

**STANDARD FORM OF AGREEMENT FOR PROFESSIONAL SERVICES**  
**BETWEEN**  
**CITY OF KILLEEN (CLIENT) AND HALFF ASSOCIATES, INC. (PLANNER)**

**I. SCOPE** - Halff Associates, Inc. (hereinafter "Planner") agrees to perform the professional services described in the attached Scope of Services (Exhibit A) which incorporates these terms and conditions. Unless modified in writing by the parties hereto, the duties of Halff shall not be construed to exceed those services specifically set forth in the Scope of Services. The Scope of Services and these General Terms and Conditions, when executed by the City of Killeen (hereinafter "Client"), shall constitute a binding Agreement on both parties. Planner shall perform its obligations under this agreement as an independent contractor and not as an agent or fiduciary of any other party.

**II. COMPENSATION** - Client agrees to pay monthly invoices or their undisputed portions within 30 days of receipt. Payment later than 30 days shall include interest at 1-1/2 percent per month or lesser maximum enforceable interest rate, from the date the Client received the invoice until the date Planner receives payment. Such interest is due and payable when the overdue payment is made.

It is understood and agreed by the parties that Planner's receipt of payment(s) from Client is not contingent upon Client's receipt of payment, funding, reimbursement or any other remuneration from others.

Time-related charges will be billed as specified in this Agreement. Unless stated otherwise in this Agreement, direct expenses, subcontracted services and direct costs will be billed at actual cost plus a service charge of 10 percent. Mileage will be billed at current IRS rates.

**III. RESPONSIBILITY** - Planner is employed to render a professional service only, and any payments made by Client are compensation solely for the services rendered and the recommendations made in carrying out the work. Planner agrees to follow the standard practices of the Planning profession to make findings, provide opinions, make factual presentations, and provide professional advice and recommendations. Nothing contained herein shall be argued to have created any warranty or certification, and Planner shall not be required to provide any certification, assignment or warranty of its work, but upon request and for a separate fee and at Planner's sole discretion, Planner may agree to provide certain written statements regarding its services. Such statements shall be in a form acceptable to Planner and shall be requested with sufficient advance notice to allow Planner to review the documents and prepare a suitable statement.

Planner's review or supervision of work prepared or performed by other individuals or firms employed by Client shall not relieve those individuals or firms of complete responsibility for the adequacy of their work. It is understood that any resident Planning or inspection provided by Planner is for the purpose of determining compliance with the technical provisions of the project specifications and does not constitute any form of guarantee or insurance with respect to the performance of a contractor. Planner does not assume responsibility for methods or appliances used by a contractor, for safety of construction work, or for compliance by contractors with laws and regulations.

**IV. SCOPE OF CLIENT SERVICES** - Client agrees to provide site access, and to provide those services described in the attached Scope of Services.

**V. OWNERSHIP OF DOCUMENTS** - Upon Planner's completion of services and receipt of payment in full, Planner grants to Client a non-exclusive license to possess the drawings and instruments produced in connection with Planner's performance of the work under this Agreement, if any. Said drawings and instruments may be copied, duplicated, reproduced and used by Client for the purpose of constructing, operating and maintaining the improvements. Client agrees that such documents are not intended or represented to be suitable for reuse by Client or others for purposes outside the Scope of Services of this Agreement. Notwithstanding the foregoing, Client understands and agrees that any and all computer programs, GIS applications, proprietary data or processes, and certain other items related to the services performable under

this Agreement are and shall remain the sole and exclusive property of Planner and may not be used or reused, in any form, by Client without the express written authorization of Planner. With regard to all drawings and instruments, Client agrees that any reuse by Client, or by those who obtain said information from or through Client, without written verification or adaptation by Planner, will be at Client's sole risk and without liability or legal exposure to Planner, Planner's subconsultants or independent associates. Client agrees to indemnify Planner, Planner's subconsultants and independent associates, to the extent allowed by law, for all damages, liability or cost arising from such reuse. Planner may reuse all drawings, reports, data and other information developed in performing the services described by this Agreement in Planner's other activities.

**VI. INDEMNIFICATION** - Planner agrees to indemnify and hold Client harmless from any actual damages, liability or costs, including reasonable attorney's fees and expenses, to the extent caused directly by the negligent act or omission or willful misconduct of Planner, Planner's subconsultants or those for whom Planner is legally liable, in the performance of the professional services which are the subject of this Agreement.

In the event that Client is found to be concurrently negligent, Planner shall not indemnify for the proportionate negligence of Client, but shall only indemnify for the portion of negligence solely attributable to Planner, its agents, servants, employees, subcontractors of any tier and their agents, servants and employees.

Neither party shall be liable to the other for incidental or consequential damages, whether or not the possibility of such damages has been disclosed or could have been reasonably foreseen.

The parties agree to indemnify one another, to the extent allowed by law, against damages of third parties recoverable from the indemnitee to the extent caused by the comparative negligence of the indemnitor. Such negligence shall be measured by standards in effect at the time services are rendered, not by later standards.

Client acknowledges that Planner may perform work at facilities that may contain hazardous materials or conditions, and that Planner had no prior role in the generation, treatment, storage, or disposition of such materials. Planner shall be indemnified and defended by Client, to the extent allowed by law, for any and all claims arising out of the presence of hazardous materials or conditions except for those claims as determined by final judgment of a court of competent jurisdiction to arise out of the sole negligence of Planner.

**VII. INSURANCE** - Planner shall maintain during the life of the Agreement the following minimum insurance:

- A. Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad form property damage liability. The limit shall be not less than \$1,000,000.
- B. Automobile bodily injury and property damage liability insurance with a limit of not less than \$1,000,000.
- C. Statutory workers' compensation and employers' liability insurance as required by state law.
- D. Professional liability insurance (Errors and Omissions) with a limit of \$1,000,000 per claim/annual aggregate.

**VIII. SUBCONTRACTS** - Planner shall be entitled to subcontract any portion of the work described in the Scope of Services.

**IX. ASSIGNMENT** - This Agreement is binding on the heirs, successors, and assigns of the parties hereto. Neither this Agreement, nor any claims, rights, obligations or duties associated hereto, shall be assigned or assignable by either Client or Planner without the prior written consent of the other party.

**HALFF ASSOCIATES, INC.**

**Standard Form of Agreement - General Terms and Conditions (continued)**

**X. INTEGRATION** - These terms and conditions and the letter agreement (Scope of Services) to which they are attached represent the entire understanding of Client and Planner. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The Agreement may not be modified or altered except in writing signed by both parties.

**XI. JURISDICTION AND VENUE** - This Agreement shall be administered and interpreted under the laws of the State Texas. Exclusive venue shall lie in Bell County, Texas.

**XII. SUSPENSION OF SERVICES** - If work under this Agreement is suspended for more than thirty (30) calendar days in the aggregate, the Planner shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and mobilization costs and there also shall be an equitable adjustment in the work schedule based on the delay caused by the suspension. If work under this Agreement is suspended for more than ninety (90) calendar days in the aggregate, the Planner may, at its option, terminate this Agreement upon giving notice in writing to the Client. Planner may request that the work be suspended by notifying Client, in writing, of circumstances that are interfering with normal progress of the work. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Planner may suspend performance of services upon five (5) calendar days' notice to the Client. The Planner shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client.

**XIII. TERMINATION OF WORK** - Either the Client or the Planner may terminate this Agreement at any time with or without cause upon giving the other party ten (10) calendar days' prior written notice. Client agrees that termination of Planner for Client's convenience shall only be utilized in good faith, and shall not be utilized if the purpose or result is the performance of all or part of Planner's services under this Agreement by Client or by another service provider. Following such termination and the Client shall, within ten (10) calendar days receipt of a final invoice, pay the Planner for all services rendered and all costs incurred up to the date of Planner's receipt of notice of termination, in accordance with the compensation provisions of this contract.

**XIV. TAXES** - The fees and costs stated in this Agreement, unless stated otherwise, exclude all sales, consumer, use and other taxes. Client agrees to fully reimburse Planner and its subconsultants for taxes paid or assessed in association with the work under this Agreement, whether those taxes were in effect as of the date of this Agreement or were promulgated after the date of this Agreement. This clause shall not apply to taxes associated with reimbursable or other project related expenses, which shall be identified in the applicable invoice for reimbursement by Client.

**XV. ALTERNATIVE DISPUTE RESOLUTION** - Any conflicts or disputes that arise under or through this Agreement or following the completion thereof shall be discussed at a meeting of one senior management person from Client and one from Planner. This meeting shall be a condition precedent to the institution of any legal or equitable proceedings, unless such meeting will infringe upon schedules defined by applicable statutes of limitation or repose. Should such a situation arise, the parties agree that such meeting shall still be required, but the institution of said proceedings shall not be precluded for failure to meet this specific meeting requirement.

**XVI. SEVERABILITY** - Should any one or more of the provisions contained in this Agreement be determined by a court of competent jurisdiction or by legislative pronouncement to be void, invalid, illegal, or unenforceable in any respect, such voiding, invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be considered as if the

entirety of such void, invalid, illegal, or unenforceable provision had never been contained in this Agreement.

**XVII. TIMELINESS OF PERFORMANCE** - Planner shall perform its professional services with due and reasonable diligence consistent with sound professional practices.

**XVIII. AGREED REMEDIES** - In recognition of the relative risks and benefits of the Project to both the Client and the Planner, and acknowledging that the allocation of risks and limitations of remedies are business understandings between the parties and these risks and remedies shall apply to all possible legal theories of recovery. Client further agrees, to the fullest extent permitted by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Planner and Planner's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from, or in any way related to, the services under this Agreement from any cause or causes of the Planner or the Planner's officers, directors, employees, agents, and subconsultants, shall not exceed the Planner's fee for the services performed under this Agreement or \$50,000, whichever is greater. Increased limits may be negotiated for additional fee. Further, it is the intent of the parties to this Agreement that Planner's services under this Agreement shall not subject Planner's individual employees, officers or directors to any personal legal exposure for claims and risks associated with the services performed or performable under this Agreement.

**XIX. WAIVER** - Any failure by Planner to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Planner may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

**APPROVED:**  
Planner: HALFF ASSOCIATES, INC.  
Signature: \_\_\_\_\_  
Name: James E. Carrillo  
Title: Vice President  
Date: 5-26-2015

**APPROVED:**  
Client: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_