC Users Guide, No. 1910-50.

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**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between
the CITY OF KILLEEN (“OWNER”) and Kimley-Horn and Associates, Inc.(“ENGINEER”).

OWNER and ENGINEER in consideration of their mutual covenants as set forth herein agree as follows:

To update the City of Killeen Water and Wastewater Impact Fees.

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

A. ENGINEER shall provide the Basic and Additional Services set forth herein and in Exhibit A.

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A.

C. If authorized by OWNER, ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Exhibit D.

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 General

A. OWNER shall have the responsibilities set forth herein and in Exhibit B.

ARTICLE 3 - TIMES FOR RENDERING SERVICES

3.01 General

A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

3.02 Suspension

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after

completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

B. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4 - PAYMENTS TO ENGINEER

4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

A. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A, Part 1, as set forth in Exhibit C.

B. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A, Part 2, as set forth in Exhibit C.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A and 4.01.B, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit C.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefore, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit C for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C. Engineer shall not incur additional expenses after receipt of notice of termination, and shall make reasonable efforts to minimize costs.

E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER at cost.

F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services or other costs in connection with this Project or compensation therefor, such new taxes, fees, or costs shall be invoiced to and paid by OWNER as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

ARTICLE 5 - OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent

ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in Exhibit B.

5.02 Designing to Construction Cost Limit

A. If a Construction Cost limit is established between OWNER and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 Opinions of Total Project Costs

A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER-furnished information.

C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.

E. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

F. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.

G. Prior to the commencement of the Construction Phase, OWNER shall notify ENGINEER of any variations from the language indicated in Exhibit E, "Notice of Acceptability of Work," or of any other notice or certification that ENGINEER will be requested to provide to OWNER or third parties in connection with the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification, and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested.

H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.

I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any

Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

K. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.

L. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions as specifically referenced in Exhibit H.

6.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

6.03 Design without Construction Phase Services

A. Should OWNER provide Construction Phase services with either OWNER's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A.

B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by OWNER, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

6.04 Use of Documents

A. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at

the discretion of the ENGINEER) whether or not the Project is completed.

B. Copies of OWNER-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

6.05 Insurance

A. ENGINEER shall procure and maintain insurance as set forth in Exhibit G, "Insurance."

B. OWNER shall procure and maintain insurance as set forth in Exhibit G, "Insurance." OWNER shall cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by OWNER which are applicable to the Project.

C. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project

D. OWNER and ENGINEER shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of the Agreement.

E. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

F. At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by OWNER, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by OWNER, and Exhibit G will be supplemented to incorporate these requirements.

6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For cause,*

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By ENGINEER:

1) upon seven days written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or

2) upon seven days written notice if the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control.

3) ENGINEER shall have no liability to OWNER on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. *For convenience,*

a. By OWNER effective upon the receipt of notice by ENGINEER.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

6.07 Controlling Law

A. This Agreement is to be governed by the law of the State of Texas and venue shall be in Bell County.

6.08 Successors, Assigns, and Beneficiaries

A. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 6.08.B the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the Contract Documents.

6.09 Hazardous Environmental Condition

A. OWNER represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In

the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an “arranger,” “operator,” “generator,” or “transporter” of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER’s activities under this Agreement.

F. If ENGINEER’s services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER’s terminating this Agreement for cause on 30 days notice.

6.10 Allocation of Risks

A. Indemnification

1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER’s officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER’s officers, directors, partners, employees, and ENGINEER’s Consultants in the performance and furnishing of ENGINEER’s services under this Agreement.

2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER’s officers, directors, partners, employees, and ENGINEER’s Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER’s officers, directors, partners, employees, and OWNER’s consultants with respect to this Agreement or the Project.

3. In addition to the indemnity provided under paragraph 6.10.A.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER’s Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 6.10.A.4. shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence or willful misconduct.

4. The indemnification provision of paragraph 6.10.A.1 is subject to and limited by the provisions agreed to by OWNER and ENGINEER in Exhibit I, “Allocation of Risks,” if any.

6.11 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.12 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.13 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.14 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it

affect the enforceability of that provision or of the remainder of this Agreement.

6.15 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 7 - DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2 of this Agreement.

3. *Agreement*--This "Standard Form of Agreement between OWNER and ENGINEER for Professional Services," including those Exhibits listed in Article 8 hereof.

4. *Application for Payment*--The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6. *Basic Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 1, of this Agreement.

7. *Bid*--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

9. *Change Order*--A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

10. *Construction Agreement*--The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.

11. *Construction Contract*--The entire and integrated written agreement between the OWNER and Contractor concerning the Work.

12. *Construction Cost*--The cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

13. *Contract Documents*--Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price*--The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

15. *Contract Times*--The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

16. *Contractor*--An individual or entity with whom OWNER enters into a Construction Agreement.

17. *Correction Period*--The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

18. *Defective*--An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

19. *Documents*--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.

20. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

21. *Effective Date of the Construction Agreement*--The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

22. *Effective Date of the Agreement*--The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

23. *ENGINEER's Consultants*--Individuals or entities having a contract with ENGINEER to furnish services with respect to this Project as ENGINEER's independent professional associates, consultants,

subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.

24. *Field Order*--A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

25. *General Conditions*--That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

26. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

27. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

28. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

29. *PCB's*--Polychlorinated biphenyls.

30. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

31. *Radioactive Materials*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

32. *Record Drawings*--The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.

33. *Reimbursable Expenses*--The expenses incurred directly by ENGINEER in connection with the

performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C.

34. *Resident Project Representative*--The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit D.

35. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

36. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.

37. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

38. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

39. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

40. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements the General Conditions.

41. *Total Project Costs*--The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement.

42. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

43. *Work Change Directive*--A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

44. *Written Amendment*--A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

A. Exhibit A, "ENGINEER's Services," consisting of 11 pages.

B. Exhibit B, "OWNER's Responsibilities," consisting of 2 pages.

C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 1 page.

D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of 1 page.

E. Exhibit E, "Notice of Acceptability of Work," consisting of 2 pages.

F. Exhibit F, "Construction Cost Limit," consisting of 1 page.

G. Exhibit G, "Insurance," consisting of 1 page.

H. Exhibit H, "Special Provisions," consisting of 1 page.

8.02 Total Agreement

A. This Agreement (consisting of pages 1 to 11 inclusive, together with the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

By signing this contract, Engineer hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. Boycotting Israel is defined in Texas Government Code section 808.001 to mean refusing to deal with, terminating business activities with, or taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: City of Killeen

ENGINEER: Kimley-Horn and Associates, Inc.

Sean Mason, P.E.

By: Kent Cagle

By: Sean Mason

Title: City Manager

Title: Associate

Date Signed: _____

Date Signed: _____

Address for giving notices:

Address for giving notices:

P.O. Box 1329

10814 Jollyville Road, Avallan IV

Killeen, TX 76540-1329

Suite 200

Austin, TX 78746

Designated Representative (paragraph 6.02.A):

Designated Representative (paragraph 6.02.A):

Steven L Kana, P.E.

Lance Parisher, P.E.

Title: Assistant City Engineer

Title: Associate

Phone Number: 254-501-7623

Phone Number: 737-263-2017

Facsimile Number: 254-501-6321

Facsimile Number: N/A

E-Mail Address: skana@killeentexas.gov

E-Mail Address: lance.parisher@kimley-horn.com

This is **EXHIBIT A**, consisting of 11 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____.

Initial:

OWNER _____

ENGINEER  _____

ENGINEER's Services

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. ENGINEER shall provide Basic and Additional Services as set forth below.

PART 1 -- BASIC SERVICES

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this proposal to the City of Killeen ("Client") for providing engineering services for the update of the City of Killeen's Water and Wastewater Impact Fees.

Scope of Services

Kimley-Horn will provide the services specifically set forth below.

Task 1. Project Initiation/Management

- 1.1. Project Kick-Off Meeting. ENGINEER will meet with the City for a formal kick-off meeting for the Impact Fee project. During this meeting the scope and City contacts will be determined for each task.
- 1.2. Project Team Status Meetings and Coordination. ENGINEER will participate in monthly virtual meetings with City staff. These meetings will be held on specific days and times as agreed by the City. A maximum of two hours will be anticipated for each meeting. These are assumed to be conference calls. ENGINEER will prepare notes from each meeting and submit to the City's Project Manager for review and approval. A maximum of six (6) virtual team meetings will be held. It is anticipated that the work will be completed within nine (9) months.
- 1.3. Project Status Reports. ENGINEER will prepare and submit monthly status reports regarding the overall project schedule, critical tasks, and sub-consultant coordination in conjunction with each monthly invoice.

Task 2. Land Use Assumptions

ENGINEER will assist the City in developing the land use assumptions in conformance with Chapter 395 of the Local Government Code and shall include:

- 2.1. Data Collection. ENGINEER will deliver a letter to the Client describing data that should be provided to the ENGINEER. The Scope for data collection is as follows:
 - General Plan – The Client shall identify and provide the most recent comprehensive mast plan.
 - The Client shall identify and provide ENGINEER the Water/Wastewater Master Plan demographic projections.

- Maps – The Client shall provide ENGINEER with GIS shapefiles, associated databases, and layer files in ESRI ArcGIS format. All data shall be projected in NAD 83 State Plane, Central Texas Zone Coordinates. Data should Include:
 - 1) Current Zoning Map
 - 2) Future Land Use Plan
 - 3) City Limits, ETJ Limits
 - 4) Water and Wastewater Infrastructure
 - 5) Current Impact Fee Water and Wastewater Service Area Limits
 - 6) Most recent digital orthophotograph (DOQ) of the City

2.1.1 Service Area Boundaries. ENGINEER will work with City staff to review previous and update, if necessary, the service area boundaries for water and wastewater impact fees

2.2. Land Use Assumptions. ENGINEER will provide City staff with an overview of the information required as part of the Land Use Assumptions for Impact Fees. This task will require the City to develop the following for use in the Impact Fee calculations:

- 2.2.1 Existing population by service area for the Year 2025;
- 2.2.2 Build-Out population by service area;
- 2.2.3 Ten Year population by service area for the Year 2035;
- 2.2.4 All population information shall be reported by number of persons and number of dwelling units/living unit equivalent;
- 2.2.5 Map identifying where the growth is projected; and
- 2.2.6 Summary report to include with the Impact Fee Update showing a general overview of methodology and results.

2.2.7 Existing Land Use Assumptions. ENGINEER will prepare the existing land use information in a format suitable for the use in the impact fee update based on information provided by the City. The information will be presented in tabular form by service area as defined by the water and wastewater service area boundaries.

- ENGINEER will use the latest available GIS future land use data provided by the City.

2.2.8 Build-Out Land Use Assumptions. ENGINEER will develop the build-out demographics within the service areas in tabular format. For each service area, population will be summarized.

2.2.9 Ten-Year Land Use Assumptions. Chapter 395 states that impact fees may only be used to pay for items included in the capital improvements plan and attributable to new service units projected over a period of time not to exceed ten (10) years. Based upon guidance from the Client, ENGINEER will develop the Ten-Year Land Use Assumptions for the 2025– 2035 planning window.

- ENGINEER will conduct one (1) meeting with the City to receive the City's projections for expected growth rates for land use. ENGINEER will review the City's information and develop the demographic table using population by households to develop 10-year population projections.

2.3. Land Use Documentation. ENGINEER will provide both a draft and final Land Use Assumptions to be incorporated as a chapter into the Impact Fee Report. The chapter will include:

- Water service area
- Wastewater service area
- Historical population data
- Existing land use, population data

- 10-year land use, population data
 - Exhibits
 - Draft versions of the Land Use Assumptions will be submitted in .pdf format.
- 2.4. Meetings. ENGINEER will prepare for and attend (1) one meeting with Client to discuss and review the proposed Land Use Assumptions in a conference call. It is anticipated that (1) one service area for water and (1) service area for wastewater will be used.
- 2.5. Deliverables.
- Data collection request letter
 - Electronic (.pdf) copy of the Draft Land Use Assumptions
 - Upon final approval of the Impact Fee Update and new ordinance by the City Council, ENGINEER will provide five (5) originals of the Final Impact Fee Update Report, including the Land Use Assumptions component of the Report (see Task 6).
 - ENGINEER will provide the City with all GIS shapefiles, associated databases, and layer files used in the development of the Land Use Assumptions in ESRI ArcGIS format. All data will be projected in NAD 83 State Plane, Central Texas Zone coordinates.

Task 3. Water Impact Fee Study

ENGINEER will prepare the water impact fee update in conformance with Chapter 395 of the Local Government Code and shall include:

- 3.1. Data Collection. ENGINEER will deliver a letter request to the City describing water data that should be provided to ENGINEER. The data collection is as follows:
- 3.1.1 Water Master Plan – ENGINEER will coordinate with the City to obtain the latest water system master plan adopted by the City.
 - 3.1.2 Water usage history - Annual water usage records for the past ten (10) years for development of the service unit projection.
 - 3.1.3 Water Meter Data – List of the current water meter account by meter size.
- 3.2. Infrastructure Capacity Criteria. ENGINEER will coordinate with the City to obtain the criterion for determining the ten (10) year capacity of the following infrastructure:
- 3.2.1 Future Transmission Lines (12-inch and larger)
 - 3.2.2 Existing and Future Elevated Storage Tanks
 - 3.2.3 Existing and Future Ground Storage Tanks
 - 3.2.4 Existing and Future Pump Stations
 - 3.2.5 Existing and Future Supply Facilities

A criterion will not be developed for existing City transmission lines. If the City does not have criteria for elevated storage tanks, ground storage tanks and pump stations sizing the ENGINEER will utilize the Texas Commission on Environmental Quality (TCEQ) criteria.

- 3.3. Water Impact Fee Capital Improvements Plan. ENGINEER will coordinate with the City to develop the Water Impact Fee Capital Improvements Plan. It will include the following infrastructure:
- 3.3.1 Future Transmission Lines (12-inch and larger)
 - 3.3.2 Existing and Future Elevated Storage Tanks
 - 3.3.3 Existing and Future Ground Storage Tanks

- 3.3.4 Existing and Future Pump Stations
- 3.3.5 Existing and Future Supply Facilities

Impact Fee CIP will not include existing City transmission lines.

- 3.4. Maximum Assessable Water Impact Fee Calculation. ENGINEER will calculate the additional service units based on the Land Use Assumptions. ENGINEER will then calculate the Impact Fee per service unit, unit equivalents by meter size and the Maximum Assessable Water Impact Fee table by meter size. ENGINEER will incorporate the financial analysis performed in Task 6 to determine the credit calculation. If Task 6 is not performed, ENGINEER will use 50% as the credit calculation as required by state law.
- 3.5. Water Impact Fee Update Report. ENGINEER will provide both a draft and final Water Impact Fee Report. The report will include:
 - 3.5.1 Water service area
 - 3.5.2 Narrative of the impact fee update methodology
 - 3.5.3 Impact fee calculations
 - 3.5.4 Water Impact Fee CIP
 - 3.5.5 Exhibits
 - 3.5.6 Draft versions of the Water Impact Fee Report will be submitted in .pdf format.
- 3.6. Deliverables
 - 3.6.1 Data collection request letter.
 - 3.6.2 Electronic (.pdf) copy of the Draft Water Impact Fee Report.
 - 3.6.3 Text of the Draft Water Impact Fee Report will be provided in .doc format for commenting purposes.
 - 3.6.4 Upon final approval of the Impact Fee Update and new ordinance by the City Council, ENGINEER will provide up to five (5) originals of the Final Impact Fee Update Report, including the Water Impact Fee component of the Report (see Task 5.2).

Task 4 – Wastewater Impact Fee Update

ENGINEER will prepare the wastewater impact fee update in conformance with Chapter 395 of the Local Government Code and shall include:

- 4.1. Data Collection. ENGINEER will collect the following data:
 - 4.1.1 Wastewater Master Plan – ENGINEER will coordinate with the City to obtain the latest wastewater system master plan adopted by the City.
 - 4.1.2 Wastewater Discharge History - Annual wastewater discharge records for the past ten (10) years for verification of current demand by service unit and development of the service unit projection.
 - 4.1.3 Wastewater service counts from billing.
- 4.2. Infrastructure Capacity Criteria. ENGINEER will coordinate with the City to obtain the criterion for determining the ten (10) year capacity of the following infrastructure:
 - 4.2.1 Future Trunk Lines (12-inch and larger)
 - 4.2.2 Existing and Future Lift Stations
 - 4.2.3 Existing and Future Force Mains

If the City does not have criteria for lift station and force main sizing the ENGINEER will utilize the Texas Commission on Environmental Quality (TCEQ) criteria.

- 4.3. Wastewater Impact Fee Capital Improvements Plan. ENGINEER will coordinate with the City to develop the Wastewater Impact Fee Capital Improvements Plan. It will include the following infrastructure:

- 4.3.1 Future Trunk Lines (12-inch and larger)
- 4.3.2 Existing and Future Lift Stations
- 4.3.3 Existing and Future Force Mains

- 4.4. Maximum Assessable Wastewater Impact Fee Calculation. ENGINEER will calculate the additional service units based on the Land Use Assumptions. ENGINEER will then calculate the Impact Fee per service unit, unit equivalents by meter size and the Maximum Assessable Wastewater Impact Fee table by meter size. ENGINEER will incorporate the financial analysis performed in Task 6 to determine the credit calculation. If Task 7 is not performed, ENGINEER will use 50% as the credit calculation as required by state law.

- 4.5. Wastewater Report. ENGINEER will provide both a draft and final Wastewater Impact Fee Report. The report will include:

- 4.5.1 Wastewater service area
- 4.5.2 Narrative of the impact fee update methodology
- 4.5.3 Impact fee calculations
- 4.5.4 Wastewater Impact Fee CIP
- 4.5.5 Exhibits
- 4.5.6 Draft versions of the Wastewater Impact Fee Report will be submitted in .pdf format.

- 4.6. Deliverables.

- 4.6.1 Data collection request letter
- 4.6.2 Electronic (.pdf) copy of the Draft Wastewater Impact Fee Report
- 4.6.3 Text of the Draft Wastewater Impact Fee Report will be provided in .doc format for commenting purposes.
- 4.6.4 Upon final approval of the Impact Fee Update and new ordinance by the City Council, ENGINEER will provide up to five (5) originals of the Final Impact Fee Update Report, including the Wastewater Impact Fee component of the Report (see Task 5.2).

Task 5 – Impact Fee Documentation/Adoption Process/Administration Tools

- 5.1. Water and Wastewater Documentation. ENGINEER will provide both a draft and final Water and Wastewater Impact Fee Report. The report will include:

5.1.1 **Executive Summary**

- Introduction
- Impact Fee Methodology
- Water and Wastewater Maximum Fee Calculation Results

5.1.2 **Land Use Assumptions**

- Water service area
- Wastewater service area

5.1.3 **Water**

- Impact Fee Capital Improvement Plan 10-year capacity criterion

- Impact Fee Capital Improvement Plan with project narratives and opinions of probable construction cost
 - Impact Fee CIP Exhibits
 - Impact fee calculations
- 5.1.4 **Wastewater**
- Impact Fee Capital Improvement Plan 10-year capacity criterion
 - Impact Fee Capital Improvement Plan with project narratives and opinions of probable construction cost
 - Impact Fee CIP Exhibit
 - Impact fee calculations
- 5.2. Deliverables
- 5.2.1 Electronic (.pdf) copy of the Draft Water and Wastewater Impact Fee Report; and
- 5.2.2 Four (4) 8.5" x 11" hard copies of the Draft Water and Wastewater Impact Fee Report
- 5.2.3 Upon final approval of the Water and Wastewater Impact Fee Analysis and new ordinance by the City Council, ENGINEER will provide four (4) 8" x 11" originals and one (1) electronic (.pdf) copy of the Final Water and Wastewater Impact Fee Report.
- 5.3. Public Hearings and Approval. It is anticipated that a representative from ENGINEER will prepare for and attend up to four (4) meetings during the public hearing and approval process. These anticipated meetings are as follows:
- As required by Chapter 395 of the Local Government Code, prepare for and attend up to two (2) CIAC public hearing to present the Land Use Assumptions, CIP, and Maximum Assessable Water, and Wastewater Impact Fees.
 - As required by Chapter 395 of the Local Government Code, prepare for and attend two (2) City Council public hearing to present the Land Use Assumptions, CIP, and Maximum Assessable Water and Wastewater Impact Fees; and adopt the associated ordinance.

Task 6 – Financial Analysis and Impact Fee Credit Determination (Special Service)

A financial subconsultant will calculate maximum assessable impact fees for the designated ten-year period for each service function (i.e. water and wastewater), as well as determine the water and wastewater impact fee credits in conformance with Chapter 395 of the Local Government Code. This task shall include:

- 1.1. Select Appropriate Credit Option. In 2001, Chapter 395 was amended to include a plan for awarding either a credit for the portion of ad valorem tax and/or utility service revenues generated by new service units during the program period that are used for payment of improvements that are included in the impact fee capital improvements plan, or a credit equal to 50% of the total cost of the impact fee capital improvements plan. Using the impact fee eligible capital improvement costs and projected service units provided by ENGINEER, the financial subconsultant will calculate the maximum assessable, full-cost recovery impact fees, including applicable financing costs, for the designated period. The financial subconsultant will then meet with City Staff to determine the credit option (either the credit determination or 50% of costs) that most appropriately satisfies the balance between the City's funding requirements and the City's desired economic growth.
- 1.2. Credit Determination. Assuming the City elects to pursue the credit option involving ad valorem tax and/or utility service revenue, the financial subconsultant will determine the appropriate credit, if any, and apply this credit to the impact fee determination in accordance

with Chapter 395 requirements. A critical component of this calculation is the examination of funding practices involving existing projects that are impact fee eligible under the newly calculated impact fees. Since Chapter 395 requires a credit for ad valorem taxes and/or utility service revenues from new service units used to fund impact fee eligible projects, a decision must be made as to whether to maintain or modify the existing funding practice for existing projects. The ultimate decision of either maintaining or modifying existing funding practices is generally based on funding needs or the administrative requirements of complying with Chapter 395.

- 1.3. Impact Fee Determination. After the credit determination is made, the credit will be incorporated into the impact fee calculation. The impact fee calculation performed by the financial subconsultant uses a financial model, which fully recognizes the requirements of Chapter 395, including the recognition of cash and/or debt financing, interest earnings, fund balances, ad valorem taxes, and utility rate revenues.
- 1.4. Meetings and Presentations. After the impact fees have been calculated, the financial subconsultant will meet with City Staff to review the impact fee determination and address any outstanding issues and/or concerns. Staff's comments and recommendations will be incorporated where appropriate. ENGINEER will incorporate the financial analysis and impact fee credit determination into the final impact fee documentation. This includes coordination with City Auditor and includes one in person meeting at City Council.

Schedule

Following Notice to Proceed (NTP) the Consultant and City of Killeen will work together to establish a schedule that considers adoption date, as well as sufficient time to hold CIAC and City Council meetings as needed for the consideration of the water and wastewater impact fee updates.

PART 2 -- ADDITIONAL SERVICES

A2.01 Additional Services Requiring OWNER's Authorization in Advance

A. If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.

1. Additional assistance in developing the land use assumptions outside of that described in this agreement.
2. Preparation for and attendance at additional public meetings not specifically identified in the Scope of Services.
3. Furnish additional copies of review documents and/or bid documents in excess of the number of the same identified in the Scope of Services.
4. Coordinating or including impact fee project costs associated with projects from wholesale water and wholesale wastewater treatment provider.
5. Reanalysis or recalculation to reflect project scope changes or policy changes requested by the City, addressing changes in direction previously approved by the City, or mandated by changing governmental laws.

This is **EXHIBIT B**, consisting of 2 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____.

Initial:

OWNER _____

ENGINEER  _____

OWNER's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of OWNER as set forth in this Agreement, OWNER shall:

A. Provide ENGINEER with all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.

B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following ENGINEER's assessment of initially available Project information and data and upon ENGINEER's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. GIS data and shapefiles, including zoning, land use, city limits, water and wastewater infrastructure, impact fee service areas, and orthography of the City.
2. Annual water and wastewater usage and discharge history, water meter data, wastewater service counts, master plans.
3. To the best of the clients abilities, provide 10 years of records for water and wastewater usage.
4. Assist the Engineer in developing 10-year capacity of existing infrastructure.
5. Advertisements for required meetings.
6. Credits, tax revenues, utility service revenue, and other required funding and interest rates as needed.

E. Authorize ENGINEER to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
2. Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or ENGINEER reasonably requests.
3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid.
4. Placement and payment for advertisement for Bids in appropriate publications.

J. Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

Q. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs B2.01.O and P.

This is **EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____

Initial:

OWNER _____

ENGINEER  _____

Payments to ENGINEER for Services and Reimbursable Expenses

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 -- PAYMENTS TO THE ENGINEER

C4.01 *For Basic Services Having A Determined Scope*

A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A, except for services of ENGINEER's Resident Project Representative and Post-Construction Phase, services, if any, as follows:

1. Progress payments in the amount of \$136,080.00 based on the following assumed distribution of compensation:

1 Project Management	\$ 11,380.00
2 Land Use Assumptions	\$ 14,325.00
3 Water Impact Fee Study	\$ 28,570.00
4 Wastewater Impact Fee Study	\$ 28,570.00
5 Impact Fee Documentation/Adoption	\$ 23,835.00
6 Financial Analysis	\$ 29,400.00

2. ENGINEER may alter the distribution of compensation between individual phases noted herein to be consistent with services actually

rendered, but shall not exceed the total amount unless approved in writing by the OWNER.

3. The amount includes compensation for ENGINEER's services and services of ENGINEER's Consultants, if any. Appropriate amounts have been incorporated to account for labor, overhead, profit, and Reimbursable Expenses.

4. The portion of the amount billed for ENGINEER's services will be based upon ENGINEER's estimate of the proportion of the total services actually completed during the billing period.

5. If more prime contracts are awarded for work designed or specified by ENGINEER for this Project than identified in Exhibit A, the ENGINEER shall be compensated an additional amount to be negotiated; however, in no case shall the amount of compensation exceed eighteen percent (18%) of the Project's estimated construction costs for all Basic Services for each prime contract added.

This is **EXHIBIT D**, consisting of 1 page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____.

Initial:


OWNER _____

ENGINEER  _____

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

General Representative Services will be provided for this project as outlined in the Exhibit A. Resident Project Representative Services will not be provided.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____.

Initial:
OWNER _____
ENGINEER  _____

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: Not applicable to this project.

OWNER:

OWNER's Construction Contract Identification:

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT:

CONSTRUCTION CONTRACT DATE:

ENGINEER:

To: OWNER

And To: CONTRACTOR

The undersigned hereby gives notice to the above OWNER and CONTRACTOR that the completed Work furnished and performed by CONTRACTOR under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents and the terms and conditions set forth on the reverse side hereof.

By: _____

Title: _____

Dated: _____, _____


(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of ENGINEER.
3. Said Notice is given as to the best of ENGINEER's knowledge, information, and belief as of the date hereof.
4. Said Notice is based entirely on and expressly limited by the scope of services ENGINEER has been employed by OWNER to perform or furnish during construction of the Project (including observation of the CONTRACTOR's work) under ENGINEER's Agreement with OWNER and under the Construction Contract referenced on the reverse hereof, and applies only to facts that are within ENGINEER's knowledge or could reasonably have been ascertained by ENGINEER as a result of carrying out the responsibilities specifically assigned to ENGINEER under ENGINEER's Agreement with OWNER and the Construction Contract referenced on the reverse hereof.
5. Said Notice is not a guarantee or warranty of CONTRACTOR's performance under the Construction Contract referenced on the reverse hereof nor an assumption of responsibility for any failure of CONTRACTOR to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT F**, consisting of 1 page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____.

Initial:
OWNER _____
ENGINEER  _____


Construction Cost Limit

Paragraph 5.02 of the Agreement is amended and supplemented to include the following agreement of the parties:

F5.02 *Designing to Construction Cost Limit*

- A. This project does not include construction costs.

This is **EXHIBIT G**, consisting of 1 page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____.

Initial:
OWNER _____
ENGINEER  _____

Insurance

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.05 Insurance

A. The limits of liability for the insurance required by paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By ENGINEER:

a. Workers' Compensation:	Statutory
b. Employer's Liability --	
1) Each Accident:	\$ 500,000
2) Disease, Policy Limit:	\$ 500,000
3) Disease, Each Employee:	\$ 500,000
c. General Liability --	
1) Each Occurrence (Bodily Injury and Property Damage):	\$ 1,000,000
2) General Aggregate:	\$ 2,000,000
d. Excess or Umbrella Liability --	
1) Each Occurrence:	\$ 4,000,000
2) General Aggregate:	\$ 4,000,000
e. Automobile Liability --	
1) Bodily Injury:	
a) Each Accident	\$ _____
2) Property Damage:	
a) Each Accident	\$ _____

[or]

1) Combined Single Limit (Bodily Injury and Property Damage): Each Accident	\$ 500,000
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f. Other (specify): On all policies except Workers Compensation and Professional Liability - "City of Killeen is named as Additional Insured on the General Liability and Auto Liability policies."

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____.

Initial:

OWNER _____

ENGINEER  _____

Special Provisions

- None