

## **CONTRACT FOR AUDIT SERVICES**

**THIS CONTRACT** is between the City of Killeen (City), a Home Rule City organized under the existing laws of the State of Texas, and McConnell and Jones (Contractor), a CPA, auditing, and advisory firm doing business at 4828 Loop Central, Suite 1000, Houston, Texas, 77081, who agree as follows:

### **1. SCOPE OF SERVICES**

Contractor agrees to perform all services described in Exhibit A, in accordance with its stated terms and conditions. Exhibit A is attached to and made a part of this Contract.

### **2. PAYMENT**

For services referred to in Section 1, City will pay Contractor a total amount not to exceed **\$394,456**. City shall make payments to Contractor in accordance with the provisions described in Exhibit B, which is attached to and made a part of this Contract.

### **3. TERM**

This Contract shall begin on \_\_\_\_\_, 2017 and continue until the performance promised by Contractor is complete.

### **4. TERMINATION OF CONTRACT**

- a. Termination without cause. City may terminate this Contract at its convenience, effective upon Contractor's receipt of written notice declaring the same and Contractor shall be compensated for all work completed at that time in accordance with this Contract.
- b. Termination for cause. Either party may terminate this Contract for cause upon thirty (30) calendar days' written notice, provided such cause cannot be reasonably cured within such thirty (30) day period.

### **5. NOTICE**

All notices or other communications that are required under this contract must be given by registered or certified mail and are complete on the date mailed, when addressed to the parties at the following addresses:

For purposes of this Contract, all notices to City shall be addressed as follows:

City Manager  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540

For the purposes of this Contract, all notices to Contractor shall be addressed as follows:

Odysseus Lanier, CPA  
4828 Loop Central Drive, Suite 1000  
Houston, Texas 77081

**6. FORCE MAJEURE**

Contractor shall not be held responsible for delay or default caused by fire, riot, acts of God or war, if the event is beyond the Contractor's reasonable control and the Contractor gives notice to the City immediately upon occurrence of the event causing the delay or default, or which is reasonably expected to cause a delay or default.

**7. MERGER AND MODIFICATION**

This Contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be waived, altered, modified, supplemented, or amended, in any manner, except by written agreement signed by both parties.

**8. SURVIVAL**

Any provision of this Contract providing for indemnity, insurance or a duty that necessarily will not be completed until after the expiration or termination of this Contract shall continue in full force and effect until such a time as all duties have been fully performed.

**9. INSURANCE**

- a. Contractor shall maintain at all times during the performance of the Contract a General Liability insurance policy with a minimum occurrence coverage in the amount of \$1,000,000 (bodily injury and property damage); an

Automobile Liability insurance policy in the minimum amount of \$500,000 (combined bodily injury and property damage); and if any licensed professional performs services under this contract, a professional liability insurance policy in the minimum amount of \$1,000,000 to cover any claims arising out of Contractor's performance of services under this Contract. All insurance, except professional liability, shall name the City, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to City.

- b. If Contractor employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: (1) provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days written notice to the City's Purchasing Manager; (2) provide a waiver for any right of subrogation against City to the extent permitted by law; and (3) shall be approved as to form and sufficiency by the Contract Administrator.

**10. CONFORMITY WITH LAW AND SAFETY**

Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations or governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all Texas Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations. All services performed by Contractor must be in accordance with these laws, ordinances, codes and regulations.

**11. GOVERNING LAW AND VENUE**

This Contract shall be subject to and governed by the laws of the State of Texas. The City and Contractor agree that for venue purposes, any and all lawsuits, disputes, or causes of action shall be in Bell County, Texas.

**12. SPOILIATION—NOTICE OF POTENTIAL CLAIMS**

Contractor shall promptly notify City of all potential claims that arise from or result from this contract. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, and grants to the City the opportunity to review and inspect the evidence.

**13. INDEMNITY**

The City and Contractor each agree to assume its own liability for any claims of any nature, including all costs, expenses, and attorneys' fees that may in any manner result from or arise out of this agreement.

**14. ALTERNATIVE DISPUTE RESOLUTION**

The City does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to legal action to enforce available remedies.

**15. CONFIDENTIALITY**

Contractor agrees not to use or disclose any information it receives from the City under this contract that the City has previously identified as confidential or exempt from mandatory public disclosure, except as necessary to carry out the purposes of this contract or as authorized in advance by the City. The City agrees not to disclose any information it receives from Contractor that the Contractor has previously identified as confidential and which the City determines in its sole discretion is protected from mandatory public disclosure. The duty of City and Contractor to maintain confidentiality of information under this section continues beyond the term of this contract, including any extensions or renewals.

**16. INDEPENDENT CONTRACTOR**

Contractor shall perform as an independent contractor under this contract and not as an employee of the City for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, and the Federal Insurance Contribution Act. Contractor will retain sole and absolute discretion in the manner and means of carrying out the Contractor's activities and responsibilities under this contract, except to the extent specified in this contract.

**17. SEVERABILITY**

If any part of this Contract or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision or application, and to this end the provisions of this Contract are declared to be severable.

**18. WAIVER**

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this Contract or a waiver of any other default of Contractor.

**SIGNED, ACCEPTED AND AGREED TO** this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by the undersigned parties who acknowledge that they have read and understand this Contract hereby execute this legal document voluntarily and of their own free will.

City

Contractor

\_\_\_\_\_  
Ron Olson, City Manager

\_\_\_\_\_  
Odysseus M. Lanier, Partner

City of Killeen

McConnell and Jones, LLP

**SCOPE OF SERVICES**

- A. Conduct a thorough risk-based analysis of the following areas, within the scope periods delineated, to determine if fraud, and/or gross management exists, and quantify, if applicable, the City's financial losses relative to incidents identified.
1. Capital Outlays (Scope Period FY 2006 – FY 2016): Conduct an analysis of the City's significant capital projects during the period FY 2006 through FY 2016 to determine if fraud and/or gross mismanagement exist, and determine the following:
    - a) What were the reasons for the dramatic increase in spending?
    - b) How were these capital projects financed (e.g., bond issuance, federal/state grants, general fund reserves)?
    - c) Were there significant cost overruns (change orders due to renovations, etc.)?
  2. Use of Bond Money (Scope Period FY 2002 – FY 2017): Review the City's major bond issuances from FY 2002 to present to determine the following:
    - a) Were bond funds spent legally and for the purpose for which the bonds were approved? (e.g., were idle funds used for other purposes)
    - b) Were funds remaining after project completion, if any, used appropriately and legally?
  3. Inter-Fund Transfers (Scope Period FY 2002 – FY 2017): Review the significant transfer of funds between the enterprise and special revenue funds and the general fund to determine the following:
    - a) Were the transfers from restricted funds allowable and legal?
    - b) Were the transfers authorized, and
    - c) Are the city's policies governing inter-fund transfers adequate to prevent the misuse or misallocation of restricted funds?
  4. Pay Increases: Review the City's fiscal planning for the short-term funding and long-term impact of the 3 percent City-wide cost of living adjustment (COLA) and the 8 percent salary increase for civil service positions implemented in June 2014 and October 2014, respectively.
  5. Analyze City/Owner Agreements (Scope Period FY 2002 – FY 2016): Review the City's City/Owner agreements to determine if the City's participation is in keeping with best practices.

6. Private roadway ownership (Scope Period FY 2002 – FY 2016): Review city participation, if any, in private road way maintenance/improvement: Compare the City's private roadway ownership and city participation to best practices to assess the overall efficiency of the City's arrangements.
  7. Spending during post Recall period (Scope Period November 2011 – May 2012): Review significant expenditures during the six-month period without a fully seated Council to determine the following:
    - a) Did Council ratify expenditures, as required?
    - b) Is there any evidence of fraud or abuse of funds during the period?
- B. The Contractor will provide a mid-Audit briefing to the City's Audit Advisory Committee on the status of the audit approximately 8 weeks from the start date.
- C. The Contractor will provide to the City Council a written report, in accordance with GAGAS reporting standards detailing the findings and recommendations resulting from the management audit.



## EXHIBIT B