

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

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.

Copyright ©1996 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Consulting Engineers Council
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers
345 East 47th Street, New York, NY 10017

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	5
6.05 Insurance.....	5
6.06 Termination	6
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	8
6.15 Headings	8
ARTICLE 7 - DEFINITIONS	8
7.01 Defined Terms.....	8
ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS.....	11
8.01 Exhibits Included.....	11
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 FREESE AND NICHOLS, INC. (“ENGINEER”).

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

The South Water Supply project will distribute water delivered by Bell County WCID No. 1 from the Stillhouse Hollow Lake Water Treatment Plant to the Killeen water distribution system. It includes an 8 MGD pump station, a 3 MG ground storage tank, piping and associated appurtenances and access. Project phases include:

Phase A – Project Management

Phase B – Preliminary Design

Phase C – Final Design

Phase D – Bid Phase

Phase E – Construction Phase

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 10 pages.

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

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

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

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

OWNER: City of Killeen

By: Dennis M. Baldwin

Title: Interim City Manager

Date Signed: _____

Address for giving notices:

P.O. Box 1329

Killeen, TX 76540-1329

Designated Representative (paragraph 6.02.A):

Steve Kana

Title: Director of Water and Sewer Utilities

Phone Number: 254-501-7623

Facsimile Number: 254-501-6321

E-Mail Address: skana@killeentexas.gov

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.

ENGINEER: Freese and Nichols, Inc.

By: Jessica Brown, P.E.

Title: Principal

Date Signed: 1/18/17

Address for giving notices:

Freese and Nichols, Inc.

4055 International Plaza, Ste. 200

Fort Worth, TX 76109-4895

Designated Representative (paragraph 6.02.A):

Jessica Brown, P.E.

Title: Principal

Phone Number: 817-735-7406

Facsimile Number: 817-735-7492

E-Mail Address: JLB@freese.com

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 JB

ENGINEER's Services

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

PART 1 -- BASIC SERVICES

Background and Scope of Work

The Killeen South Water Supply Project will distribute water delivered by Bell County WCID No. 1 from the Stillhouse Hollow Lake Water Treatment Plant to the Killeen water distribution system. The scope includes design, bid and construction services for the transport of water from a planned delivery point in South Killeen to both the upper and lower pressure planes. Required infrastructure for delivery to the lower pressure plane includes a 3.0 million gallon (MG) ground storage tank (acting as elevated storage), approximately 4,600 LF of 30-inch pipeline, and approximately 3,500 LF of 20-inch pipeline. Required infrastructure for delivery to the upper pressure plane includes an 8 million gallon per day (MGD) firm capacity pump station and approximately 24,000 LF of 20-inch pipeline.

Project Assumptions

- A. The 3.0 MG storage tank will be a ground storage tank, with an overflow elevation of 1000 ft, and 30-40 feet of storage. *Other tank options will be evaluated as part of the preliminary design phase of the project, and if another option is chosen, the scope/fee for final design will be updated accordingly.*
- B. The alignment of pipeline to the upper pressure plane is currently unknown. Piping to the upper pressure plane will be limited to a maximum 30,000 LF.
- C. A maximum of 10 easements will be required for the project. More easements will result in additional scope/fee.
- D. The City of Killeen will be responsible for all right of entry, easement acquisition & landowner coordination.
- E. The City of Killeen will be responsible for clearing for geotechnical borings. This is not included in this scope of work.
- F. Upper and lower pressure plane projects will be designed concurrently then bid and constructed as one construction package. If they are split into two packages, additional bid and construction phase effort will be an additional service.
- G. When the project is constructed, there will already be access by pipeline easement from Chaparral Rd. The project will include design and construction of only an access road from the proposed pipeline easement to the proposed pump station and ground storage tank location. The road will be no more than 3,000 linear feet.
- H. Video surveillance and access security system for the pump station and tank are not included in this scope of work.
- I. SCADA fiber optic design is not included in this scope of work.
- J. Production of O&M manuals (aside from compilation of manufacturer provided O&M manuals) is not included in this scope of work.
- K. Construction of the project will be design-bid-build and will not be performed through an alternate delivery package.

Contract Services

Freese and Nichols, Inc. (CONSULTANT) has been selected to provide professional services for the Killeen South Water Supply project. The City of Killeen (City) desires to proceed with the Design, Bid and Construction Phase Services for this project, the subject of this Agreement for Professional Services.

ARTICLE I

BASIC SERVICES: After authorization from the City, CONSULTANT shall proceed with the Basic Services as described below. CONSULTANT will provide monthly progress reports and schedule updates to the City. CONSULTANT shall render the following professional services in connection with the development of the Project:

- A. **PHASE A – PROJECT MANAGEMENT:** CONSULTANT shall coordinate internally and also with the City for successful project initiation, planning, execution, monitoring/controlling and closeout. CONSULTANT shall manage project integration, scope, time, cost, quality, staff resources, communications, risk and procurements as necessary throughout the duration of the project. This includes but is not limited to:
1. Consult with the City: (1) to review the scope of services, (2) to verify the City's requirements for the Project, and (3) to review available data.
 2. Advise the City as to the necessity of the City's providing or obtaining data or services from others, and assist the City in connection with any such services.
 3. Develop and implement a project Quality Assurance/ Quality Control (QA/ QC) Program for all deliverables.
 4. Develop a baseline project design schedule and prepare updated project design schedules on a monthly basis.
 5. Provide monthly progress reports and invoices to the City.
 6. Track all action items and decisions made by the City and the Project Team.
- B. **PHASE B – PRELIMINARY DESIGN:** Upon execution of this AGREEMENT and upon receiving a Notice to Proceed from the City, CONSULTANT shall provide professional services in this phase as follows:
1. **MEETINGS:** CONSULTANT will prepare meeting agendas and minutes for all meetings and workshops listed below:
 - a) Attend one (1) kickoff meeting for the Preliminary Design Phase of the project.
 - b) Attend one (1) Project Progress meeting prior to submittal of the Draft Preliminary Design Report.
 - c) Attend one (1) review workshop to review the City's comments on the Preliminary Design Report.
 2. **ENVIRONMENTAL STUDY:** The following scope includes the environmental topics expected to be involved in the permitting, design, and construction phases of the Project:
 - a) **Initial Site Visit** – A site visit will be conducted by CONSULTANT environmental staff to survey the proposed pump station, tank, and pipeline alignments in order to identify potential environmental issues discussed in the following sections. Prior to the site visit, CONSULTANT will gather information about the site vicinity such as soils maps, National Wetland Inventory maps, topographic maps, and U.S. Fish and Wildlife Services threatened or endangered species data.
 - b) **Threatened and Endangered Species** – The proposed project site will be surveyed by CONSULTANT staff to identify and document any threatened or endangered (T&E) species and any potential habitat for T&E species. Federally listed species of concern will be reviewed using the most current listings found in the U.S. Fish and Wildlife Services (USFWS) database. Reporting of the T&E species review will be documented in a site visit memorandum. Consultation with the USFWS would be necessary if the project activities affect T&E species or their critical habitat.
 - c) **Section 404 Permitting** – A U.S. Army Corps of Engineers (USACE) Section 404 permit is required for activities conducted within jurisdictional boundaries of waters of the U.S. The need for a permit will be determined based on the design and its potential to affect wetlands or other waters of the U.S. present. If any of the Nationwide Permit (NWP) conditions could not be met, then an Individual Permit (IP) may be required. Permitting recommendations will be provided by the CONSULTANT staff. Mitigation to compensate for unavoidable impacts to waters of the U.S. is generally required for any of the permit options, except for a NWP that does not require notification to the USACE. Wetlands in the project site will be determined by a person trained in the use of the USACE methodology. Effort associated with an IP is not included in this contract and will be an additional service.
 - d) **Archaeological and Cultural Resources** – The Antiquities Code of Texas was passed in 1969. It requires that the Texas Historical Commission (THC) staff review any action that has the potential to disturb historic and archeological sites on public land. CONSULTANT will coordinate by letter with the THC to determine if an archeological survey would be required. Additional actions that need review under the Antiquities Code of Texas include any construction program that takes

place on land owned or controlled by a state agency or a state political subdivision, such as a city or a county.

Projects that require review include:

- Reservoirs constructed by river authorities and water districts;
- Construction of recreational parks or the expansion of existing facilities by city governments;
- Energy exploration by private companies on public land; and
- Construction by a city or county government that exceeds 5 acres or 5,000 cubic yards, whichever comes first. If the activity occurs inside a designated historic district or affects a recorded archeological site, it needs to be reviewed, regardless of project size.

If there is a requirement for a Section 404 permit, compliance with the conditions of the National Historic Preservation Act is required. No activity which may affect historic properties listed or eligible for listing in the National Register of Historic Places can be authorized until the USACE District Engineer has complied with the provisions of 33 CFR part 325, Appendix C. If required by the THC, a pedestrian archeological survey will be performed by a qualified archaeologist as an additional service.

3. **DRAFT PRELIMINARY DESIGN REPORT:** Prepare a Draft Preliminary Design Report (PDR) to outline preliminary design considerations and anticipated project components. Basic approaches for the hydraulic, utility, site civil, mechanical, structural, electrical, and architectural components of the project will be incorporated in the Draft PDR. Permitting and regulatory considerations will also be included. Specific components of this task include:
 - a) Pump Station & Tank Site Evaluation
 - b) Site Civil Design
 - c) Roadway and Access Point Design (up to 3,000 LF of Roadway)
 - d) Hydraulic Modeling
 - e) Pump Station Design & Alternatives, including:
 - Pump Type Options
 - Pump Station Layout Options
 - f) Ground Storage Tank Design & Alternatives, including:
 - Site Option 1 – Tank Built into Mountain
 - Site Option 2 – EST at Foot of Mountain
 - Site Option 3 – Standpipe at Foot of Mountain
 - g) Pipeline Route Study & Alternatives, including:
 - Lower Pressure Plane – Single straight line route.
 - Upper Pressure Plane – Up to 3 route alternatives.
 - h) Electrical, Instrumentation, SCADA including design of diesel driven emergency generator (with diesel tank onsite)
 - i) Mechanical Design
 - j) Structural Design
 - k) Architectural Design
 - l) Environmental and Permitting Summary
 - m) Engineer's Opinion of Probable Cost (EOPC) for each alternative.
 - n) Preliminary Design Report Preparation
 - o) Preliminary Engineering Report QC & Incorporation of Comments
4. **SURVEY (By Sub-consultant Survey And Mapping, LLC [SAM])**
 - a) **Survey Control** – SAM will establish horizontal and vertical control including a minimum of 15 points within the survey limits. The survey control points (5/8" iron rods with SAM Control" plastic caps) will be set in locations that will likely be undisturbed by construction or maintenance. The project control will be placed on horizontal and vertical datums [NAD83/93/NAVD88 values (Texas State Plane, Central Zone)] with a scale factor to be provided by the City of Killeen. Elevations will be derived from GPS observations using Geoid 2012A model. Leveling through the control to establish elevations is outside of this scope of services.
 - b) **Records Research** – Upon notice to proceed, SAM will conduct research in the Bell County Appraisal District offices to confirm property ownership for the 10 affected properties (subject properties).
 - c) **Right-of-Entry** – For purposes of surveying and field investigations, City of Killeen will obtain written right of entry (ROE) from respective property owners or their authorized representatives

and any tenants. SAM will contact affected land owners from which ROE has been obtained prior to commencing any work on private property. SAM anticipates that the City of Killeen will handle problems regarding any and all refusal to grant ROE or communication with land owners who are hostile with respect to the completion of this scope of services. SAM will document any interactions with land owners while performing the work. Gaining ROE from all land owners in a timely manner will be critical to the success and efficiency in meeting deadlines for this project.

- d) Deed Study – SAM will perform courthouse research for the 10 affected landowners within the project limits. Courthouse research will consist of obtaining current subdivision plats and vesting deeds only. SAM will enlist the services of a Title Company to obtain Title Reports for each of the 10 subject tracts. Based upon the records obtained by SAM, and in conjunction with the field surveys described below, SAM will prepare a working drawing of the deed information to be used for a preliminary base map. This base map will be utilized in the preparation of the easement surveys.
- e) Field Survey – SAM will recover monuments marking the existing ROW lines (if any) and the front corners of the properties from which an easement is to be obtained and will tie to the project control. SAM will recover the corner or angle point monuments nearest to the proposed easement on the side line of each of the subject properties and these corners will be tied to the project control. SAM will locate any visible improvements including buildings, propane tanks, sheds, fences, barns, cattle catch pens and stalls, and wells. SAM will detail bisected improvements with distances to the proposed easement alignment. Structures encroaching into the proposed easement will be located and detailed on the base file.
- f) Design Survey – Limits of Design Survey will be 100 feet wide centered on the proposed waterline alignment, as well as the approximately 3 acre proposed tank/pump station site. In such areas, SAM will collect cross-sections and break lines at approximate 50-foot intervals. Major grade-break lines necessary to produce a one-foot interval contour DTM will be collected, as well as any visible improvements including driveways (with type noted), driveway pipes, drainage structures (noting size, material and flowline elevation), edge of pavement, edge (shoulder) line, crown (physical centerline), guardrail, fences, signs (with text) and mailboxes. Visible utilities, visible evidence of underground utilities, and trees 12 inches and larger in diameter (noting species and size) along the proposed easement corridor will be located and shown.
- g) Boundary Analysis – Utilizing the deed study and the data from the field survey, SAM will analyze the results of the survey and perform computations related to the analysis. Location of the existing ROW lines and the side property lines of each of the subject properties will be determined by SAM.
- h) Preparation of Easement Documents – SAM will develop a base file showing ownership of the subject properties and any easements found during the title abstract, if any. Properties adjacent to the existing right of way and proposed easement within the project limits will be labeled with the owner's name and deed recordation information. Utilizing the boundary surveys performed by SAM and the proposed easement line location provided by CONSULTANT, SAM will compute the boundaries of the easement parcels for each of the subject properties. SAM will draft plats for the 10 easements. The plats will be prepared on 8 1/2" x 11" pages. A closure computation will be prepared for each of the plats. SAM will prepare a field note (metes and bounds) description for each of the 10 easements. A closure computation will be prepared for each of the descriptions. To assure the accuracy of the documents, SAM will read the descriptions while all details are compared to the easement plats (bearings, distances, stations and offsets, deed references, etc.). Final mark-ups will be made and corrections completed. All of the above described survey documents will be submitted to CONSULTANT for review. Upon the completion of review of all easement documents, SAM will make any necessary corrections. The final easement documents will then be delivered to CONSULTANT.
- i) Monumentation – SAM shall monument the proposed easement corners using 5/8-inch iron rods with plastic caps marked "SAM" (assume 50 total).
- j) Deliverables:
 - One legal description for each easement (signed and sealed).
 - One individual survey plat on 8 1/2"x11" for each easement (signed and sealed).
 - One set of area computation sheets for legal descriptions and plats and ROW maps for all parcels.

- Survey Control Index Sheet signed, sealed, and dated by a registered professional land surveyor on 11x17 paper.
 - Digital files on CD for the right-of-way base file and reference files in AutoCAD 2012 format.
5. **GEOTECHNICAL ANALYSIS** – CONSULTANT will select appropriate locations along the proposed pipeline route and within the vicinity of the proposed GST and pump station for exploratory borings. These locations will be based on the reviewed preliminary design report. The Engineer will coordinate with the City of Killeen and Texas 811 regarding underground utilities within the vicinity of the planned boring locations prior to commencement of the field exploration activities.
- a) **Field Exploration** – Drill bores per the following schedule:

Type	Depth	Number of Bores
Pipeline	15 feet	14
Tank Perimeter	30 feet	4
Tank Center	60 feet	1
Pump Station	40 feet	4

Subsurface samples will be collected using 3-inch diameter Shelby tubes for cohesive soils and a 2-inch diameter split-spoon sampler in conjunction with the Standard Penetration Test (SPT) for intermediate and non-cohesive soils. Rock and rock-like materials will be sampled using an NX-size core barrel and/or tested in-situ using the TxDOT Cone Penetration Test or the SPT, as appropriate for the material. Groundwater observations within the borings will be recorded at the time of drilling and at the completion of drilling and sampling. At the completion of drilling and sampling, the borings will be backfilled with auger cuttings. Provide an Engineer or Geologist experienced in logging borings to direct the drilling, log the borings, and handle and transport the samples. Visual classification of the subsurface stratigraphy shall be provided according to ASTM D2488 and the Unified Soil Classification System (USCS) during drilling and sampling.

- b) **Laboratory Testing** – Testing shall be performed on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials. The Engineer will select samples for laboratory testing, assign tests, and review the test results. Laboratory tests will be appropriately assigned for the specific subsurface materials encountered during exploration, but are expected to include:
- Classification tests (liquid and plastic limits and percent passing the no. 200 sieve or gradation)
 - Moisture content
 - Dry unit weight
 - Unconfined compressive strength
 - One-dimensional swell
 - 1-D Consolidation tests
- c) **Engineering Analysis and Reporting** – Perform the geotechnical engineering analysis and prepare a technical memorandum summarizing the field exploration, laboratory testing, and engineering analysis, which will include the following:
- Appendix with the boring locations, boring logs, laboratory test results, and a key to the symbols used;
 - Discussion of subsurface conditions and soil properties indicated by the field and laboratory work and the implications for design;
 - Foundation recommendations for support of the proposed GST and pump station, including bearing capacity of soils, suitable bearing material, lateral and overturning resistance, etc. applicable for the recommended foundation or foundation options;
 - Lateral earth pressures when appropriate;
 - General discussion of expected construction related issues; and
 - Earthwork related recommendations for use during development of plans and specifications.

Submittals will include one (1) paper copy and one (1) electronic PDF copy of the technical memorandum.

6. **FINAL PRELIMINARY DESIGN REPORT**: After receiving comments from the City and geotechnical data, the Preliminary Design Report will be revised, updated and finalized. A comment

response form will be provided to the City addressing all comments. This document will be used as the design basis for the Final Design Phase of the Project.

7. **DELIVERABLES:** CONSULTANT will provide copies of reports and other data to the City as required. Furnish electronic and hard copies as shown for the following deliverables for the Preliminary Design Phase:

- a) Agendas and Meeting Minutes for all meetings – one (1) electronic copy
- b) Draft Preliminary Design Report – one (1) electronic copy and four (4) hard copies delivered to the City
- c) Final Preliminary Design Report – one (1) electronic copy and four (4) hard copies delivered to the City

- C. **PHASE C – FINAL DESIGN:** Upon execution of this AGREEMENT and upon receiving a Notice to Proceed from the City, CONSULTANT shall provide professional services in this phase as follows:

1. **MEETINGS:** CONSULTANT will prepare meeting agendas and minutes for all meetings and workshops listed below:

- a) One (1) kickoff meeting for the Final Design Phase of the project.
- b) Up to six (6) Monthly Project Progress meetings/ review meetings.

2. **PERMITTING COORDINATION:** Coordinate and prepare documents for review by other local, state, and federal agencies, as required; including TCEQ, TXDOT, etc. This includes permitting for pipeline alignments, such as franchise utilities, irrigation canals, and county and state roadways. This task also includes an additional Environmental Site Visit for the pipeline design.

3. **FINAL DESIGN SUBMITTALS (60%/ 90%/ 100%):** Perform final design for the tank, booster pump station, and both upper pressure plane and lower pressure plane pipelines as follows:

- a) **Ground Storage Tank Design:** Design of a pre-stressed concrete ground storage tank and associated appurtenances. Coordination with tank manufactures to refine construction requirements.

- b) **Upper Pressure Plane Pipeline Design:**

- Design of approximately 24,000 (maximum 30,000) LF of 20-inch pipeline, including evaluation of piping plan and profiles.
- Design of all pipeline materials, isolation valves, control valves, flow meters, and other associated appurtenances.
- Review of survey information to finalize pipeline route and alignment.
- Design of all connections into the existing system.
- Coordination with manufacturers, Developer, and property owners as needed.

- c) **Lower Pressure Plane Pipeline Design:**

- Design of approximately 4,600 LF of 30-inch pipeline, and approximately 3,500 LF of 20-inch pipeline, including evaluation of piping plan and profiles.
- Design of all pipeline materials, isolation valves, control valves, flow meters, and other associated appurtenances.
- Review of survey information to finalize pipeline route and alignment.
- Design of all connections into the existing system.
- Coordination with manufacturers, Developer, and property owners as needed.

- d) **Booster Pump Station Design:**

- Design of system curves and hydraulic analysis that will serve the City's Upper Pressure Plane.
- Design of all pump control valves, isolation valves, flow meters, and associated appurtenances for the suction and discharge side of the pumps. Coordination with manufacturers.
- Coordination with pump manufacturers to refine equipment and pump curve selection.
- Provide structural design for pump station foundation and equipment supports.

- e) **Power Supply, Electrical, Instrumentation, and SCADA Design:**

- Design of power supply and coordination with Power Provider.
- Design of all electrical, instrumentation, and SCADA requirements for all project components.
- Design of all site lighting.
- Design of diesel driven emergency generator with onsite diesel supply.

- f) Site Civil Design:
 - Design of all site grading, drainage, roads, parking, paving, and fencing.
 - Access road design up to 3,000 LF.
 - i. Analyze and present maximum three alignment alternatives.
 - ii. Run cross sections for alignment alternatives.
 - iii. Perform detailed design of preferred alternatives.
 - iv. Assume that drainage design for access road will be limited to ditches or swales parallel to roadway.
 - g) Pump Station & Electrical Building Design:
 - Structural, architectural and mechanical/HVAC design for a building required to house all pump station facilities, electrical switchgear, controls, instrumentation, and SCADA equipment.
 - h) QA/QC Reviews: Provide QA/QC reviews for all project deliverables.
 - i) EOPC: Prepare detailed cost estimates for each design deliverable.
 - 4. **DELIVERABLES:** CONSULTANT will provide copies of plans, specifications, reports, and other data to the City as required. Furnish electronic and hard copies as shown for the following deliverables for the Final Design Phase, including up to two (2) separate bid packages for the project:
 - d) Agendas and Meeting Minutes for all meetings – one (1) electronic copy
 - e) 60% Design Submittal, including Plans and Technical Specifications – One (1) electronic copy in PDF format and five (5) sets of standard 11"x17" "half-size" bound plans and letter size specifications.
 - f) 90% Design Submittal - comment response form for City's comments on 60% submittal, Plans, Contract Documents, and Technical Specifications – One (1) electronic copy in PDF format and five (5) sets of standard 11"x17" "half-size" bound plans and letter size specifications.
 - g) 100% Signed and Sealed Submittal- comment response form for City's comments on 90% submittal, One (1) electronic copy in PDF format and five (5) sets of standard 11"x17" "half-size" bound plans and letter size specifications.
- D. **PHASE D – BID PHASE:** Upon execution of this AGREEMENT and upon receiving a Notice to Proceed from the City, CONSULTANT shall provide professional services in this phase as follows:
- 1. **MEETINGS:** CONSULTANT will prepare meeting agendas and minutes for all meetings and workshops listed below:
 - a) One (1) pre-bid conference.
 - b) One (1) bid opening.
 - 2. **BID PHASE COORDINATION:** Coordinate with the City for successful bid phase initiation, planning, execution, monitoring, controlling, and closeout. This scope of services is based on one (1) bid package. The following services will be performed:
 - a) CONSULTANT will prepare one (1) bid packet/contract documents/advertisement for bids. CONSULTANT will assist the City in the bid process using CivCast to distribute plans, specifications, and addenda. CONSULTANT will provide a copy of the notice to bidders for the City to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by the City.
 - b) CONSULTANT will assist the City by responding to questions and interpreting bid documents. CONSULTANT will prepare needed addenda to the bid documents if necessary.
 - c) CONSULTANT will assist the City in the opening and analyzing of the bids received for the project, including reviewing the bids for errors and unit price discrepancies. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project. This includes researching contractor qualifications and references.
 - d) CONSULTANT will recommend award of contract or other actions as appropriate to be taken by the City in the form of a Letter of Recommendation.
- E. **PHASE E – CONSTRUCTION PHASE:** Upon execution of this AGREEMENT and upon receiving a Notice to Proceed from the City, CONSULTANT shall provide professional services in this phase as follows:

1. MEETINGS: CONSULTANT will prepare meeting agendas and minutes for all meetings and workshops listed below:
 - a) One (1) pre-construction conference for one construction package with the Contractor and the City.
 - b) Facilitate up to ten (10) Monthly Construction Progress Meetings and Site Visits with the Contractor and the City during the Construction Phase to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. Site Visits and Progress Meetings will be held on the same day for BOTH construction packages.
 - c) Facilitate up to six (6) additional General Representation Site visits to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents.
2. CONSTRUCTION COORDINATION: Upon completion of the bid phase services, CONSULTANT will proceed with the performance of construction phase services as described below. CONSULTANT will endeavor to protect the City in providing these services however, it is understood that CONSULTANT does not guarantee the Contractor's performance, nor is CONSULTANT responsible for supervision of the Contractor's operation and employees. CONSULTANT shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. CONSULTANT shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the project.
 - a) Prepare "Conformed" Construction Contract Documents: "Conformed" documents shall include information from the bid documents, legal documents, addenda, and other documents and/or forms required by the City, bound in the documents for execution by the City and the construction Contractor. The "Conformed" plans and specifications shall have all addenda incorporated into the original drawings and specifications. Furnish one (1) electronic copy, two (2) "full-size" sets and five (5) "half-size" sets of plans and specifications for the project for distribution to the City and the Contractor.
 - b) Document Review: Establish and maintain a project documentation system consistent with the requirements of the construction Contract Documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Review Contractor's submittals for compliance with the design concepts as follows. Contractor submittals beyond the numbers outline below will be an additional service.
 - Review up to seventy (70) Shop Drawings.
 - Review up to forty (40) Record Data.
 - Review up to fifteen (15) Requests for Information (RFI's).
 - Review up to twelve (12) monthly progress schedules from the Contractor.
 - Review up to twelve (12) monthly construction estimates from the Contractor and make recommendations for payment.
 - Review up to ten (10) operation and maintenance (O&M) manuals.
 - Review up to ten (10) quality related documents, such as test reports, equipment installation reports, or other documentation.
 - Review up to ten (10) miscellaneous submittals.
 - c) Interpret the drawings and specifications for City and Contractor.
 - d) Prepare Field/ Change Order Documents and Requests for Proposals (RFP's): Evaluate notices of Contractor claims and make recommendations to the City on the merit and value of the claim on the basis of information submitted by the Contractor or available in project documentation. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the Contractor or other deviations from the Construction Contract Documents requested by the Contractor and approved by the City are an additional service. Substitutions of materials or equipment or design modifications requested by the City are an additional service. Review all field alterations and prepare/make recommendations for Field/Change Orders and RFPs as follows. Documents beyond the numbers outlined below will be an additional service:
 - Prepare up to ten (10) field orders for minor alterations to the design.
 - Prepare up to five (5) change orders and/or RFP's for alterations to the design.

- e) Notify City of Contractor's non-conforming work observed on site visits and provide site visit memorandums. In this effort CONSULTANT will endeavor to protect the City against defects and deficiencies in the work of Contractors and will report any observed deficiencies to City.
- f) Performance Testing Observation and Special Inspections: Attend up to two (2) full days of site visits to observe and assist in performance tests, initial operations of the project, and special inspections (concrete pours, equipment installation, etc.). Special inspections per International Building Code (IBC) Chapter 17 are an Additional Service. Provide testing/observation report for documentation of all observed activities.
- g) Substantial Completion Inspections: Conduct, in company with the City, a Substantial Completion Inspection and Punchlist review for conformance with the design concept and general compliance with the Construction Contract Documents. Provide punch-lists of noted deficiencies to the City and Contractor.
- h) Final Inspections: At the completion of the project, in company with the City's representative(s), conduct final inspections and prepare final inspection reports for the project.
- i) Record Drawings: Prepare the Record Drawings based on the revised redline Construction Drawings and information furnished by the construction CONTRACTOR reflecting changes in the Project made during construction. One (1) set of record drawings and specifications for all project components will be prepared at the completion of the project. Furnish one (1) electronic copy of plans and specifications in PDF format and one full size set of plans and specifications. Provide a geo-referenced CAD file with features adjusted to the location of GPS points collected in the field by the Contractor.

PART 2 -- ADDITIONAL SERVICES AND TIME OF COMPLETION

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

Additional Services to be performed by the CONSULTANT, if authorized by the City, which are not included in the above described basic or supplemental services, are described as follows:

- A. Advise the City of the need for any special services, which are not already included in the Basic Services. The cost of any additional special services shall be paid by the City and are not included in the services provided by CONSULTANT.
- B. Bid and construction phase services for a second bid package – this scope is limited to one bid package.
- C. Final design, bid, or construction phase services for any chlorine boosting or treatment requirements.
- D. Any design changes that deviate from the approved recommendations of the Preliminary Design Report.
- E. SWPPP design, inspection, or construction services.
- F. Field Archaeological Survey
- G. Providing shop, mill, field or laboratory inspection of materials and equipment. Observing factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- H. Performing investigations, studies and analyses of Contractor's substitutions of equipment and/or materials or deviations from the drawings and specifications (does not include "approved by ENGINEER" designation as included in the Contract Documents).
- I. Performing investigations, studies, and analysis of work proposed by construction Contractor to correct defective work.
- J. Design, contract modifications, studies or analysis required to comply with local, state, federal or other regulatory agencies that become effective after the date of this agreement.
- K. Services required to resolve bid protests or to rebid the projects for any reason.
- L. Visits to the site during the construction phase in excess of the number of trips included in the Basic Services for periodic site visits, coordination meetings, or contract completion activities.
- M. Full-time construction Resident Representation services.
- N. Any services required as a result of default of the Contractor or the failure, for any reason, of the Contractor to complete the work within the contract time.

- O. Investigations, analyses, and studies requested by the Contractor and approved by the City, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
- P. Providing services after completion of construction phase not specifically listed in the scope of services.
- Q. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- R. Providing services to review or evaluate construction Contractor claim(s), provided said claims are supported by causes not within the control of the CONSULTANT.
- S. Providing value engineering studies or reviews of cost savings proposed by construction Contractor after bids have been submitted.
- T. Providing follow-up professional services during Contractor's warranty period or 1-year Warranty Inspection.
- U. Fees associated with GLO easements/leases or other permits.
- V. Additional field investigations or analysis required to respond to public or regulatory agency comments, including additional data requests, schematics or drawings for project features outside of the scope of services listed in Article I.
- W. Detailed Tree Survey beyond survey identification of trees 12" and larger.
- X. Preparation of tree mitigation plans for local entities.
- Y. Expert representation at legal proceedings or at contested hearings.
- Z. Monitoring compliance with permit conditions.
- AA. Attendance at or assisting with additional public meetings outside of those identified in Article I.
- BB. Platting services.
- CC. Special inspections during construction phase.
- DD. Field tracing of electric circuits.
- EE. Power System Study including Arc Flash Analysis.

TIME OF COMPLETION: CONSULTANT is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule:

The scope of work is based upon a total project duration of twenty five (25) months. The schedule is attached as Exhibit 1 to this proposal.

The schedule assumes a review period of 10 days by the City for each submittal. If CONSULTANT's services are delayed through no fault of CONSULTANT, CONSULTANT shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in the City or regulatory reviews, delays on the flow of information to be provided to CONSULTANT, Developer delays, governmental approvals, etc.

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 JB

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 *JP*

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 \$1,863,179.00 based on the following assumed distribution of compensation:

a. Project Management	<u>\$29,944.00</u>
b. Preliminary Design	<u>\$687,799.00</u>
c. Final Design	<u>\$853,910.00</u>
d. Bidding Phase	<u>\$48,178.00</u>
e. Construction Phase	<u>\$243,348.00</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 1 page referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, _____.

Initial:

OWNER _____
ENGINEER CP

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

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

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

Initial:

OWNER _____
ENGINEER EB

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: _____

OWNER: _____

OWNER's Construction Contract Identification: _____

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT: _____

CONSTRUCTION CONTRACT DATE: _____

ENGINEER: _____

To: _____ OWNER

And To: _____ CONTRACTOR

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

By: _____

Title: _____

Dated: _____, _____

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 Fifteen Million dollars (\$ 15,000,000.00) 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 CPB

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 JB

Special Provisions

There are no special provisions for this project.