

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

PROJECT: American with Disabilities

Phase II – Self Assessment of Public Rights of Way and Transition Plan

This is an agreement by and between the City of Killeen, Texas, a Texas home rule City (hereinafter called **CITY**), acting through its duly authorized agent, Kent Cagle, City Manager, and **CP&Y/Meeting the Challenge**, (hereinafter called **CONSULTANT**).

WHEREAS the **CITY** desires to obtain professional consulting services for the ADA Self-Assessment of Public Rights of Way and Transition Plan related to the Americans with Disabilities Act, hereinafter called the **PROJECT**; and

WHEREAS, the **CONSULTANT** is qualified and capable of performing the professional consulting services proposed herein, is acceptable to the **CITY**, and is willing to enter into an Agreement with the **CITY** to perform such services.

NOW, THEREFORE, BE IT RESOLVED, that in consideration of the mutual agreements contained this Agreement, the parties do mutually agree as follows:

ARTICLE 1 PROJECT

1.1 The **CITY** agrees to retain the **CONSULTANT**, and the **CONSULTANT** agrees to perform professional consulting services for the **PROJECT** as an independent contractor and professional consultant as set forth in the sections following; and the **CITY** agrees to pay, and the **CONSULTANT** agrees to accept payments as specified in the sections following as full and final compensation for the work accomplished.

ARTICLE 2 BASIC SERVICES TO BE PROVIDED BY CONSULTANT

2.1 The **CONSULTANT** will render professional services necessary for the **PROJECT**. Upon receipt of the **CITY's** written authorization, the **CONSULTANT** will perform basic services as outlined in the **Proposal dated December 15, 2022**, attached hereto, and incorporated herein for all purposes as Exhibit A. In the event of a conflict between the terms and conditions of this Agreement and the Proposal, the term or condition most favorable to the City, in the City's sole discretion, shall control.

ARTICLE 3 ADDITIONAL SERVICES TO BE PROVIDED BY CONSULTANT

3.1 The services set forth in Article 2 will be considered sufficient to perform the work. The consulting services set forth hereinafter as Additional Services are not included as part of the basic services to be provided by the **CONSULTANT** under Article 2. It is recognized that

the elements of such consulting work cannot be accurately predetermined or controlled entirely by the **CONSULTANT**. Therefore, such consulting work will be performed as Additional Services.

3.2 The **CONSULTANT** will furnish Additional Services only when agreed between **CITY** and **CONSULTANT** in writing in an amendment to this Agreement.

3.3 Such services may include: Public Right-of Way Self-Assessment, Public Outreach and finalization of the complete Transition Plan

3.3.1 Appearing before State and other regulatory agencies.

3.3.2 Preparing to serve or serving as an expert witness on behalf of the **CITY** in connection with any public hearing, arbitration or legal proceeding.

3.3.3 Revising drawings, specifications, or other documents which have been previously approved by **CITY** to accomplish changes not initiated by the **CONSULTANT** which would require substantial change.

ARTICLE 4 COMPENSATION

4.1 PAYMENT FOR BASIC SERVICES

4.1.1 For basic services, **CONSULTANT** will be paid an amount not to exceed **\$1, 204,293.00**.

4.1.2 Based on the application for payment submitted by the **CONSULTANT** and approved by the **CITY**, the **CITY** will make progress payments associated with each Work Order and City Assessment Area as outlined in in the proposed schedule for basic services. The application for payment shall be computed on the amount of time and progress of the services shown in Exhibit A.

4.1.3 In no event will the **CONSULTANT** ever be paid more than the total amount of services performed on the date that the **CONSULTANT** is notified that the **CITY** does not wish to proceed with the **PROJECT**, or otherwise terminates this agreement in accordance with the termination clause contained in Article 9.

4.1.4. **CONSULTANT** agrees and certifies in accordance with the Texas Professional Services Procurement Act that the professional fees charged under this Agreement may not exceed any maximum provided by law.

4.1.5 **CONSULTANT** will allow **CITY** or its representative to perform audits, if necessary, to verify the hours worked and the expenses incurred contained in applications for payment.

4.2 PAYMENT FOR ADDITIONAL SERVICES

4.2.1 Payment for additional services will be determined by needs requested and defined by the **CITY** and additional scope of services to be performed. For any additional services provided, the **CONSULTANT** will be compensated in accordance with fees established and agreed upon between **CITY** and **CONSULTANT** in writing as an amendment to this agreement pursuant to Article 3.

4.2.2 Payment for Additional Services authorized by amendment to this agreement will be made monthly, based upon presentation of an application for payment to the **CITY** sufficient to show the work accomplished.

ARTICLE 5 CITY OBLIGATIONS

5.1 In general, the **CITY** agrees to:

5.1.1 Provide available criteria and full information as to the **CITY'S** requirements for the **PROJECT**.

5.1.2 Assist the **CONSULTANT** by placing at his/her disposal all available written data pertinent to previous operations, reports, and any other data affecting the consulting services for the **PROJECT**.

5.1.3 Respond promptly in writing to requests by the **CONSULTANT** for authorization to proceed with specific activities deemed desirable.

5.1.4 Examine documents submitted by the **CONSULTANT** and render decisions pertaining thereto, promptly, to avoid unreasonable delay in the progress of the **CONSULTANT'S** services.

5.1.5 Furnish required information as expeditiously as necessary for the orderly progress of the work.

5.2 The **CONSULTANT** will be entitled to rely upon the information provided by the **CITY** regarding decisions made by **CITY**; further, all notices or information will be deemed made when conveyed in writing to Leslie Hinkle Executive Director of Community Development.

ARTICLE 6 PROJECT DOCUMENTS

6.1 All documents, including but not limited to, tracings, drawings, estimates, specifications, investigations, and studies completed or partially completed, will be the property of the **CITY**.

6.2 **CONSULTANT**, its subcontractors, agents, and employees will be liable to **CITY** for any loss or damage to any such documents while they are in the possession of or while being worked upon by the **CONSULTANT** or **CONSULTANT'S** agents, employees, or officers. All documents so lost or damaged will be replaced or restored by **CONSULTANT** without cost to the **CITY**.

ARTICLE 7 NOTICE TO PROCEED; SCHEDULING OF WORK

7.1 It is understood and agreed that the **CONSULTANT** will work as an Independent Contractor but the **CITY** will have ultimate control of the services to be rendered, and that no work will be done under this Agreement until the **CONSULTANT** is instructed in writing to proceed with the work, and he shall complete his work within twenty (20) months from notice from City to proceed.

ARTICLE 8 ASSIGNMENT

8.1 The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party will assign, sublet nor transfer any interest in this Agreement without the written authorization of the other.

ARTICLE 9 TERMINATION

9.1 In connection with the work outlined in this Agreement, it is agreed and fully understood by the **CONSULTANT** that the **CITY** may cancel or indefinitely suspend further work hereunder or terminate this Agreement for convenience or cause upon thirty (30) days written notice to the **CONSULTANT** with the understanding that immediately upon receipt of said notice all work and labor being performed under this Agreement will cease. Before the end of such thirty (30) day period **CONSULTANT** will invoice **CITY** for all work satisfactorily completed and will be compensated in accordance with the terms of this Agreement. All drawings, field surveys, maps, estimates, investigation, studies, and other data work related to the **PROJECT** will become the property of the **CITY** upon termination of this Agreement.

9.2 Nothing contained in paragraph 9.1 above will require the **CITY** to pay for any work which is unsatisfactory as determined by the **CITY** or which is not submitted in compliance with the terms of the Agreement. The **CITY** will not be required to make any payments to the **CONSULTANT** when the **CONSULTANT** is in default under this Agreement, nor will this article constitute a waiver of any rights, at law or at equity, which the **CITY** may have if the

CONSULTANT is in default, including the right to bring legal action for damages or to force specific performance of this Agreement.

9.3 **CONSULTANT** understands and agrees that time is of the essence and that any failure of the **CONSULTANT** to complete his services within the time limit established herein will constitute a material breach of this Agreement. The **CONSULTANT** will be fully responsible for any delays or for failures to use his best efforts in developing contractual documents in accordance with the terms of this Agreement. Where damage is caused to the **CITY** due to the **CONSULTANT'S** failure to perform in this manner, the **CITY** may withhold all or any portion of the **CONSULTANT'S** payments hereunder without waiver of any of the **CITY'S** additional legal rights or remedies.

9.4 The **CONSULTANT** will have the right to terminate this Agreement for cause, on thirty (30) days written notice to the **CITY** should the **CITY** fail to satisfactorily perform its obligations herein. In the event of termination, the **CONSULTANT** will be paid for all services rendered to date of termination. In the event of termination hereunder, **CONSULTANT** will invoice **CITY** for all work satisfactorily completed up to the date of this notice of termination and will be compensated in accordance with the terms of Agreement.

9.5 Notwithstanding anything contained herein to the contrary, the **CITY** will have the right to withdraw from this Agreement on the last day of **CITY'S** current fiscal year in the event of non-appropriation of funds by its governing body.

ARTICLE 10

VENUE

10.1 Venue and jurisdiction of any suit or right or cause of action arising under or in connection with this Agreement will be exclusively in Bell County, Texas, and any court of competent jurisdiction will interpret this Agreement in accordance with the laws of the State of Texas. The prevailing party in an action brought under or concerning this Agreement may recover costs of court, reasonable attorney's fees, and reasonable expert witnesses' and consultants' fees.

ARTICLE 11

ENTIRE AGREEMENT

11.1 This instrument represents the entire understanding between the **CITY** and the **CONSULTANT** in respect to the **PROJECT** and may only be modified in writing signed by both parties.

ARTICLE 12

UNLAWFUL PROVISIONS DEEMED STRICKEN

12.1 If this Agreement contains any unlawful provisions not an essential part of the Agreement, and which shall do not appear to have been a controlling or material inducement

to the making thereof, such unlawful provisions shall be of no effect. Upon the ruling of a court of competent jurisdiction, the unlawful provision shall be considered stricken from the Agreement without affecting the remainder of the Agreement.

ARTICLE 13

RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

13.1 Approval by the **CITY** will not constitute nor be deemed a release of the responsibility and liability of the **CONSULTANT**, his employees, subcontractors, agents and consultants for the accuracy and competency of their designs, drawings, or other documents and work, nor will such approval be deemed to be an assumption of such responsibility by the **CITY** for any defect in the designs, drawings, or other documents prepared by the **CONSULTANT**, his employees, subcontractors, agents and consultants.

ARTICLE 14

STANDARD OF CARE

14.1 Services performed under this agreement shall be by a licensed **CONSULTANT**, if a license is required by the **CONSULTANT'S** profession, and shall be executed with the professional skill and care ordinarily provided by competent **CONSULTANTS** in the same or similar locality under the same or similar circumstances and professional license, and shall be performed as expeditiously as is prudent considering the ordinary professional skill and care of a competent **CONSULTANT**.

ARTICLE 15

INDEMNIFICATION

15.1 THE CONSULTANT WILL INDEMNIFY, DEFEND, AND HOLD THE CITY AND ALL OF ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES HARMLESS FROM ANY LOSS, DAMAGE, LIABILITY OR EXPENSE, INCLUDING COSTS OF COURT, REASONABLE ATTORNEYS' FEES, EXPERT WITNESSES' AND CONSULTANTS' FEES, ON ACCOUNT OF DAMAGE TO PROPERTY AND/OR INJURIES, INCLUDING DEATH, TO ALL PERSONS, DUE TO ANY ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, BREACH OF ANY OBLIGATION UNDER THIS AGREEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER UNDER THIS AGREEMENT, CAUSED BY CONSULTANT OR ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, OR OTHER PERSONS ACTIONS FOR WHOM CONSULTANT IS LIABLE, AND SHALL PAY ALL EXPENSES AND SATISFY ALL JUDGMENTS WHICH MAY BE INCURRED BY OR RENDERED AGAINST THEM, OR ANY OF THEM IN CONNECTION WITH THIS AGREEMENT.

15.2 THE INDEMNITY OBLIGATIONS HEREIN SHALL SURVIVE THE TERMINATION OF THE AGREEMENT FOR ANY REASON AND SHALL SURVIVE THE COMPLETION OF THE WORK.

ARTICLE 16 CONFIDENTIALITY

16.1 All information obtained during the execution of this Agreement by **CONSULTANT** is deemed confidential. Disclosure of information by **CONSULTANT** not authorized by **CITY** in writing will constitute a material breach of this Agreement.

ARTICLE 17 INSURANCE

17.1 The **CONSULTANT** will maintain at all times professional liability or errors and omissions insurance covering any claim hereunder occasioned by **CONSULTANT's** negligent act, or error or omission in an amount of not less than \$1,000,000 general aggregate. **CONSULTANT** agrees to maintain professional liability insurance during the term of this agreement and, if the policy is on a claims made basis, for a period of not less than five (5) years after the Project is complete and provide proof of such continuing coverage. **CONSULTANT** further agrees to provide proof of coverage as needed for prior acts back to the date of execution of this agreement if **CONSULTANT** changes insurance carriers during this extended indemnity period.

17.2 **CONSULTANT** will further maintain general commercial liability coverage \$1,000,000 per occurrence (Bodily injury and property damage). **CONSULTANT** will maintain Automobile Liability coverage in an amount of \$500,000 Combined single limit for each accident (Bodily injury and property damage). **CONSULTANT** will maintain Professional Liability Insurance \$1,000,000 general aggregate.

17.3 **CONSULTANT** further agrees that with respect to the above required liability insurances, the **CITY** will:

- 1. Be named as additional insured for general liability insurance.*
- 2. Be provided with a waiver of subrogation, in favor of CITY.*
- 3. Be provided with 30 days advance written notice of cancellation, nonrenewal, or reduction in coverage (all 'endeavor to' and similar language of reservation stricken from cancellation section of certificate).*
4. Prior to execution of this Agreement, be provided with either their original Certificate of Insurance or insurance policy evidencing the above limits and requirements, subject to approval by the **CITY**.

17.4 The insurance requirements set out in this section are independent from all other obligations of **CONSULTANT** under this Agreement and apply whether or not required by any other provision of this Agreement.

ARTICLE 18 COMPLIANCE WITH LAWS

18.1 The **CONSULTANT**, his consultants, agents and employees and subcontractors, will comply with all applicable Federal and State laws, the Charter and Code or Ordinances of the City of Killeen, and all other applicable rules and regulations promoted by all local, State and National boards, bureaus and agencies.

ARTICLE 19 CONSULTANT'S CERTIFICATION

19.1 **CONSULTANT** certifies that neither it, nor any of its agents or employees, have or will offer or accept gifts or anything of value, or enter into any business arrangement, with any employee, official, or agent of the **CITY**.

19.2 **CONSULTANT** certifies, pursuant to Texas Government Code Chapter 2270, that it does not boycott Israel and will not boycott Israel during the term of this Agreement. **CONSULANT** further certifies, pursuant to Texas Government Code Chapter 2252, Subchapter F, that it does not engage in business with Iran, Sudan, or a foreign terrorist organization as may be designated by the United States Secretary of State pursuant to his authorization in 8 U.S.C. Section 1189. Texas Government Code, Chapter 2274 – the **CONSULTANT** verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. *Boycott energy company is defined in Government Code Chapter 809.* Texas Government Code, Chapter 2274 – the **CONSULTANT** verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. *Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.*

ARTICLE 20 NOTICES

20.1 This Agreement will be administered on the **CITY'S** behalf by Leslie Hinkle Executive Director of Community Development. All notices, documentation, or questions arising under this Agreement should be addressed to:

Leslie Hinkle Executive Director of Community Development
P.O. Box 1329
Killeen, TX 76540

All written notices from **CITY** to **CONSULTANT** will be addressed to the **CONSULTANT** as follows:

Matt Lucier, Project Manager
Meeting the Challenge, Inc. A CP&Y Company
3630 Sinton Road, Suite 103
Colorado Springs, CO 80907

ARTICLE 21 CAPTIONS

21.1 The captions of this Agreement are for information purposes only and will not in any way affect the substantive terms and conditions of this Agreement.

ARTICLE 22 NON-WAIVER

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

ARTICLE 23 EXECUTION OF AGREEMENT

23.1 SIGNED, ACCEPTED AND AGREED TO this ____ day of _____, 2023, by the undersigned Parties who acknowledge that they have read and understand this Agreement and that the Agreement is issued in accordance with local, State, and Federal laws, and the undersigned Parties hereby execute this legal document voluntarily and of their own free will.

THE CITY OF KILLEEN, TEXAS

CONSULTANT

Kent Cagle, City Manager

R. Shane Wade, Senior V.P. Director of
Operations - Meeting the Challenge, A
CP&Y Company

EXHBIT A
Proposal -CP&Y Meeting the Challenge
December 15, 2022