

CONTRACT ROUTING FORM

Contract No. _____ Project No. _____ Bid No. _____ RFP No. _____

New Contract Renewal Change Order Amendment Assignment Other

NAME OF CONTRACTOR:

CONTRACT DESCRIPTION:

CONTRACT VALUE:

GL ACCOUNT NO:

GRANT FUNDED: NO YES If YES, Grant No.

SIGNATURES RECOMMENDING APPROVAL

Nicole Abrigo 8/20/2021

 PURCHASING/CONTRACT COORDINATOR DATE

 LEGAL DEPARTMENT DATE

 DIRECTOR ADMINISTERING CONTRACT DATE
 (greater than \$10,000)

APPROVED and EXECUTED

n/a

 DIRECTOR ADMINISTERING CONTRACT DATE
 (\$10,000 or less)

n/a

 CITY MANAGER/ASST CITY MANAGER DATE
 (\$50,000 or less)

 MAYOR/CITY SECRETARY ATTESTS (if applicable) DATE

FINAL PROCESSING

 PURCHASING DATE

<p><i>for Purchasing Use Only</i></p> <p>Insurance Certificates: on file</p> <p>Performance Bond: X</p> <p>Payment Bond: X</p> <p>Form 1295: 2021-791097</p>	<p><i>For City Secretary Use Only</i></p> <p>Originals sent to CSO:</p> <p>Scanned into Laserfiche/Global:</p> <p>Council Date: Item No.:</p>
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**MASTER SERVICES AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES
TASK ORDER EDITION
CONTRACT NO. 21-0115-MSA**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between
_____ (“Owner” or “City”) and
_____ (“Engineer”).
the City of Georgetown, A Texas Home Rule Municipal Corporation
Kasberg, Patrick & Associates, LP, a Texas limited partnership

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer’s services (“Services”) will be detailed in a duly executed Task Order for each Specific Project. Each Task Order will indicate the specific tasks and functions to be performed and deliverables to be provided.
- B. The general format of a Task Order is shown in Exhibit A to this Agreement.
- C. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- D. A Task Order will be effective when executed by Owner and Engineer. Engineer shall not perform under any prospective Task Order unless and until a Task Order is executed by Owner and Engineer.

1.02 *Task Order Procedure*

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer shall commence performance as set forth in the Task Order.
- C. Changes in an approved Task Order may be initiated by the Engineer or Owner by a Task Order Amendment. The Task Order Amendment shall: (i) describe a change in scope, including Services to be added, changed, or deleted; (ii) state the additional cost or cost reduction; and (iii) described schedule changes, if any. The general format of a Task Order Amendment is show in Exhibit B to this Agreement. A Task Order Amendment will be effective when executed by Owner and Engineer. Engineer shall not perform under any prospective Task Order Amendment unless and until the Task Order Amendment is

executed by Owner and Engineer. Oral amendments to a Task Order will have no effect, except in cases of an emergency threatening personal injury or property damage. In such case, the Owner and Engineer will document the Task Order Amendment in writing, as soon as possible.

- D. If Engineer becomes aware that a change concerning a Specific Project may require a Task Order Amendment to increase the scope of Services, request additional cost or request additional time, Engineer shall provide written notice to the Owner's Designated Representative within ten (10) days. If Engineer determines that a Task Order Amendment is required as a result of the change, Engineer shall initiate a Task Order Amendment within ten (10) days.

1.03 *Task Order Amount.* Engineer shall provide a not to exceed amount to perform the scope of Services included in the Task Order. A Level of Effort Table will be submitted to Owner to document and support Engineer's calculation of the not to exceed amount, including but not limited to a Standard Hourly Rate Schedule and a Reimbursable Expense Schedule.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General.* Owner shall have the responsibilities set forth herein, in this Agreement and in a Task Order.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 *Term.* This Agreement shall be effective and applicable to Task Orders issued hereunder for one (1) year from the Effective Date of the Agreement.

3.02 *Times for Rendering Services*

- A. The times for performing Services or providing deliverables will be stated in each Task Order. Time is of the essence.
- B. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- C. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of damages resulting from such failure.

ARTICLE 4 – PAYMENTS TO ENGINEER

4.01 *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with the specific Task Order. Engineer shall submit invoices to Owner on a monthly basis.

4.02 *Payments*

- A. Owner agrees to pay Engineer in accordance with Texas Government Code Chapter 2251. Engineer shall pay all Subcontractors and other expenses incurred under the Task Order in accordance with Texas Government Code Chapter 2251.
- B. *Compensation Methods.* Engineer Services will be compensated in accordance with one or more of the following methods as specified in the Task Order:

1. *Lump Sum Method.* The Lump Sum shall include compensation for Engineer's services and services of Subcontractors, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead and profit. Owner will pay Engineer for reasonable and customary Reimbursable Expenses in addition to Lump Sum.
 2. *Standard Hourly Rates Method.* The cumulative hours charged to the Specific Project is calculated by multiplying each class of Engineer's employees by the Standard Hourly Rates for each applicable billing class for all Services performed on the Specific Project and Subcontractor's charges, if any. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of Customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin of profit. In addition, Owner will pay Engineer for reasonable and customary Reimbursable Expenses.
- C. *Failure to Pay.* If Owner fails to make any payment that is due, Engineer may, after giving seven (7) days written notice to Owner, suspend services under the Task Order until Owner pays the amount due.
- D. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.

ARTICLE 5 – GENERAL CONSIDERATIONS

5.01 Standards of Performance

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will conform to standard engineering practices and applicable rules and regulations of Chapter 1001 of the Texas Occupations Code and the rules of the Texas Board of Professional Engineers. Engineer warrants that the professional engineering and related services performed or furnished by Engineer under this Agreement, and Task Order issued under this Agreement, if any, shall meet or exceed such standard of care.
- B. Owner will not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information, not reasonably known or discoverable by Engineer.
- C. Engineer shall serve as Owner's prime professional under each Task Order. Engineer may employ such Subcontractors as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. Engineer and Owner shall comply with applicable Laws and Regulations and additional Owner-mandated standards, if any, that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of the Effective Date of each Task Order. Changes to these requirements after the Effective Date of each Task Order may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.

- E. Engineer shall not be required to sign any documents, no matter by who requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its Services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such certification.
- F. Engineer shall at all times be an independent contractor with the sole authority to control and direct the performance of the details of the Services. Engineer shall not purport to be an employee or agent of the City and shall not have any right or power to bind the City to any obligation.
- G. Engineer shall procure and maintain at its expense all licenses and permits necessary to perform Services. Engineer shall require that its employees and Subcontractors are properly licensed to perform their respective portion of Services.
- H. The Services to be performed under this Agreement shall be performed entirely at Engineer's risk. Engineer shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services to be performed under this Agreement. Engineer shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury, or loss to employees, the Services, endangered species, or the property affected by this Agreement. All damage or loss to any property caused in whole or in part by Engineer, Subcontractor, or anyone employed by either of them shall be remedied by Engineer.

5.02 *Ownerships of Documents*

- A. City shall have the title to and ownership of all documents produced or developed by Engineer in connection with a Task Order issued pursuant to this Agreement. Documents include publications, plans drawings, designs, specifications, photographs, studies, reports schedules, computer programs, and other data and work product, in any form or media. Owner shall have sole ownership of all copyright interest in all documents to the extent that documents may be copyrighted. Engineer shall deliver all documents to the Owner at completion of the Specific Project under a Task Order, termination of Services under a Task Order, or upon Owner's request. Engineer may retain copies of its work product.

5.03 *Insurance*

- A. At all times for the term of this Agreement and when any Task Order is under performance, Engineer shall procure and maintain insurance as set forth in Exhibit C, "Insurance." Engineer's failure to purchase and maintain the required insurance shall be grounds for Owner's termination or suspension of this Agreement or a Task Order.
- B. Engineer shall cause Owner and its elected officials, officers, directors, employees, representatives and volunteers to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer which is applicable to a Specific Project. The additional insured status shall cover completed operations as well, and the policy covering completed work must remain in effect until the expiration of the statute of repose. As respects the Workers Compensation policy, the Engineer will waive subrogation in favor of the Owner.

- C. Engineer must complete and forward the required Certificates of Insurance to the Owner when Engineer executes this Agreement as verification of coverage required as indicated. Engineer shall not provide any Services under a Task Order until the required insurance is obtained and until such insurance has been reviewed by the Owner. Approval of insurance by the Owner shall not relieve or decrease the liability of Engineer and shall not be construed to be a limitation of liability on the part of Engineer. Engineer shall also complete and forward the required Certificates of Insurance to the Owner whenever a previously identified policy period has expired as verification of continuing coverage.
- D. Engineer's insurance coverage shall be written by companies licensed and authorized to do business in the State of Texas before the policies are issued and shall be written by companies with A.M. Best rating A VIII or better.
- E. All endorsements naming the Owner as additional insured, waivers, and notices of cancellation, as well as the Certificates of Insurances shall indicate: City of Georgetown, 300-1 Industrial Avenue, Georgetown, Texas 78626, ATTN: Contract Manager.
- F. The "other insurance" clause shall not apply to the Owner where the Owner is an additional insured shown on any policy. It is agreed that the Engineer's general liability insurance shall be considered primary with respect to any insurance or self insurance carried by the Owner. The Owner's insurance shall apply separately to each insured against whom a claim is made and/or lawsuits brought, except with respect to the limits of insured's liability.
- G. If insurance policies are not written for the specified amounts, Engineer shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- H. Owner shall be entitled, upon request and without expense, to receive "certified copies" of policies and policy endorsements and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the Parties or the underwriter on any such policies.
- I. Owner reserves the right to review the insurance requirements during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits and exclusions when deemed necessary and prudent by the Owner. Owner may request, in a Task Order or Task Order Amendment, that Engineer and its Subcontractors provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit C. Engineer shall obtain and shall require its Subcontractors to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner in the Task Order or Task Order Amendment.
- J. Engineer shall not allow any insurance to be cancelled nor permit any insurance to lapse during the term of this Agreement or as required in this Agreement. The policies shall contain the following language: "This policy shall not be cancelled or not renewed until after thirty (30) days prior written notice has been given to the additional insured, the City of Georgetown." In addition, Engineer shall provide Owner thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

- K. Engineer shall be responsible for premiums, deductibles and self insured retentions, if any, as stated in policies. All deductibles or self insured retentions shall be disclosed on the Certificates of Insurance.
- L. If Owner's property is being transported or stored off-site by Engineer, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect the Owner's property.
- M. The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of Engineer.
- N. Without limiting any of the other obligations or liabilities of the Engineer, the Engineer shall require each Subcontractor performing work under a Task Order to maintain during the term of the Task Order, at the Subcontractor's expense, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, the Engineer may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. The Engineer's Certificate of Insurance shall note in such event that the Subcontractors are included as additional insureds and that Engineer agrees to provide Workers Compensation for the Subcontractors and their employees. The Engineer shall obtain and monitor the Certificates of Insurance from each Subcontractor in order to comply with the insurance requirements. The Engineer must retain the Certificates of Insurance for the duration of the Task Order plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. The Owner shall be entitled, upon request and without expense, to receive copies of these Certificates of Insurance.

5.04 *Suspension and Termination*

A. *Suspension*

1. Owner has the right to suspend all or any portion of the Services to be performed under a Task Order upon ten (10) days written notice to Engineer. Upon receipt of a notice of suspension, Engineer shall:
 - a. immediately suspend Services on the date and to the extent specified in the notice;
 - b. protect and maintain the portion of the Services completed, including the portion of the Services suspended, unless otherwise specifically stated in the notice; and
 - c. continue to perform the Services not suspended.
2. If Owner suspends Services to be performed under a Task Order, Owner shall pay Engineer, as specified in the Task Order, for the Services completed to the date of suspension. Owner will also reimburse Engineer for the following costs, without duplication of any item, to the extent that such costs actually result from such suspension of Services:

- a. a reasonable standby charge to compensate Engineer for keeping (to the extent required in the notice) its organization and equipment committed to the Services in standby status;
 - b. reasonable costs associated with demobilization of Engineer's facility, forces and equipment; and
 - c. reasonable cost of maintaining and protecting that portion of the Services upon which activities have been suspended.
 3. Engineer shall not be entitled to receive any other compensation or reimbursement resulting from a suspension in Services under a Task Order.
 4. Upon receipt of notice to restart the suspended portion of Services, Engineer shall immediately resume performance to the extent required in the notice. Within ten (10) days after receipt of notice to resume the suspended portion, the Engineer shall submit a revised schedule for approval by Owner. If, as a result of any suspension, the cost to Engineer of subsequently performing the Services or the time required to perform the Services is changed, Engineer may initiate a Task Order Amendment.
- B. *Termination.* The obligation to provide further services under this Agreement, or under a Task Order, may be terminated:
 1. For Cause,
 - a. The obligation to provide further services under this Agreement, or under a Task Order, may be terminated by Owner, for cause, upon ten (10) days written notice in the event of substantial failure by Engineer to perform in accordance with this Agreement or any Task Order. This Agreement, or Task Order, will not terminate if the Engineer corrects the failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of the notice. If Engineer fails to cure the default, Owner may provide written notice of termination to Engineer.
 - b. The obligation to provide further services under this Agreement, or under Task Order, may be terminated by Engineer, for cause, upon ten (10) days written notice in the event of substantial failure by Owner to perform in accordance with the terms of this Agreement or any Task Order. This Agreement, or a Task Order, will not terminate if the Owner corrects the failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of the notice. If Owner fails to cure the default, Engineer may provide written notice of termination to Owner.
 2. For Convenience,
 - a. Owner has the right to terminate a Task Order under this Agreement for convenience at any time by providing ten (10) days written notice to Engineer. Upon receipt of a notice of termination for convenience, Engineer shall:
 - 1) immediately cease providing Services under the Task Order; and

2) protect and maintain the portion of the Services completed, unless otherwise specifically stated in the notice.

b. In the event of a termination for convenience, Owner shall pay Engineer, as specified in the Task Order, for the Services completed to the date of termination. Owner shall not be liable for special, incidental, consequential or punitive damages, for loss of anticipated future Services, anticipated profits, administrative costs or overhead on anticipated Services, or other indirect costs as a result of a termination for convenience.

5.05 *Controlling Law.* This Agreement is to be governed by and construed in accordance with Texas law. Owner and Engineer each submit to the exclusive jurisdiction of the state and federal courts in Williamson County, Texas. Owner does not waive the defense of sovereign immunity.

5.06 *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 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. There are no third party beneficiaries to this Agreement. The provisions of this Agreement do not, and shall not be construed to, create any legal or equitable right, remedy or claim enforceable by any person or entity other than Owner and Engineer. 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 other 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.

5.07 *Dispute Resolution*

A. If a dispute arises under this Agreement or a Task Order, Owner and Engineer agree to negotiate the dispute between them in good faith for a period of 30 days from the date of written notice of the dispute.

B. If the Parties fail to resolve a dispute through negotiation under Paragraph 5.07.A, then Owner and Engineer agree that they shall submit any and all unsettled claims,

counterclaims, and other matters in question between them arising out of or relating to this Agreement or a Task Order to mediation.

- C. If mediation is unsuccessful in resolving a dispute, then any and all unsettled claims, counterclaims, and other matters in question between Owner and Engineer arising out of or relating to this Agreement or Task Order (a) may be submitted to binding arbitration by written agreement of the Parties, or (b) may be filed by either Party in a court of competent jurisdiction.
- D. Upon Owner's request, Engineer shall proceed with performance of Services pending final resolution of a dispute arising under this Agreement or a Task Order.

5.08 Environmental Condition of Site

- A. With respect to each Task Order, Specific Project, and Site:
 - 1. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
 - 2. Owner represents to Engineer that to its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
 - 3. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
 - 4. If Engineer or any other Party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Specific Project affected thereby until the Site is in full compliance with applicable Laws and Regulations.
 - 5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under a Task Order, then the Engineer shall have the option of (a) submitting a Task Order Amendment for adjustment in its compensation or in the time of completion, or both; or (b) terminating this Agreement for cause.

5.09 Indemnification

- A. **General Obligation to Indemnify and Defend. TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS ELECTED OFFICIALS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES AND VOLUNTEERS OF AND FROM DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, FORFEITURES, PENALTIES, FINES, COSTS, LAWSUITS, LIABILITIES, ACTIONS, AND CAUSES OF ACTION, OF EVERY KIND**

WHATSOEVER, AND EXPENSES, INCLUDING BUT NOT LIMITED TO FEES AND CHARGES OF ENGINEERS, ATTORNEYS, AND OTHER PROFESSIONALS, AND COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS, AND EXPENSES AND COSTS OF INVESTIGATION, ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY TASK ORDER, OR ANY SPECIFIC PROJECT, TO THE EXTENT CAUSED BY 1) THE NEGLIGENT ACT OR OMISSION OR WILLFUL ACTS OF ENGINEER OR ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS OR 2) MATERIAL BREACH OF THIS AGREEMENT OR TASK ORDER. ENGINEER FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, ON BEHALF OF THE OWNER AND IN THE NAME OF THE OWNER, SUITS AND PROCEEDINGS INSTITUTED AGAINST OWNER TO WHICH THE INDEMNITY OBLIGATION APPLIES, AND PAY AWARDS OF DAMAGES ASSESSED WHICH RESULT FROM ANY SUCH CLAIM, SUIT OR PROCEEDING, INCLUDING ASSOCIATED EXPENSES, ATTORNEY FEES, COSTS OF INVESTIGATION, ARBITRATION AND/OR LITIGATION.

B. Intellectual Property.

- 1. ENGINEER AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS ELECTED OFFICIALS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES AND VOLUNTEERS OF AND FROM DAMAGES, CLAIMS, LOSSES, DEMANDS, FORFEITURES, PENALTIES, FINES, COSTS, LAWSUITS, LIABILITIES, ACTIONS, CAUSES OF ACTION OF EVERY KIND WHATSOEVER, AND EXPENSES, INCLUDING BUT NOT LIMITED TO FEES AND CHARGES OF ENGINEERS, ATTORNEYS, AND OTHER PROFESSIONALS, AND COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS, AND EXPENSES AND COSTS OF INVESTIGATION, TO THE EXTENT CAUSED BY ALLEGED INFRINGEMENT OF PATENT OR COPYRIGHT OF THE UNITED STATES OR OF ANY TRADEMARK OR TRADE SECRET PROTECTED BY EITHER FEDERAL OR STATE LAW BY ENGINEER OR ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS . ENGINEER SHALL, AT ITS OWN EXPENSE, DEFEND SUITS OR PROCEEDINGS INSTITUTED AGAINST OWNER, AND PAY AWARDS OF DAMAGES ASSESSED WHICH RESULT FROM ANY SUCH CLAIM, SUIT OR PROCEEDING, INCLUDING ASSOCIATED EXPENSES, ATTORNEY FEES, COSTS OF INVESTIGATION, ARBITRATION AND/OR LITIGATION, AND SHALL ABIDE BY RESULTING DECREES AND COMPROMISES.**
- 2. IF A RESTRAINING ORDER OR TEMPORARY INJUNCTION IS GRANTED, ENGINEER SHALL MAKE EVERY REASONABLE EFFORT, BY GIVING A SATISFACTORY BOND OR OTHERWISE, TO SECURE THE SUSPENSION OF ANY SUCH RESTRAINING ORDER OR TEMPORARY INJUNCTION. IF THE SERVICES ARE HELD TO CONSTITUTE AN INFRINGEMENT, AND PERMANENTLY ENJOINED, ENGINEER SHALL MAKE EVERY REASONABLE EFFORT TO SECURE FOR OWNER A LICENSE AT ENGINEER'S EXPENSE AUTHORIZING THE CONTINUED USE OF THE ALLEGED INFRINGING PORTION OF THE SERVICES. IF**

ENGINEER IS UNABLE TO SECURE SUCH LICENSE WITHIN A REASONABLE TIME, ENGINEER SHALL, AT ITS OWN EXPENSE AND WITHOUT IMPAIRING PERFORMANCE REQUIREMENTS, EITHER PROVIDE NON-INFRINGEMENT REPLACEMENT OR MODIFY THE SERVICES TO ELIMINATE THE INFRINGEMENT. IN ADDITION TO INDEMNIFYING AND SAVING OWNER HARMLESS, ENGINEER SHALL REIMBURSE OWNER FOR ANY COSTS INCURRED AS A RESULT OF THE UNAVAILABILITY OF THE INFRINGING ITEM OR ITS NON-INFRINGEMENT REPLACEMENT.

- C. Engineer's indemnity obligations are independent covenants and shall survive completion of or termination of the Agreement or any claimed breach of the Agreement.
- D. Owner shall promptly notify Engineer, in writing, of receipt of notice of the commencement or threatened commencement of any civil, administrative or investigative action or proceeding involving a claim for which Owner seeks indemnification. No failure to so notify Engineer shall relieve Engineer of its obligations under this Agreement except to the extent that Engineer can demonstrate damages attributable to such failure. Within fifteen (15) days following receipt of written notice from the Owner, but no later than ten (10) days before the date on which any response to a complaint or summons is due, Engineer shall assume control of the defense and/or resolution of the claim.
- E. *Release.* Engineer assumes full responsibility for the Services to be performed and releases, relinquishes, and discharges the City, its elected officials, officers, directors, agents, employees, representatives and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense, for any injury to or death of any person (whether employees of either Party or other third parties) and any loss of or damage to any property that is caused by or alleged to be caused by, arising out of, or in connection with Services performed under this Agreement or a Task Order. This release shall apply regardless of whether the claims, demands and/or causes of action are covered in whole or in part by insurance, and in the event of injury, death, property damage, or loss suffered by the Engineer, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish Services under this Agreement.

5.10 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing and sent to the Designated Representative by personal delivery, facsimile, registered or certified mail postage prepaid, or a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* 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.
- D. *Waiver.* A Party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

- E. *Applicability to Task Orders.* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified in the Task Order. In the event of a conflict between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- F. *Non-Exclusive Agreement.* Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other owners for the same or different services contemplated hereunder.

ARTICLE 6 – DEFINITIONS

6.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the Exhibits or Task Order, or in the following provisions:
 - 1. *Additional Services* – Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order which are not included in Basic Services for that Task Order.
 - 2. *Agreement* – This "Master Services Agreement between Owner and Engineer for Professional Services – Task Order Edition" including Exhibits and any duly executed Task Order.
 - 3. *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.
 - 4. *Basic Services* – Specified services to be performed for or furnished to Owner by Engineer in accordance with a Task Order.
 - 5. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

6. *Documents* – Data, reports, Drawings, 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.
7. *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.
8. *Effective Date of the Task Order* – The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
9. *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.
10. *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.
11. *PCBs* – Polychlorinated biphenyls.
12. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at 32 degrees Fahrenheit and 14.7 pounds per square inch absolute, such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
13. *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.
14. *Reimbursable Expenses* – Reasonable and customary expenses approved by Owner in a Task Order and incurred directly by Engineer in connection with the performing or furnishing of Services for a Specific Project for which Owner shall pay Engineer.
15. *Site* -- Lands or areas indicated in the Task Order for a Specific Project upon which the Services are to be performed.
16. *Specific Project* – An undertaking of Owner as set forth in a Task Order.
17. *Subcontractor* – Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent associates, consultants, subcontractors, or vendors. The term Engineer includes Engineer's Subcontractors.
18. *Task Order* – A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.

6.02 Exhibits

Included? (Yes or No)	Exhibit Letter	Exhibit Title
Yes	A	Task Order (Form)
Yes	B	Amendment to Task Order (Form)
Yes	C	Insurance

- 6.03 *Entire Agreement.* This Agreement (consisting of pages 1 to ___ inclusive, together with the Exhibits identified) 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.
- 6.04 *Designated Representatives.* 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 Agreement on behalf of each respective Party. Each Task Order shall likewise designate representatives of the Parties. The Designated Representative may be changed with written notice to the Designated Representative of the other Party.

[signatures on the following page(s)]

IN WITNESS WHEREOF, the Parties execute this Agreement.

OWNER:

ENGINEER:

By: _____

By: Alvin R. Sutton III

Name: _____

Name: Alvin R. (Trae) Sutton III, PE, CFM

Title: Mayor, City of Georgetown

Title: Principal

Engineer License or Firm's Certificate No. F-510

State of : Texas

Date Signed: _____

Date Signed: August 16, 2021

ATTEST:

APPROVED AS TO FORM:

_____, City Secretary

City Attorney

DESIGNATED REPRESENTATIVE
(see Paragraph 6.04):

DESIGNATED REPRESENTATIVE
(see Paragraph 6.04):

Title: _____

Title: Principal

Phone Number: 512-930-

Phone Number: 512-819-9478

Facsimile Number: 512-930-3559

Facsimile Number: 254-773-3731

E-Mail
Address: _____

E-Mail TSutton@kpaengineers.com
Address: _____

Address for giving notices:

Address for giving notices:

300-1 Industrial Ave.

800 South Austin Avenue

Georgetown, TX 78626

Georgetown, Texas 78626