

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

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AMERICAN CONSULTING ENGINEERS COUNCIL

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AMERICAN SOCIETY OF CIVIL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition). For guidance on the completion and use of this Agreement, see EJCDC Users Guide, No. 1910-50.

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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 Kimley-Horn and Associates, Inc. (“ENGINEER”).

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

The Highway 195 Water Line and Tank Project will distribute water along Highway 195 from Chaparral Road to Stagecoach Road with a proposed 24-inch water line and provide additional storage with a proposed 1.5 million gallon (MG) tank providing pressure maintenance or elevated storage.

## ARTICLE 1 - SERVICES OF ENGINEER

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### 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

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### 2.01 General

A. OWNER shall have the responsibilities set forth herein and in Exhibit B.

## ARTICLE 3 - TIMES FOR RENDERING SERVICES

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### 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

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### 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

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### 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

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### 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

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### 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

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### 8.01 Exhibits Included

A. Exhibit A, "ENGINEER's Services," consisting of 11 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.

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 11 inclusive, together with the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

By signing this contract, Engineer hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. Boycotting Israel is defined in Texas Government Code section 808.001 to mean refusing to deal with, terminating business activities with, or taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

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

OWNER: City of Killeen

ENGINEER: Kimley-Horn and Associates, Incl

By: Kent Cagle

By: Sean Mason

Title: City Manager

Title: Associate

Date Signed: \_\_\_\_\_

Date Signed: 6/29/2021

Address for giving notices:

Address for giving notices:

P.O. Box 1329

10814 Jollyville Road, Avallon IV

Killeen, TX 76540-1329

Suite 200

Austin, TX 78746

Designated Representative (paragraph 6.02.A):

Designated Representative (paragraph 6.02.A):

Steven L Kana, P.E.

Lance Parish, P.E.

Title: Director of Water & Sewer

Title: Associate

Phone Number: 254-501-7623

Phone Number: 737-263-2017

Facsimile Number: 254-501-6321

Facsimile Number: \_\_\_\_\_

E-Mail Address: skana@killeentexas.gov

E-Mail Address: lance.parisher@kimley-horn.com



This is **EXHIBIT A**, consisting of 11 pages, referred to in and part of the Agreement between **OWNER** and **ENGINEER** for Professional Services dated \_\_\_\_\_, \_\_\_\_\_.

Initial:

OWNER \_\_\_\_\_  
ENGINEER  \_\_\_\_\_

## **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**

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this proposal to the City of Killeen ("Client") for providing engineering services for the design, bid, and construction of approximately 16,500 linear feet of 24" water line along Hwy 195 between Chapparral Road and Stagecoach Road, and a 1.5 million gallon (MG) ground storage tank (GST) on Hwy 195 at Bald Knob or Douglas Mountain. See Exhibit 1 attached to this document for a graphical representation of the understanding of the project

#### **Project Assumptions**

- A) A 1.5 MG tank will be a ground storage tank and will have an overflow of 1,125' and a head range of 30'.
- B) The alignment of the 24" water line will be determined as part of the Preliminary Engineering Phase. The 24" is expected to be no more than 16,500'.
- C) The intent of the 24" water line is to be designed and constructed within the TxDOT ROW.
- D) A maximum of 4 Easements on 2 Parcels will be required for the project. Additional easements will result in additional scope and fee.
- E) Kimley-Horn and team will issue Right of Entry documents to the landowners. This proposal assumes 2 Right of Entry letters.
- F) The City of Killeen will provide their Right of Entry letter, or approve a letter provided Kimley-Horn.
- G) The Ground Storage Tank and 24" Water Line shall be bid in one package.

#### **Scope of Services**

Kimley-Horn will provide the services specifically set forth below.

#### **Task 1 - Project Management**

- a) Project Schedule and Work Plan – Kimley-Horn will develop the project schedule and work plan for executing the project scope of services.
- b) Invoicing and Progress Reports – Assume this project task will have a duration of twenty-four (24) Months and includes monthly invoicing and progress reports.
- c) Project Kick-Off Meeting – Project team will attend a kickoff meeting with the City of Killeen.
- d) Up to twenty-four (24) progress meetings – This assumes a monthly meeting with the City of Killeen. Kimley Horn will produce meeting minutes for each progress meetings. This assumes 12 virtual and 12 in person meetings.
- e) Up to four (4) Site Visits with the owner to review the alignment and tank sites.
- f) Design Team Coordination – Biweekly Project Team meetings including Kimley-Horn and Subconsultants. Assumes 26, 30-minute biweekly meetings.
- g) Meetings for tank site analysis:
  - o One (1) meeting with Texas A&M University
  - o One (1) meeting with City of Killeen Development Services
- h) Data Collection, Research, and Electronic File Creation– Kimley-Horn will create electronic base files by

downloading and converting different electronic files provided by the City of Killeen into useable files for the Preliminary Phase of this project. Kimley-Horn will also research and incorporate available record drawings and studies as provided to fit in with this project as needed. The City will be responsible for making the following data available in the vicinity of the projects for Kimley Horn:

- Client GIS Data – Storm, Sewer, Wastewater, Water, High Resolution Photography, LIDAR, Roadway Master Plan Alignments. If the City is unable to provide this information, then Kimley Horn will use the available online resources for GIS shapefiles.
- Client Record Drawings - Storm, Sewer, Wastewater, Water, Roadway, and Site and Subdivision Plans
- Client Master Plans - Storm, Sewer, Wastewater, Water, Roadway, and Park/Trail
- i) Kimley Horn task for Landowner Coordination for Right of Entry and Easement Acquisition. 7 Arrow Land Staff will issue the Right of Entry letters and order title, with Kimley Horn for assistance and necessary communication from the landowners. 7 Arrow scope of services is included in Task 6.
  - Assumes coordination with 2 landowners regarding questions for Right of Entry
    - i. Research preliminary ownership and county tax information
    - ii. Prepare Right of Entry necessary for survey, geotechnical investigations, and environmental services.
  - Title Services for up to 2 parcels
    - i. Review preliminary title commitments for all affected properties, up to 2.
    - ii. Secure title commitments and updates in accordance with insurance rules and requirements for parcel payment submissions for properties which will be acquired in fee simple and for ROW easements
    - iii. Secure title insurance for parcels, insuring acceptable title
    - iv. Attend closings and provide closing services in conjunction with Title Company for all tracts
    - v. Record all original instruments immediately after closings at the County Clerk's office
    - vi. Research title and provide condemnation Title Report to legal counsel for property rights that will be acquired through eminent domain

## **Task 2 Preliminary Engineering - 24" Waterline and 1.5 MG GST**

- a) Preliminary Engineering – Water Line and Ground Storage Tank
  - i. Pipeline Routing and Alternatives, including:
    - a) Bald Knob – 3 route Options
    - b) Douglas Mountain – 2 route Options
    - c) Hwy 195 Easement – East Side
    - d) Exhibits:
      - 1. Draft Alignment Exhibits for Review with the City of Killeen
  - ii. Ground Storage Tank and Elevated Storage Tank - Site Alternatives
    - a) Elevated Storage Tank – One (1) Option
      - 1. Texas A&M Site Located Adjacent to SH-195
    - b) Ground Storage Tank – Two (2) Options
      - 1. Douglas Mountain (Existing Tank Site) – 1 Options
      - 2. Texas A&M Mountain – 1 Options
      - 3. Exhibits:
        - a. Draft Site Exhibit for three (3) options
        - b. Draft water line extension exhibit for two (2) GST options
        - c. Draft access driveway exhibit for two (2) GST options
  - iii. Technical Memorandum
    - a) Executive Summary
    - b) Water Line
      - 1. Introduction



2. Design Criteria

3. Alternatives

- a. Matrix for selecting the alignment including permitting; trenchless construction; easements; cost; constructability; traffic impacts; environmental; and other constraints identified during this investigation
- b. OPCC
- c. Recommendation

c) Tanks

1. Evaluation of sites for:

- a. Access Driveway
- b. Constructability/Geotech/Foundation
- c. Grading
- d. Easements and Land Acquisition
- e. Platting/Permitting
- f. Hydraulics
- g. Electrical/SCADA
- h. Drainage and Overflow
- i. Tank Types
  - i. GST – AWWA D110 – Prestressed Concrete Tank
  - ii. EST – AWWA D107 – Composite Elevated Storage Tank
- j. OPCC
- iv. Subsurface Utility Engineering (SUE) – Level D SUE to be provided by the Rios Group
- v. Workshop Meeting with Killeen to discuss Water Line Routes and Ground Storage Tanks
- vi. QA/QC – Kimley-Horn shall perform a quality control check of the Technical Memorandum prior to the submittal to the City of Killeen
- vii. Revisions to the QA/QC – Kimley-Horn and team to address comments generated from the QA/QC.
- viii. Draft Tech Memorandum – for review by the City of Killeen
- ix. Final Tech Memorandum – submitted after comments are addressed by City of Killeen

Deliverables:

Draft and Final Tech Memo – 3 hard copies and PDF

**Task 3a – 30% Plans and OPCC – 24” Water Line – To be packaged and submitted with Task 3b to the City of Killeen**

- a) 30% Plans and OPCC – Kimley Horn will not proceed with 30% Design activities without obtaining written approval by the City of Killeen of the Preliminary Engineering and Technical Memorandum recommendations
  - i. Cover Sheet – 1 Sheet
  - ii. Project Notes and Sheet Index – 2 Sheets
  - iii. Project Control Sheet – 1 Sheet
  - iv. Project Access and Easement Plans – 2 Sheets
  - v. Water Layout Sheet – 1 Sheet
  - vi. Water Plan and Profile Sheets – Up to thirty-five (35) Plan and Profile Sheets – 1” = 40' on 11x17 sheets
  - vii. Opinion of Probable Construction Cost (OPCC) – Kimley-Horn will prepare an opinion of probable construction cost for the project with a 25% contingency. (The Consultant has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided are based on the information known to Consultant at the time and represent only the Consultant judgment as a design professional familiar with the construction industry. The Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.)
  - viii. Survey – to be performed by Gorrondona & Associates, Inc.
    - a) Flight Topography and LIDAR – to be processed once the alignment is set and tank site is located.
    - b) Boundary Survey – the surveyor shall provide apparent ROW along SH-195 and up to 2 boundaries for use in the design.
    - c) Aerial Photography – Acquire color digital aerial photography, suitable for

- photogrammetric map compilation and digital orthophoto production with a large format sensor.
- d) Orthoimagery – Perform analytical aerial triangulation adjustment to supplement the control network. Produce color digital orthophotos with a 3” pixel resolution.
- ix. Environmental Investigation - to be performed by Cox McIn Environmental Consulting – Tech memorandum documenting the potential environmental impacts and associated regulatory commitments. This investigation includes the following:
  - a) Cultural Resource Impact Assessment and Agency Coordination
  - b) Preliminary Waters of the US Delineation
  - c) Protected Species Habitat Assessment
  - d) Tech Memo and Comment Response
- x. QA/QC – Kimley-Horn shall perform a quality control check of the 30% prior to the submittal to the City of Killeen
- xi. Revisions to the QA/QC – Kimley-Horn and team to address comments generated from the QA/QC.
- xii. Submit 30% and OPCC
  - Deliverables:
    - a) 30% Plans and OPCC – 3 hard copies half size 11x17 and PDF

**Task 3b – 30% Plans and OPCC – 1.5 MG GST – To be packaged and submitted with Task 3a to the City of Killeen**

- a) 30% Plans and OPCC – Kimley Horn will not proceed with 30% Tank Design activities without obtaining written approval by the City of Killeen of the Preliminary Engineering and Technical Memorandum recommendations
  - i. Site Plan and
  - ii. Yard Piping Plan
  - iii. Tank Plan
  - iv. Water Line Extension Layout to Tank (Assume up to 3,000 linear feet)
  - v. Access Road to Tank Layout
  - vi. Opinion of Probable Construction Cost (OPCC) – Kimley-Horn will prepare an opinion of probable construction cost for the project with a 25% contingency. The Consultant has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided are based on the information known to Consultant at the time and represent only the Consultant judgment as a design professional familiar with the construction industry. The Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.
  - vii. Tank Manufacturer Coordination – Kimley-Horn will coordinate with tank manufacturers for site layout and staging and tank OPCC.
  - viii. QA/QC – Kimley-Horn shall perform a quality control check of the 30% prior to the submittal to the City of Killeen
  - ix. Revisions to the QA/QC – Kimley-Horn and team to address comments generated from the QA/QC.
  - x. Submit 30% and OPCC
    - Deliverables:
      - a) 30% Plans and OPCC – 3 hard copies half size 11x17 and PDF

**Task 4a – 24” Water Line Design Work Product Milestones (each to be submitted with Task 4b below)**

- a) 60% Plans, Specifications, and OPCC
- b) 90% Plans, Specifications, and OPCC
- c) Final Plans, Specs and OPCC

Task 4a shall include the following for each submittal:

- i. Cover Sheet
- ii. Project Notes and Sheet Index – 2 Sheets
- iii. Project Control Sheet – 1 Sheet
- iv. Erosion and Sedimentation Plan 1000’ per sheet – up to sixteen (16) sheets

- v. Erosion and Sedimentation Details – Four (4) Sheets
- vi. Traffic Control Plan – Four (4) Sheets
- vii. Traffic Control Details – Sixteen (16) Standard TxDOT Detail Sheets
- viii. Project Access and Easement Plans – 2 Sheets
- ix. Water Layout Sheet – 1 Sheet
- x. Water Plan and Profile Sheets – Up to thirty-five (35) Plan and Profile Sheets – 1" = 40' on 11x17 Sheets.
- xi. Water Plan Details – Up to four (4) Detail Sheets
- xii. Specifications - Full specification list including Killeen Front End Docs, General specifications, and technical specifications.
- xiii. Geotechnical Investigation – to be performed by Arias Geoprosessionals
- xiv. Subsurface Utility Engineering – Level B and Level A – to be performed by The Rios Group
  - a) Up to 5 QL "A" Test Holes
- xv. Survey – Easement Metes and Bounds for up to 4 easements – to be performed by Gorronadona & Associates. Temporary construction easements will be shown on the permanent easement exhibit. The easements include up to 1 permanent water line easements, 1 electrical easement, 1 access easement, and 1 tank site easement. This number is based on the best information available at the time of this proposal and could be subject to change as the project advances.
- xvi. Appraisal Services for 4 Easement – to be performed by 7 Arrow Land Staff. This number is different from the survey metes and bounds due to 3 of the expected easements being on the same property owner's parcel.
  - a) Prepare pre-appraisal contact with interest owners for each parcel
  - b) Contact property owners or their designated representative to offer opportunity to accompany the appraiser on the appraiser's inspection of the property.
  - c) Finalize complete appraisal report for each parcel.
  - d) All completed appraisals will be administratively reviewed and approved by the City of Killeen.
  - e) Appraisal fee could be adjusted on complexity of evaluation within range provided in Fee Schedule.
- xvii. Negotiation Services for 4 easements (In Fee and/or Easement Acquisition) – to be performed by 7 Arrow Land Staff
  - a) Analyze appraisal reports and confirm approved value prior to making offer for each parcel.
  - b) Analyze preliminary title report to determine potential title problems and propose methods to cure title deficiencies. (Exhaust all efforts to obtain subordinations of liens, waiver of lienholders and clear any title, if 7Arrows staff cannot cure title through standard practices, the City will be responsible for obtaining legal counsel to remedy any tile deficiencies as required by title or alternatively, may elect to close the easement without a title policy).
  - c) Prepare the initial offer letter and any other documents required or requested by the City in an acceptable form.
  - d) Contact each property owner or owner's designated representative and present the written offer in person where practical. When owners do not wish to have offers delivered in person, they will be mailed via certified mail with return receipt for documentation of delivery/receipt. Maintain follow-up contacts and secure the necessary instruments upon acceptance of the offer for the closing.
  - e) Provide a copy of the appraisal report for the subject property exclusively to the property owner or authorized representative at the time of the offer.
  - f) Respond to property owner inquiries verbally and/or in writing within two business days.
  - g) Prepare a separate negotiator contact report for each parcel file for each contact.
  - h) Maintain parcel files of original documentation related to the purchase of the real property or property interests/acquisition of the Easement or Right of Way.
  - i) Present counteroffers in a form as directed by the City. Transmit any written counteroffer from property owners including supporting documentation, and Agent's recommendation with regard to the counteroffer.
  - j) Prepare second and final offer letter as necessary.
- xviii. Acquisition/Closing Services for 4 Easements (In Fee and/or Easement Acquisition)
  - a) Prepare check request, review closing documents and facilitate execution of all necessary

- documents. Attend closings and provide closing services in conjunction with Title Company for all tracts.
- b) Transport any documents to the City and landowner for signatures.
- c) Record or cause to be recorded all original instruments immediately after closing at the respective County Clerk's Office.
- d) Review Title Policy and provide to City for permanent storage.
- xix. Opinion of Probable Construction Cost (OPCC) – Kimley-Horn will prepare an opinion of probable construction cost for the project with a 20% contingency. The Consultant has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided are based on the information known to Consultant at the time and represent only the Consultant judgment as a design professional familiar with the construction industry. The Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.
- xx. QA/QC – Kimley-Horn shall perform a quality control check of the deliverable prior to submittal to the City of Killeen.
- xxi. Revisions from the QA/QC – Kimley-Horn and team shall address the comments from the QA/QC.
- xxii. Submit Deliverable: Compilation of the Task work products into the required deliverables to the City of Killeen, including compiling PDFs and printing copies

**Task 4b – 1.5 MG GST Design Work Product Milestones (each to be submitted with Task 4a above)**

- a) 60% Plans, Specifications, and OPCC
- b) 90% Plans, Specifications, and OPCC
- c) Final Plans, Specifications and OPCC

Task 4b shall include the following for each submittal:

- i. General Notes
- ii. Overall Site Layout
- iii. Site Plan and Dimensional Control
- iv. Grading Plan
- v. Paving Plan
- vi. Yard Piping Plan
- vii. Piping Profiles
- viii. Erosion Control Plan
- ix. Tank Plan
- x. Tank Elevation
- xi. Tank Details (3 Sheets)
- xii. Yard Piping Details (2 Sheets)
- xiii. Valve Vault Sheet
- xiv. Water Line Extension and Access Drive Layout Sheet
- xv. Water Line Extension to Tank (Assume up to 3,000 linear feet) - Plan and Profile (4 Sheets)
- xvi. Water Line Details (2 Sheets)
- xvii. Access Road to Tank (Assume up to 3,000 linear feet) - Plan and Profile (4 Sheets)
- xviii. Paving Details (3 Sheets)
- xix. Electrical
  - a) General Notes
  - b) Electrical Site Plan
  - c) Control Schematics
  - d) Floor Plans and Details
  - e) Details (2 Sheets)
- xx. Structural
  - f) Notes
  - g) Vault Structural
  - h) Details
- xxi. Specifications - Full specification list including Killeen Front End Docs, General specifications, and

- technical specifications.
- xxii. Opinion of Probable Construction Cost (OPCC) – Kimley-Horn will prepare an opinion of probable construction cost for the project with a 20% contingency. The Consultant has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided are based on the information known to Consultant at the time and represent only the Consultant judgment as a design professional familiar with the construction industry. The Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.
  - xxiii. QA/QC – Kimley-Horn shall perform a quality control check of the deliverable prior to submittal to the City of Killeen.
  - xxiv. Revisions from the QA/QC – Kimley-Horn and team shall address the comments from the QA/QC.
  - xxv. Submit Deliverable: Compilation of the Task work products into the required deliverables to the City of Killeen, including compiling PDFs and printing copies

#### **Task 5 – Permitting and Land Acquisition Support**

- a) Texas Department of Transportation (TxDOT)
  - a. Driveway Permit -The Consultant will prepare for and attend meetings with the City and TxDOT, to the extent requested by the Client and budgeted for in this agreement. The following task meetings are anticipated:
    - i. Up to Two (2) TxDOT coordination meetings
    - ii. Consultant will prepare the driveway permit and submit to TxDOT for approval. If additional permits are required outside of the driveway permit all work shall be considered additional services.
  - b. Plans
    - i. Kimley-Horn will perform the following tasks as part of the Construction Plans:
    - ii. Develop a Sequence of Work and General Traffic Control Notes for construction.
    - iii. Prepare Driveway Plan and Profile Sheet at a scale of 1"=20'. Sheet will include any removals associated with construction of the driveway.
    - iv. Prepare Erosion Control Layout at a scale of 1"=40'.
    - v. Incorporate TxDOT standard details as applicable.
    - vi. Perform internal quality control review.
- b) Texas Commission of Environmental Quality (TCEQ)
  - a. The Consultant will submit water plans to TCEQ in accordance with TCEQ 290.
    - i. TCEQ Assumptions
      - 1. One (1) submittal
      - 2. Deliverables
        - a. TCEQ submittal letter
- c) Local Jurisdictions
  - a. The Consultant will coordinate with City Development Department to include a land disturbance permit.
    - i. Assumptions
      - 1. One (1) permit for tank
      - 2. One (1) meetings
- d) Kimley Horn Task - Coordination Landowners, City, and Land Agent for Easement Acquisition – Assumes coordination for up to 4 easements on the project. This includes coordination and 1 virtual meeting with each of the 2 parcel owners to discuss easement locations and offers. This does not include services for eminent domain.

#### **Task 6 – Subconsultants**

- a) Gorrondona and Associates – Survey; Boundary and Topography
- b) Arias and Associates – Geotechnical Investigation and Reporting
- c) Cox McClain and Associates – Environmental Investigation

- d) The Rios Group – Subsurface Utility Investigation (SUE)
- e) 7 Arrow Land Staff – Right of Entry and Land Acquisition
- f) JRSA – Electrical Design for Ground Storage Tank

#### **Task 7 – Bidding Phase Services**

It is anticipated that this project will contain one (1) set of Construction Documents. The Consultant will perform the following professional services for the bidding phase of the project:

- a) Notice to Bidders – The Consultant will prepare a notice to bidders and/or assist the Client with preparation.
- b) Pre-Bid Conference – The Consultant will attend a Pre-bid conference.
- c) Respond to Contractor Questions – the Consultant will respond to contractor questions regarding clarifications to the plans.
- d) Addenda – The Consultant will answer contractor questions during the bid process. The Consultant will issue up to four (4) addenda as required.
- e) Bid Opening – The Consultant will attend the bid opening, review bids and prepare a tabulation of bids, and assist with bid evaluation scoring as needed.
- f) Recommendation for Award – The Consultant will prepare a letter with a recommendation for award.
- g) Final Conformed Contract Documents – The Consultant will print and issue a PDF set of plans and specifications for distribution to the Client.

#### **Task Deliverables:**

- a) Bid tabulation
- b) Recommendation for Award
- c) Conformed Documents

#### **Task 8 – Construction Phase Services**

Consultant will provide the limited construction phase services specifically stated below:

- a) Pre-Construction Conference. Consultant will conduct [or attend] a Pre-Construction Conference prior to commencement of Work at the Site.
- b) Visits to Site and Observation of Construction. Consultant will make visits at intervals as directed by Client in order to observe the progress of the Work. For this scope of services, it is assumed that six (6) site visits during construction will be required. Such visits and observations by Consultant are not intended to be exhaustive or to extend to every aspect of Contractor's work. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation. Based on information obtained during such visits, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep Client informed of the general progress of the Work.
  - I. Consultant shall not, during such visits or as a result of such observations, supervise, direct, or have control over Contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with applicable laws and regulations. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
  - II. Recommendations with Respect to Defective Work. Consultant will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such

observations, Consultant believes that such work will not produce a completed Project that conforms generally to Contract Documents.

- c) Monthly Project Meetings: The Consultant shall attend fourteen (14) monthly construction meetings for the duration of construction which is anticipated to be 14 months. The construction meetings shall be with the consultant, selected contractor, owner's representative, and program manager. The consultant shall prepare an agenda and distribute meeting minutes to all attendees.
- d) Clarifications and Interpretations. Consultant will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to Client as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by Client. This scope of services assumes up to six (6) RFIs during the construction phase.
- e) Change Orders. Consultant may recommend Change Orders to Client and will review and make recommendations related to Change Orders submitted or proposed by the Contractor. This scope of services assumes up to three (3) change order evaluations.
- f) Shop Drawings and Samples. Consultant will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs. This scope of services assumes reviewing up to thirty (30) shop drawings. Each submittal shall be reviewed up to two (2) times.
- g) Substitutes and "or-equal." Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities. This assumes up to two (2) evaluations of equal substitutes.
- h) Inspections and Tests. Consultant may require special inspections or tests of Contractor's work as Consultant deems appropriate and may receive and review certificates of inspections within Consultant's area of responsibility or of tests and approvals required by laws and regulations or the Contract Documents. Consultant's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Consultant shall be entitled to rely on the results of such tests and the facts being certified.
- i) Disagreements between Client and Contractor. Consultant will, if requested by Client, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- j) Applications for Payment. Based on its observations and on review of applications for payment and accompanying supporting documentation, Consultant will determine the amounts that Consultant recommends Contractor be paid. Such recommendations will be based on Consultant's knowledge, information, and belief, and will state whether in Consultant's opinion Contractor's work has progressed to the point indicated, subject to any qualifications stated in the recommendation. In the case of unit price work, Consultant's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests. Consultant's recommendations will not be a representation that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work, or involved detailed inspections.
- k) Substantial Completion. Consultant will, promptly after notice from Contractor that it considers the entire Work ready for its intended use, in company with Client and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any

objections of Client, Consultant considers the Work substantially complete, Consultant will notify Client and Contractor.

- l) Final Notice of Acceptability of the Work. Consultant will conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Consultant shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of Consultant's knowledge, information, and belief based on the extent of its services and based upon information provided to Consultant upon which it is entitled to rely.
- m) Record Drawings – Consultant will prepare a set of record drawings based on the contractors redlines in the field. Record drawings will be delivered in PDF and AutoCAD format.
- n) Subconsultant Services for Construction Phase:
  - I. Electrical – JRSA

**Task Deliverables:**

- Review of up to thirty (30) shop drawings and submittals
- Prepare up to six (6) site visit/ /observations notes
- Attend and distribute meeting minutes for up to fourteen (14) monthly meetings
- Prepare responses for up to six (6) RFIs
- Prepare responses for up to three (3) Change Orders
- Substantial Completion Walk-Through and checklist
- Final Completion and Concurrence Letter
- Record Drawings

**Schedule**

Following Notice to Proceed (NTP) the Consultant will begin work in accordance with the attached Schedule Exhibit 2.



## PART 2 -- ADDITIONAL SERVICES

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

A. If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.

1. Bid and Construction Phase Services for a second bid package – this scope is for one bid package.
2. Water quality, retention, or detention facilities.
3. Chlorine dosing or analyzer facilities.
4. SWPPP Design, Inspection, or construction services.
5. Storm sewer design, detention design, or any floodplain analysis or design.
6. Franchise Utility Design is not included in this proposal.
7. Unavoidable relocation design and construction for utility, water, wastewater, storm sewer, or other underground structure or pipeline that would conflict with this design is not included.
8. Field Archaeological Survey.
9. Providing shop, mill, field, or laboratory inspection of materials and equipment is not included.
10. Performing investigations, studies, and analysis of work proposed by construction Contractor to correct defective work.
11. 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.
12. Services required to resolve bid protests or to rebid the project for any reason.
13. Full time resident representation services.
14. Providing services after the completion of the construction phase services.
15. Detailed Tree Survey
16. Tree mitigation or irrigation services
17. Water Alignment changes after 30% that involve movement into areas that were not identified during the Preliminary Phase and are not surveyed.
18. Legal Representation at hearings.
19. Public Meetings
20. Platting and City Development Permitting
21. Warranty Services
22. Providing services to review contractor claims, provided said claims are supported by causes not within the control of Kimley Horn or associated subconsultants.
23. Structural Design outside of what is required for the construction of the tank. This could include drainage culvert, retaining wall, or bridges required for access to the tanks.
24. Updates to Appraisals from the original is not included.
25. Preparation of Condemnation package as directed by the City.
26. Production of O&M manuals, except for those provided by the manufacturers, is not included in the scope. If additional O&M are requested, then this will be additional services.
27. If the OWNER employs an independent consultant after the date of this agreement for scope of services to assist in estimating, program management, peer review, value engineering, and/or constructability, then this will be additional services.

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  \_\_\_\_\_

## **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 constructability 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                     

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 \$908,087.30 based on the following assumed distribution of compensation:

1 Project Management	\$ 57,970.00
2 Preliminary Engineering	\$ 95,230.00
3a 30% Water Line Plans	\$ 50,955.00
3b 30% Tank Plans	\$ 27,220.00
4a 60%-Final Water Line Design Plans	\$ 186,075.00
4b 60%-Final Tank Design Plans	\$ 148,960.00
5 Permitting and Easement Coordination	\$ 41,315.00
6 Subconsultants Services	\$ 168,692.30
7 Bidding Phase Services	\$ 26,020.00
8 Limited Construction Phase Services	\$ 100,650.00
9 Extra Expenses	\$ 5,000.00

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  \_\_\_\_\_

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

General Representative 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 SM

---

### NOTICE OF ACCEPTABILITY OF WORK

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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: \_\_\_\_\_, \_\_\_\_\_

(Reverse side of Notice)

**CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of ENGINEER.
3. Said Notice is given as to the best of ENGINEER's knowledge, information, and belief as of the date hereof.
4. Said Notice is based entirely on and expressly limited by the scope of services ENGINEER has been employed by OWNER to perform or furnish during construction of the Project (including observation of the CONTRACTOR's work) under ENGINEER's Agreement with OWNER and under the Construction Contract referenced on the reverse hereof, and applies only to facts that are within ENGINEER's knowledge or could reasonably have been ascertained by ENGINEER as a result of carrying out the responsibilities specifically assigned to ENGINEER under ENGINEER's Agreement with OWNER and the Construction Contract referenced on the reverse hereof.
5. Said Notice is not a guarantee or warranty of CONTRACTOR's performance under the Construction Contract referenced on the reverse hereof nor an assumption of responsibility for any failure of CONTRACTOR to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT F**, consisting of 1 page, referred to in and part of the Agreement between **OWNER** and **ENGINEER** for Professional Services dated \_\_\_\_\_,

Initial:

OWNER \_\_\_\_\_  
ENGINEER 

### Construction Cost Limit

Paragraph 5.02 of the Agreement is amended and supplemented to include the following agreement of the parties:

#### *F5.02 Designing to Construction Cost Limit*

- A. A Construction Cost limit in the amount of Twelve Million Dollars (\$ 12,000,000.00 ) 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                     

**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<br>(Bodily Injury and Property Damage):<br>Each Accident | \$ 500,000 |
|---|------------|

f. Other (specify): On all policies except Workers Compensation and Professional Liability - "City of Killeen is named as Additional Insured on the General Liability and Auto Liability policies."

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the Agreement between **OWNER** and **ENGINEER** for Professional Services dated \_\_\_\_\_, \_\_\_\_\_.

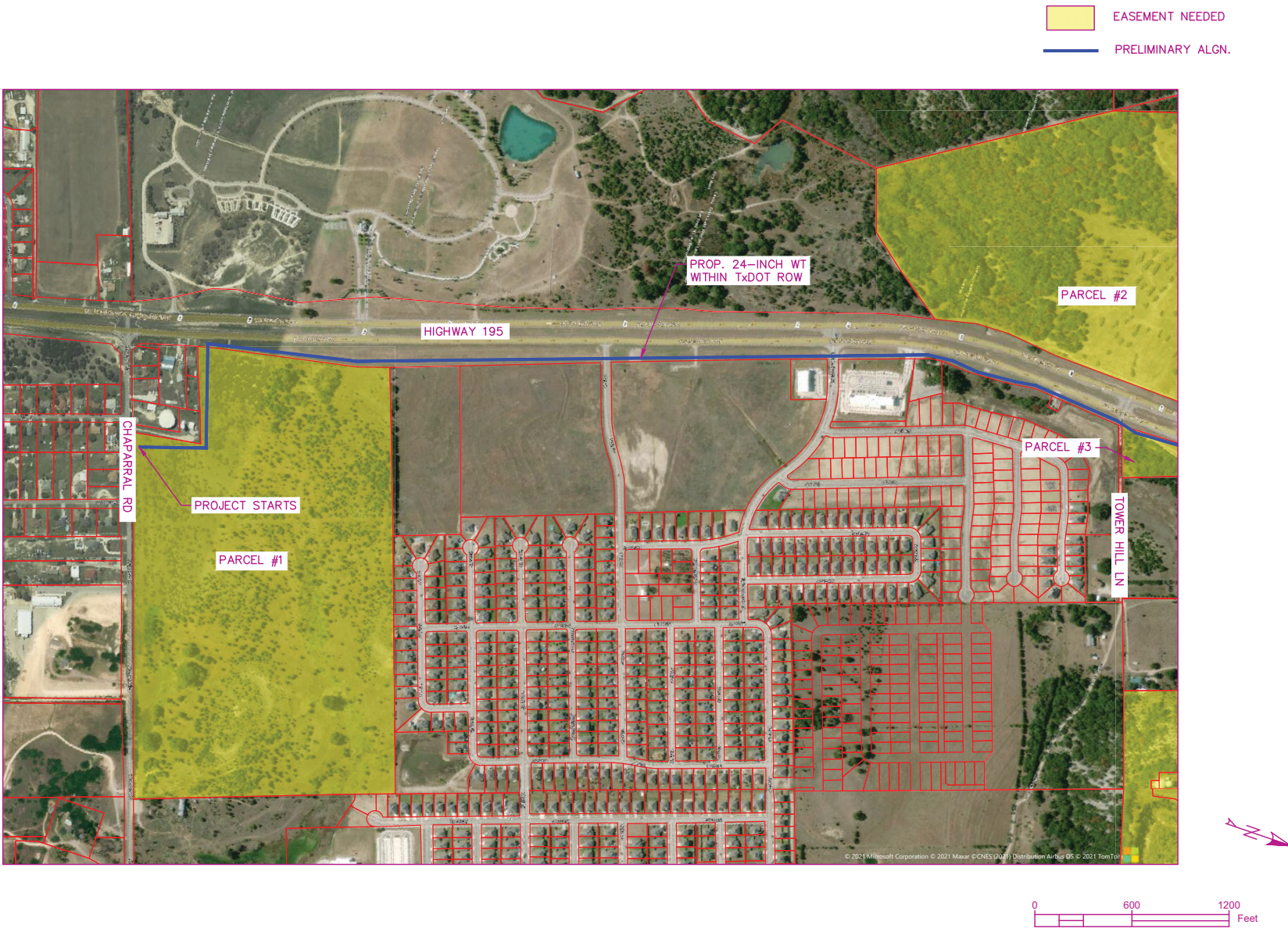
Initial:

OWNER \_\_\_\_\_  
ENGINEER  \_\_\_\_\_

**Special Provisions** \_\_\_\_\_

- None

EXHIBIT 1



Kimley-Horn  
2800 W. Parkway, Suite 300, Austin, TX 78748  
PH: 512-444-2377  
FAX: 512-444-2378  
www.kimley-horn.com

CITY OF KILLEEN  
HIGHWAY 195  
24-INCH WATER  
MAIN & 1.5MGD GST

DATE:	MAY 2021
DESIGN:	TR
DRAWN:	RK
CHECKED:	LP
BY:	NOI

SHEET

E1





## EXHIBIT 2

