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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

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

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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TABLE OF CONTENTS

Page

| | |
|--|----|
| ARTICLE 1 - SERVICES OF ENGINEER..... | 2 |
| 1.01 Scope | 2 |
| ARTICLE 2 - OWNER'S RESPONSIBILITIES | 2 |
| 2.01 General | 2 |
| ARTICLE 3 - TIMES FOR RENDERING SERVICES..... | 2 |
| 3.01 General | 2 |
| 3.02 Suspension..... | 2 |
| ARTICLE 4 - PAYMENTS TO ENGINEER..... | 2 |
| 4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER | 2 |
| 4.02 Other Provisions Concerning Payments | 2 |
| ARTICLE 5 - OPINIONS OF COST | 3 |
| 5.01 Opinions of Probable Construction Cost | 3 |
| 5.02 Designing to Construction Cost Limit | 3 |
| 5.03 Opinions of Total Project Costs | 3 |
| ARTICLE 6 - GENERAL CONSIDERATIONS | 3 |
| 6.01 Standards of Performance | 3 |
| 6.02 Authorized Project Representatives | 4 |
| 6.03 Design without Construction Phase Services | 4 |
| 6.04 Use of Documents | 4 |
| 6.05 Insurance..... | 5 |
| 6.06 Termination | 5 |
| 6.07 Controlling Law | 6 |
| 6.08 Successors, Assigns, and Beneficiaries | 6 |
| 6.09 Hazardous Environmental Condition | 6 |
| 6.10 Allocation of Risks | 7 |
| 6.11 Notices | 7 |
| 6.12 Survival..... | 7 |
| 6.13 Severability..... | 7 |
| 6.14 Waiver | 7 |
| 6.15 Headings | 8 |
| ARTICLE 7 - DEFINITIONS | 8 |
| 7.01 Defined Terms | 8 |
| ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS..... | 10 |
| 8.01 Exhibits Included..... | 10 |
| 8.02 Total Agreement..... | 11 |

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 Walker Partners (“ENGINEER”).

OWNER and ENGINEER in consideration of their mutual covenants as set forth herein agree as follows: To provide professional
surveying and civil engineering services for W.S. Young Drive & I-14 Intersection Drainage Improvement Project as described
in Exhibit A of this contract in the amount of \$68,700.00.

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 9 pages.

B. Exhibit B, "OWNER's Responsibilities," consisting of 3 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 4 pages.

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 12 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: Walker Partners

By: Kent Cagle

By: Otto E. Wiederhold, PE

Title: City Manager

Title: Senior Vice President

Date Signed: _____

Date Signed: October 23, 2023

Address for giving notices:

Address for giving notices:

P.O. Box 1329

2100 Trimmier Road, Suite 102

Killeen, TX 76540-1329

Killeen, TX 76541

Designated Representative (paragraph 6.02.A):

Designated Representative (paragraph 6.02.A):

Edwin Revell

Title: Executive Director of Development Services

Title: _____

Phone Number: 254-616-3173

Phone Number: _____

Facsimile Number: _____

Facsimile Number: _____

E-Mail Address: ERevell@killeentexas.gov

E-Mail Address: _____

This is **EXHIBIT A**, consisting of 10 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____.

Initial:

OWNER _____
ENGINEER OECW

ENGINEER's Services

See Walker Partners Attached Exhibit A (7 pages)



SCOPE AND FEE PROPOSAL

To: City of Killeen Public Works Department

Attn: Andrew Zagars, P.E., City Engineer **From:** Otto

Wiederhold, P.E.

Project Name: W. S. Young Drive & I-14 Intersection Drainage Improvement Project

Project No.: 2-01671

Date: October 10, 2023

Xc: Abdulbasit Abbasi, Project Manager

W S Y O U N G D R I V E & I - 1 4 I N T E R S E C T I O N D R A I N A G E I M P R O V E M E N T S

Walker Partners, LLC (Engineer) appreciates this opportunity to submit this Proposal to provide professional surveying and civil engineering services to The City of Killeen, (Owner) in connection with the W. S. Young Drive & I-14 Intersection Drainage Improvements Project. The City of Killeen intends to improve the existing drainage at the intersection of W. S. Young Drive and I – 14 as well as extend the sidewalk and add landscaping for this Project.

The scope of services, schedule, and associated fees that Walker Partners proposes to provide for this Project are outlined below:

1.00 SCOPE OF SERVICES

1.01 SURVEYING SERVICES

A. Topographic Survey (Phase 12)

1. Perform an on-the-ground field survey to obtain the topography (terrain data) and other visible and apparent surface features (manmade or natural) such as ditches, swales, channels, embankments, drainage structures, catch basins and inlets, manholes, above-grade utility appurtenances, pavements, significant trees (hardwoods greater than 8 inches in diameter), fences, building structures, water's edge, etc. For underground utilities, Walker Partners will coordinate with Texas 811. The approximate locations of underground utilities will be shown based upon utility locators' markings.
2. Establish vertical control at the site and place benchmarks based upon North American Vertical Datum of 1988 (NAVD88), unless otherwise specified by client.
3. Prepare a topographic map from the topographic survey depicting the physical features as described above and with elevation contours at a 1-foot interval. The 100-year floodplain as identified by FEMA and as depicted on the Flood Insurance Rate Map (FIRM) will be graphically located and drafted on the topographic map.

1.02 ENGINEERING BASIC SERVICES

A. Study and Concept Plan (Phase 20)

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services of other consultants which are not part of Engineer's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities (TxDOT) having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the drainage assessment.
4. Identify and evaluate the alternate B solution available to Owner from a prior assessment and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. Prepare a report and concept plan which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. The Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for TxDOT permits and contingencies.; the estimated total costs of design, a summary of allowances for other items and services included within the definition of Total Project Costs.
6. Furnish 5 review copies of the Concept Plan and any other deliverables to Owner within 45 calendar days of authorization to begin services and review it with Owner.
7. Revise the Concept Plan and any other deliverables in response to Owner's comments, as appropriate, and furnish 5 copies of the revised Report Concept Plan and any other deliverables to the Owner.

Engineer's services under the Concept Plan Phase will be considered complete on the date when the revised Concept Plan and any other deliverables have been delivered to Owner.

B. Preliminary Design (Phase 30).

1. Attend preliminary conferences with the Owner regarding the Project.
2. Establish the scope of any soil and foundation investigations or any special surveys and tests which, in the opinion of the Engineer, may be required; assist the Owner in arranging for such work to be done, for the Owner's account.
3. Prepare preliminary design documents on the Project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the Owner, including final design criteria, preliminary drawings, an outline of specifications, and setting forth clearly the Engineer's recommendations.
4. Prepare a preliminary Engineer's Opinion of Probable Cost.
5. Furnish the Owner the required number of copies of the preliminary plan, including preliminary layouts and cost estimates.

C. Final Design (Phase 40)

1. Prepare Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
2. The Drawings to be prepared with this Phase of the Work, in general, will include the following:
 - a. General Condition Drawings – these Drawings shall be for informational, permitting, and bidding purposes and shall, in general, consist of the following:

- i) General Notes and Project Specific Notes ii) Legends, Abbreviations, and Symbols iii) Survey Control Plan iv) Topographic Survey
 - v) Drainage Area Map(s) vi) Drainage Calculations vii) Sedimentation and Erosion Control Plan (if required)
- b. Paving Plan – prepare plans and details for site paving, sidewalks and roadways (hardscape). Paving section designs are to be based on recommendations included in the Geotechnical Report to be provided by Owner. This Drawing(s) will include the following:
 - i) Details for subgrade, base, and pavement for the various pavement sections.
 - ii) Recommendations, layouts, and details for rigid pavement joints.
- c. Grading Plan – prepare a Grading Plan for the Project. This plan will show existing grades, proposed contours and spot elevations as required; proposed grades at critical features; and proposed finish floor elevation(s).
- d. Demolition Plan – prepare plans and details for demolition of existing features.
- e. Drainage Plans – prepare Drainage Plans for the Project. These plans will indicate clearly the proposed drainage system(s). These Drawings shall include the following:
 - i) Design of an on-site storm sewer and the coordination of City review and approval of the Drawings prepared as part of this item.
 - ii) Preparation of profiles for storm drain systems.
- 3. Provide technical criteria, written descriptions, and design data for Client’s use in filing applications for TxDOT permits following review/approval of the final design of the Project; assist Client in consultations with TxDOT authorities; and revise the Drawings and Specifications in response to directives from such authorities.
- 4. Advise Client of any adjustments to the EOPC known to Engineer.
- 5. Submit electronic copies of the drawings, specifications, updated EOPC, and any other agreed upon deliverables to Client.
- 6. It is assumed that the site construction work will be fully developed in this phase and no major alterations to the site plans will occur after this phase.

D. Construction Documents (Phase 45)

- 1. As stated above, it is assumed that the site civil work will be fully developed during Design Development and no major alterations to the site will occur during the Construction Document Phase.
- 2. The purpose of this phase is to revise/complete drawings and specifications to reflect the Construction Document phase and incorporate minor comments from the Owner, Contractor, Architect, and other subconsultants from the Design Development phase. Any work requested beyond the original scope of services shall be subject to additional services at hourly rates or a negotiated fee.
- 3. This phase includes addressing City plan review comments, so long as they do not induce significant revisions to the site design.
- 4. Furnish the Client electronic copies of approved contract documents including drawings and specifications.

D. Bidding and Negotiating (Phase 50)

- 1. Attend pre-Bid conferences, if any.
- 2. Answer contractor questions and issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

3. Provide information or assistance needed by Client in the course of any negotiations with prospective contractors.
4. Consult with Client as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents.

E. Construction Administration (Phase 60)

1. Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
2. Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit for the Civil Site Work, including Progress Schedule, Schedule of Submittals, and Schedule of Values.
3. Make periodic visits to the site (as distinguished from the continuous services of a resident Project Representative) to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents. In performing these services, the Engineer will endeavor to protect the Owner against defects and deficiencies in the work of the contractor, but he cannot guarantee the performance of the contractor, nor be responsible for the actual supervision of construction operations or for the safety measures that the contractor takes or should take.
4. Consult and advise with the Client; issue all instructions to the contractor requested by the Client; and prepare and issue routine change orders with Client's approval.
5. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data which the contractor submits. This review is for the benefit of the Owner and covers only general conformance with the information given by the Contract Documents. The contractor is to review and stamp his approval on submittals prior to submitting to Engineer, and review by the Engineer does not relieve the contractor of any responsibility such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity to construct a complete and workable facility in accordance with Contract Documents.
6. Assist the Client as necessary in reviewing monthly and final estimates for payments to Contractors.
7. Conduct, in company with the Client, a final inspection of the Project for compliance with the Contract Documents, and submit recommendations concerning project status, as it may affect final payment to the contractors.

F. Outside Consultant (Landscape Architect) (Phase 100)

1. Provide construction documents for the design, permit, bidding and construction phase to include:
 - a. Landscape Permit Plan(s) – documenting plant names (common and botanical), location, size, quantity, general appearance/condition, and planting details, notes, and specifications as part of the submittal for a Site Development Permit in accordance with City requirements and documents required for permitting.
 - b. Irrigation Design Plan(s) – detailed design plans documenting areas to be irrigated, point of connection, meter location, controller location, sleeving locations, incorporation of specific zones, hydraulic calculations, mainlines, and detailed head layout for turf areas a dripline layout for all landscape planting beds including irrigation details, specifications, and calculations.
 - c. Refined design plan and supplemental graphics, imagery, details, and material selections for project site improvement drawings.
 - d. Site development drawings coordinated with Client and design team members.
 - e. One (1) revision/refinement to design development drawings per Client meeting.

2. Provide coordination and oversight during the Construction Phase that could include but not limited to RFI responses and coordination, bid tab reviews, shop drawing reviews, periodic meetings, or coordination with contractor on various issues that arise during the bidding and installation process.
3. Assist in developing Punch List and Final walk through inspection.

2.00 SCHEDULE FOR SERVICES

Walker Partners acknowledges the importance of the project schedule to the Owner and agrees to put forth its best professional efforts to perform its services under this proposal in a manner consistent with that schedule. The Owner understands, however, that Walker Partners' performance must be governed by sound professional practices. If requested, Walker Partners will be pleased to develop a project schedule outlining each of the items included the abovedescribed scope of services.

3.00 FEES

3.01 LUMP SUM FEE

For the SCOPE OF SERVICES, outlined above, the Owner agrees to pay Walker Partners a lump sum fee of Sixty-Eight Thousand Seven Hundred dollars (\$68,700.00) to be invoiced monthly at a percentage of the work completed.

Below is an itemized breakdown of the proposed fees:

| Phase No. | Description | Lump Sum Fee |
|---------------------------|--|---------------------|
| 12 | Topographic Survey | \$4,000.00 |
| 20 | Study & Concept Plan | \$8,000.00 |
| 30 | Preliminary Design | \$10,000.00 |
| 40 | Final Design | \$15,000.00 |
| 45 | Construction Documents | \$ 4,500.00 |
| 50 | Bidding & Negotiating | \$4,500.00 |
| 60 | Construction Administration | \$10,000.00 |
| 100 | Outside Consultant (Landscape Architect) | \$12,700.00 |
| TOTAL LUMP SUM FEE | | \$68,700.00 |

3.02 ADDITIONAL SERVICES

Fees for Additional Services not identified in the SCOPE OF SERVICES may be deemed necessary during the course of the project. Payment for additional services will be billed on an hourly basis or at a negotiated fee. Work related to Additional Services will not commence without authorization by the Owner.

4.00 EXCLUSIONS

The following items are excluded from this proposal. If there are questions about any other services not listed here, they shall be clarified prior to approval and acceptance of this proposal.

The proposed engineering services do not include the following:

- Wastewater lift station design and drawings
- Off-site water and wastewater design and drawings
- Off-site street and drainage design and drawings
- Design work related to LEEDS certification(s)
- Geotechnical Investigation
- Environmental Investigation

- Wetlands determination and permitting
- Determination of any listed endangered or threatened species
- Determination of any designated critical habitats in the Project area
- Retaining wall design
- Design of screening walls, light pole bases, transformer or generator pads, hardscape features, pavers and/or site signage
- Site lighting plans
- Preparation of “as-built” drawings
- Construction staking (except as noted)
- Abandonment of private or public easements
- Subsurface utility engineering survey
- Assistance to the Owner and/or the Contractor in filing the Notice of Intent (NOI) for the proposed construction activities
- Design of any “dry” utility facilities (i.e. gas, electric, phone, cable TV, etc.)
- Multiple bid packages/multiple construction contracts.

5.00 ACCEPTANCE OF PROPOSAL

If the Scope of Services, Schedule, and Fees outlined herein are acceptable to The City of Killeen (Owner), Walker Partners will prepare a “Standard Form of Agreement for Professional Services” for review, approval, and execution.

OWNER: City of Killeen

BY: _____
Signature

Printed Name

TITLE: _____

DATE SIGNED: _____

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 OECW

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. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

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

F. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under the Agreement.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors

or consultants as OWNER deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

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 constructibility review.

K. Furnish to ENGINEER data as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

L. If OWNER designates a construction manager or an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER.

M. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of ENGINEER as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof.

P. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as OWNER determines necessary to verify:

1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.
2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

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 OECW

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 \$68,700.00 based on the following assumed distribution of compensation:

| | |
|--------------------------------|--------------------|
| a. Topographic Survey | <u>\$4,000.00</u> |
| b. Study & Concept Plan | <u>\$8,000.00</u> |
| c. Preliminary Design | <u>\$10,000.00</u> |
| d. Final Design | <u>\$15,000.00</u> |
| e. Construction Documents | <u>\$4,500.00</u> |
| f. Bidding & Negotiating | <u>\$4,500.00</u> |
| g. Construction Administration | <u>\$10,000.00</u> |
| i. Outside Consultant | |
| -Landscape Architect | <u>\$12,700.00</u> |

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 4 pages, 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

Paragraph 1.01C of the Agreement is amended and supplemented to include the following agreement of the parties:

~~D6.02~~ — *Resident Project Representative*

— A. ENGINEER shall furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist ENGINEER in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D may provide full time representation or may provide representation to a lesser degree.

— B. Through such additional observations of Contractor’s work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor’s work in progress, supervise, direct, or have control over the Contractor’s Work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor’s work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work, or responsibility of construction for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in section A.1.05 of Exhibit A of the Agreement are applicable.

— C. The duties and responsibilities of the RPR are limited to those of ENGINEER in the Agreement with the OWNER and in the Contract Documents, and are further limited and described as follows:

1. ~~General:~~ RPR is ENGINEER’s agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s work in progress shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR’s dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.
2. ~~Schedules:~~ Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
3. ~~Conferences and Meetings:~~ Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project related meetings, and prepare and circulate copies of minutes thereof.
4. ~~Liaison:~~
 - a. ~~Serve as ENGINEER’s liaison with Contractor, working principally through Contractor’s superintendent and assist in understanding the intent of the Contract Documents.~~
 - b. ~~Assist ENGINEER in serving as OWNER’s liaison with Contractor when Contractor’s operations affect OWNER’s on-Site operations.~~
 - c. ~~Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.~~

5. ~~Interpretation of Contract Documents:~~ Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
6. ~~Shop Drawings and Samples:~~
 - a. ~~Record date of receipt of Samples and approved Shop Drawings.~~
 - b. ~~Receive Samples which are furnished at the Site by Contractor, and notify ENGINEER of availability of Samples for examination.~~
 - c. ~~Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by ENGINEER.~~
7. ~~Modifications:~~ Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.
8. ~~Review of Work and Rejection of Defective Work:~~
 - a. ~~Conduct on Site observations of Contractor's work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.~~
 - b. ~~Report to ENGINEER whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.~~
9. ~~Inspections, Tests, and System Startups:~~
 - a. ~~Consult with ENGINEER in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.~~
 - b. ~~Verify that tests, equipment, and systems start ups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that Contractor maintains adequate records thereof.~~
 - c. ~~Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems startups.~~
 - d. ~~Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER.~~
10. ~~Records:~~
 - a. ~~Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.~~
 - b. ~~Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific~~

~~observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.~~

~~c. Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.~~

~~d. Maintain records for use in preparing Project documentation.~~

~~e. Upon completion of the Work, furnish original set of all RPR Project documentation to ENGINEER.~~

~~11. Reports:~~

~~a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.~~

~~b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.~~

~~c. Furnish to ENGINEER and OWNER copies of all inspection, test, and system startup reports.~~

~~d. Report immediately to ENGINEER the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.~~

~~12. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.~~

~~13. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment for that part of the Work.~~

~~14. Completion:~~

~~a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.~~

~~b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.~~

~~c. Participate in a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected.~~

~~d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.~~

~~D. Resident Project Representative shall not:~~

~~1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or equal" items).~~

~~2. Exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.~~

3. ~~Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.~~
4. ~~Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.~~
5. ~~Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of OWNER or Contractor.~~
6. ~~Participate in specialized field or laboratory tests or inspections conducted off site by others except as specifically authorized by ENGINEER.~~
7. ~~Accept Shop Drawing or Sample submittals from anyone other than Contractor.~~
8. ~~Authorize OWNER to occupy the Project in whole or in part.~~

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: W. S. Young Drive & I-14 Intersection Drainage Improvement Project

OWNER: City of Killeen

~~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. A Construction Cost limit in the amount of Five Hundred Thousand Dollars (\$ 500,000.00) is hereby agreed to.~~

~~— B. A bidding or negotiating contingency of 15 percent will be added to any Construction Cost limit established.~~

~~— C. The acceptance by OWNER at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.~~

~~— D. ENGINEER will be permitted to determine what types of materials, equipment and component systems, and the types and quality thereof are to be included in the Drawings and Specifications and to make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices to bring the Project within the Construction Cost limit.~~

~~— E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on ENGINEER, and OWNER shall consent to an adjustment in such Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.~~

~~— F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, OWNER shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), ENGINEER shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. In lieu of other compensation for services in making such modifications, OWNER shall pay ENGINEER's cost of such services, including the costs of the services of ENGINEER's Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to ENGINEER on account of such services. The providing of such services will be the limit of ENGINEER's responsibility in this regard and, having done so, ENGINEER shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or Bid exceeding the established Construction Cost limit.~~

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 OECW

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 |
|---|------------|

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

— Preliminary Alignment

— Proposed Typical Section

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

Initial:

OWNER _____

ENGINEER _____

~~DBE Goal~~

~~DBE Goal 0%~~