

CONTRACT FOR ENGINEERING SERVICES

FIRM: Halff Associates, Inc. (“Engineer”)
ADDRESS: 100 NE Loop 410, STE 701 San Antonio, Texas 78216
PROJECT: Walnut Springs Pedestrian Route PER (“Project”)

THE STATE OF TEXAS §
§
COUNTY OF GUADALUPE §

THIS CONTRACT FOR ENGINEERING SERVICES (“Contract”) is made and entered into, effective as the date of the last party’s execution hereinbelow, by and between the City of Seguin, a Texas home rule municipality, whose offices are located at 205 North River Street, Seguin, Texas, 78155 (hereinafter referred to as “City”), and Engineer, and such Contract is for the purpose of contracting for professional engineering services.

RECITALS:

WHEREAS, V.T.C.A., Government Code §2254.002(2)(A)(vii) under Subchapter A entitled “Professional Services Procurement Act” provides for the procurement professional engineering services by local governmental entities; and

WHEREAS, City and Engineer desire to contract for such professional engineering services; and

WHEREAS, City and Engineer wish to document their agreement concerning the requirements and respective obligations of the parties;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable considerations, and the covenants and agreements hereinafter contained to be kept and performed by the respective parties hereto, it is agreed as follows:

ARTICLE 1

CONTRACT DOCUMENTS AND APPLICABLE PROJECT DOCUMENTS

A. Contract Documents. The Contract Documents consist of this Contract, any exhibits attached hereto (which exhibits are hereby incorporated into and made a part of this Contract), any fully executed Work Authorizations; any fully executed Supplemental Work Authorizations and all fully executed Contract Amendments (as defined herein in Article 14) which are subsequently issued. These form the entire contract, and all are as fully a part of this Contract as if attached to this Contract or repeated herein.

B. Project Documents. In addition to any other pertinent and necessary Project documents, the following documents shall be used in the development of the Project:

- A. American Association of State Highway and Transportation Officials (AASHTO)
 - a. Policy on Geometric Design of Highways and Streets
 - b. Guide for Planning, Design, and Operation of Pedestrian Facilities
 - c. Guide for the Development of Bicycle Facilities
 - d. Highway Safety Manual
- B. International Building Code
- C. Americans with Disabilities Act (ADA) Regulations
 - a. ADA Standards for Accessible Design Standards
- D. National Environmental Policy Act (NEPA)
- E. Federal Emergency Management Administration (FEMA)
- F. United States Army Corps of Engineers Regulations
- G. Texas Accessibility Standards (TAS) of the Architectural Barriers Act
- H. Texas Department of Transportation (TxDOT)
 - a. Texas Manual of Uniform Traffic Control (TMUTCD)
 - b. Standard Specifications for Construction of Highways, Streets, and Bridges
 - c. TxDOT Bridge Design Manual - LRFD
 - d. TxDOT Geotechnical Manual
 - e. TxDOT Roadway Design Manual
- I. City of Seguin
 - a. Design Standards
 - b. Stormwater Criteria Manual
 - c. Road Adequacy and Access Technical Guidance

ARTICLE 2

NON-COLLUSION; DEBARMENT; AND FINANCIAL INTEREST PROHIBITED

A. Non-collusion. Engineer warrants that he/she/it has not employed or retained any company or persons, other than a bona fide employee working solely for Engineer, to solicit or secure this Contract, and that he/she/it has not paid or agreed to pay any company or engineer any

fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City reserves and shall have the right to annul this Contract without liability or, in its discretion and at its sole election, to deduct from the contract price or compensation, or to otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

B. Debarment Certification. Engineer must sign the Debarment Certification enclosed herewith as **Exhibit A**.

C. Financial Interest Prohibited. Engineer covenants and represents that Engineer, his/her/its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the Project.

ARTICLE 3 **ENGINEERING SERVICES**

Engineer shall perform Engineering Services as identified in **Exhibit B** entitled “Engineering Services.”

City will prepare and issue Work Authorizations, in substantially the same form identified and attached hereto as **Exhibit C** and entitled “Work Authorization No. 1”, to authorize the Engineer to perform one or more tasks of the Engineering Services. Each Work Authorization will include a description of the work to be performed, a description of the tasks and milestones, a work schedule for the tasks, definite review times by City and Engineer of all Engineering Services and a fee amount agreed upon by the City and Engineer. The amount payable for a Work Authorization shall be supported by the estimated cost of each work task as described in the Work Authorization. The Work Authorization will not waive the Engineer’s responsibilities and obligations established in this Contract. The executed Work Authorizations shall become part of this Contract.

All work must be completed on or before the date specified in the Work Authorization. The Engineer shall notify the City of any event which will affect completion of the Work Authorization, although such notification shall not relieve the Engineer from costs or liabilities resulting from delays in completion of the Work Authorization. Should the review times or Engineering Services take longer than shown on the Work Authorization, through no fault of Engineer, Engineer may submit a timely written request for additional time, which shall be subject to the approval of the City. Any changes in a Work Authorization shall be enacted by a written Supplemental Work Authorization before additional costs may be incurred. Any Supplemental Work Authorization must be executed by both parties within the period specified in the Work Authorization.

ARTICLE 4 **CONTRACT TERM**

A. Term. The Engineer is expected to complete the Engineering Services described herein in accordance with the above described Work Authorizations or any Supplemental Work Authorization related thereto. If Engineer does not perform the Engineering Services in accordance with each applicable Work Authorization or any Supplemental Work Authorization related thereto, then City shall have the right to terminate this Contract as set forth below in Article 20. So long as the City elects not to terminate this Contract, it shall continue from day to day until such time as the Engineering Services are completed in accordance with each applicable Work Authorization or any Supplemental Work Authorization related thereto. Any Engineering Services performed or costs incurred after the date of termination shall not be eligible for reimbursement. Engineer shall notify City in writing as soon as possible if he/she/it determines, or reasonably anticipates, that the Engineering Services will not be completed in accordance with an applicable Work Authorization or any Supplemental Work Authorization related thereto.

B. Work Authorizations. Engineer acknowledges that each Work Authorization is of critical importance, and agrees to undertake all reasonably necessary efforts to expedite the performance of Engineering Services required herein so that construction of the Project will be commenced and completed as scheduled. In this regard, and subject to adjustments in a particular Work Authorization, as provided in Article 3 herein, Engineer shall proceed with sufficient qualified personnel and consultants necessary to fully and timely accomplish all Engineering Services required under this Contract in a professional manner.

C. Commencement of Engineering Services. After execution of this Contract, Engineer shall not proceed with Engineering Services until Engineer has been thoroughly briefed on the scope of the Project and has been notified in writing by the City to proceed, as provided in Article 8.

ARTICLE 5

COMPENSATION AND EXPENSES

City shall pay and Engineer agrees to accept up to the amount shown below as full compensation for the Engineering Services performed and to be performed under this Contract. The basis of compensation for the services of principals and employees engaged in the performance of the Engineering Services shall be based on the Rate Schedule set forth in the attached **Exhibit D**.

The maximum amount payable under this Contract, without modification, is **One Hundred Forty One thousand eighteen Dollars and zero Cents (\$ 141,018.00)** (the "Compensation Cap"), provided that any amounts paid or payable shall be solely pursuant to a validly issued Work Authorization or any Supplemental Work Authorization related thereto. In no event may the aggregate amount of compensation authorized under Work Authorizations and Supplemental Work Authorizations exceed the Compensation Cap. The Compensation Cap shall be revised equitably only by written Contract Amendments executed by both parties in the event of a change the overall scope of the Engineering Services set forth in **Exhibit B**, as authorized by City.

The Compensation Cap is based upon all labor and non-labor costs estimated to be required in the performance of the Engineering Services provided for under this Contract. Should the actual costs of all labor and non-labor costs rendered under this Contract be less than the above stated

Compensation Cap, then Engineer shall receive compensation for only actual fees and costs of the Engineering Services actually rendered and incurred, which may be less than the above stated Compensation Cap.

The Compensation Cap herein referenced may be adjusted for Additional Engineering Services requested and performed only if approved by a written Contract Amendment signed by both parties.

Engineer shall prepare and submit to City monthly progress reports in sufficient detail to support the progress of the Engineering Services and to support invoices requesting monthly payment. The format for such monthly progress reports and invoices must be in a format acceptable to City. Satisfactory progress of Engineering Services shall be an absolute condition of payment.

Engineer shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Contract at the Engineer's invoice cost. Invoices requesting reimbursement for costs and expenditures related to the Project (reimbursables) must be accompanied by copies of the provider's invoice. The copies of the provider's invoice must evidence the actual costs billed to Engineer without mark-up.

ARTICLE 6

METHOD OF PAYMENT

Payments to Engineer shall be made while Engineering Services are in progress. Engineer shall prepare and submit to City Project Manager, not more frequently than once per month, a progress report as referenced in Article 5 above. Such progress report shall state the percentage of completion of Engineering Services accomplished for an applicable Work Authorization or any Supplemental Work Authorization related thereto during that billing period and to date. This submittal shall also include a progress assessment report in a form acceptable to the City Engineer.

Simultaneous with submission of such progress report, Engineer shall prepare and submit one (1) invoice to City Project Manager in a form acceptable to the Director of Finance for the City. All invoices submitted to the City must, at a minimum, be accompanied by a complete packet of supporting documentation and time sheets detailing hours worked by staff persons with a description of the work performed by such persons. For Additional Engineering Services performed pursuant to this Contract, a separate invoice or itemization of the Additional Engineering Services must be presented with the same aforementioned requirements.

Payments shall be made by City based upon Engineering Services actually provided and performed. Upon timely receipt and approval of each statement, City shall make a good faith effort to pay the amount which is due and payable within thirty (30) days of receipt. City, following written notice to Engineer, reserves the right to reasonably withhold payment pending verification of satisfactory Engineering Services performed. Engineer has the responsibility to submit proof to City, adequate and sufficient in its determination, that tasks of an applicable Work Authorization or any Supplemental Work Authorization related thereto were completed.

The statements shall show the total amount earned to the date of submission and shall show the amount due and payable as of the date of the current statement. Final payment does not relieve Engineer of the responsibility of correcting any errors and/or omissions resulting from his/her/its negligence.

Upon submittal of the initial invoice, Engineer shall provide the Director of Finance for the City with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification that is complete in compliance with the Internal Revenue Code, its rules and regulations.

ARTICLE 7

PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Engineer will be made within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which the City receives a correct invoice for services, whichever is later.

Engineer may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply in the event:

- A. There is a bona fide dispute between City and Engineer concerning the supplies, materials, or equipment delivered or the services performed that causes the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Engineer and a subcontractor/subconsultant or between a subcontractor/subconsultant and its supplier concerning supplies, materials, or equipment delivered or the Engineering Services performed which causes the payment to be late; or
- D. The invoice is not mailed to the City in strict accordance with instructions, if any, on the purchase order, or this Contract or other such contractual agreement.

The City shall document to Engineer the issues related to disputed invoices within ten (10) calendar days of receipt of such invoice. Any non-disputed invoices shall be considered correct and payable per the terms of Chapter 2251, V.T.C.A., Texas Government Code.

ARTICLE 8

COMMENCEMENT OF ENGINEERING SERVICES

The Engineer shall not proceed with any task of the Engineering Services until Engineer has been thoroughly briefed on the scope of the Project and instructed, in writing by the City, to proceed with the applicable Engineering Services. The City shall not be responsible for work performed or costs incurred by Engineer related to any task for which a Work Authorization or a Supplemental Work Authorization related thereto has not been issued and signed by both parties.

Engineer shall not be required to perform any work for which a Work Authorization or a Supplemental Work Authorization related thereto has not been issued and signed by both parties.

ARTICLE 9

PROJECT TEAM

City's Designated Representative and Project Manager for purposes of this Contract are as follows:

Melissa Reynolds, P.E., MPA, CFM
City Engineer/ Director of Capital Projects | Engineering
City of Seguin
108 East Mountain Street
Seguin, Texas 78155
mreynolds@seguintexas.gov

Michael Sharp, CFM
Project Manager
Capital Projects | Engineering Department
108 East Mountain Street
Seguin, Texas 78155
msharp@seguintexas.gov

City shall have the right, from time to time, to change the City's Designated Representative by giving Engineer written notice thereof. With respect to any action, decision or determination which is to be taken or made by City under this Contract, the City's Designated Representative may take such action or make such decision or determination or shall notify Engineer in writing of an individual responsible for and capable of taking such action, decision or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by the City's Designated Representative on behalf of City shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Contract, in which case, actions taken by the City's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the City's Designated Representative shall be binding on City; *provided, however*, the City's Designated Representative shall not have any right to modify, amend or terminate this Contract, an Executed Work Authorization, an executed Supplemental Work Authorization or executed Contract Amendment. City's Designated Representative shall not have any authority to execute a Contract Amendment, Work Authorization or any Supplemental Work Authorization unless otherwise granted such authority by the City Manager or the Seguin City Council, as the policies of the City deem appropriate.

Engineer's Designated Representative for purposes of this Contract is as follows:

Troy Dorman, PhD, P.E., CFM
Halff Associates, Inc.
100 NE Loop 410, Suite 701
San Antonio, Texas 78216
tdorman@halff.com

Engineer shall have the right, from time to time, to change the Engineer's Designated Representative by giving City written notice thereof. The City shall have a right to object to any change of Engineer's Designated Representative if the City determines that the newly designated Representative does not have equal or greater qualifications as Engineer's Designated Representative named above. With respect to any action, decision or determination which is to be taken or made by Engineer under this Contract, the Engineer's Designated Representative may take such action or make such decision or determination or shall notify City in writing of an individual responsible for and capable of taking such action, decision or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by the Engineer's Designated Representative on behalf of Engineer shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Contract, in which case, actions taken by the Engineer's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the Engineer's Designated Representative shall be binding on Engineer. Engineer's Designated Representative shall have the right to modify, amend and execute Work Authorizations, Supplemental Work Authorizations and Contract Amendments on behalf of Engineer.

ARTICLE 10

PROGRESS EVALUATION

Engineer shall, from time to time during the progress of the Engineering Services, confer with the City at the City's discretion. Engineer shall prepare and present such information as may be pertinent and necessary, or as may be reasonably requested by City, in order for City to evaluate features of the Engineering Services. At the request of City or Engineer, conferences shall be provided at Engineer's office, the offices of City, or at other locations designated by City. When requested by City, such conferences shall also include evaluation of the Engineering Services. City may, from time to time, require Engineer to appear and provide information to the Seguin City Council.

Should City determine that the progress in Engineering Services does not satisfy an applicable Work Authorization or any Supplemental Work Authorization related thereto, then City shall review same with Engineer to determine corrective action required.

Engineer shall promptly advise City in writing of events which have or may have a significant impact upon the progress of the Engineering Services, including but not limited to the following:

- A. Problems, delays, adverse conditions which may materially affect the ability to meet the objectives of an applicable Work Authorization or any Supplemental Work Authorization related thereto, or preclude the attainment of Project Engineering Services units by established time periods; and such disclosure shall be accompanied by statement of actions taken or contemplated, and City assistance needed to resolve the situation, if any; and
- B. Favorable developments or events which enable meeting goals sooner than anticipated in relation to an applicable Work Authorization's or any Supplemental Work Authorization related thereto.

ARTICLE 11

SUSPENSION

Should City desire to suspend the Engineering Services, but not to terminate this Contract, then such suspension may be effected by City giving Engineer thirty (30) calendar days' written notification. Such thirty-day notice may be waived in writing by agreement and signature of both parties. The Engineering Services may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from City to resume the Engineering Services. Such sixty-day (60) notice may be waived in writing by agreement and signature of both parties. If this Contract is suspended for more than thirty (30) days, Engineer shall have the option of terminating this Contract and, in the event, Engineer shall be compensated for all Engineering Services performed and reimbursable expenses incurred, provided such Engineering Services and reimbursable expenses have been previously authorized and approved by City, to the effective date of suspension.

If City suspends the Engineering Services, the contract period as determined in Article 4, and the Work Authorization or any Supplemental Work Authorization related thereto, shall be extended for a time period equal to the suspension period.

City assumes no liability for Engineering Services performed or costs incurred prior to the date authorized by City for Engineer to begin Engineering Services, and/or during periods when Engineering Services is suspended, and/or subsequent to the completion date.

ARTICLE 12

ADDITIONAL ENGINEERING SERVICES

If Engineer forms a reasonable opinion that any work he/she/it has been directed to perform is beyond the overall scope of this Contract, as set forth in **Exhibit B**, and as such constitutes extra work ("Additional Engineering Services"), he/she/it shall promptly notify City in writing. In the event City finds that such work does constitute Additional Engineering Services, City shall so advise Engineer and a written Contract Amendment will be executed between the parties as provided in Article 14. Any increase to the Compensation Cap due to Additional Engineering Services must be set forth in such Contract Amendment. Engineer shall not perform any proposed Additional Engineering Services nor incur any additional costs prior to the execution, by both parties, of a written Contract Amendment. Following the execution of a Contract Amendment that provides for Additional Engineering Services, a written Work Authorization, which sets forth the Additional Engineering Services to be performed, must be

executed by the parties. City shall not be responsible for actions by Engineer nor for any costs incurred by Engineer relating to Additional Engineering Services not directly associated with the performance of the Engineering Services authorized in this Contract, by a fully executed Work Authorization or a fully executed Contract Amendment thereto.

ARTICLE 13

CHANGES IN COMPLETED ENGINEERING SERVICES

If City deems it necessary to request changes to previously satisfactorily completed Engineering Services or parts thereof which involve changes to the original Engineering Services or character of Engineering Services under this Contract, then Engineer shall make such revisions as requested and as directed by City. Such revisions shall be considered as Additional Engineering Services and paid for as specified under Article 12.

Engineer shall make revisions to Engineering Services authorized hereunder as are necessary to correct errors appearing therein, when required to do so by City. No additional compensation shall be due for such Engineering Services.

ARTICLE 14

CONTRACT AMENDMENTS

The terms set out in this Contract may be modified by a written fully executed Contract Amendment. Changes and modifications to a fully executed Work Authorization shall be made in the form of a Supplemental Work Authorization. To the extent that such changes or modifications to a Work Authorization do not also require modifications to the terms of this Contract (i.e. changes to the overall scope of Engineering Services set forth in **Exhibit B**, modification of the Compensation Cap, etc.) a Contract Amendment will not be required.

ARTICLE 15

USE OF DOCUMENTS

All documents, including but not limited to drawings, specifications and data or programs stored electronically, (hereinafter referred to as “Engineering Work Products”) prepared by Engineer and its subcontractors/subconsultants are related exclusively to the services described in this Contract and are intended to be used with respect to this Project. However, it is expressly understood and agreed by and between the parties hereto that all of Engineer’s designs under this Contract (including but not limited to tracings, drawings, estimates, specifications, investigations, studies and other documents, completed), shall be the property of the City to be thereafter used in any lawful manner as the City elects. Any such subsequent use made of documents by the City shall be at the City’s sole risk and without liability to Engineer.

Upon execution of this Contract, Engineer grants to the City permission to reproduce Engineer’s work and documents for purposes of constructing, using and maintaining the Project, provided that the City shall comply with its obligations, including prompt payment of all sums when due, under this Contract. Engineer shall obtain similar permission from Engineer’s subcontractors/subconsultants consistent with this Contract. If and upon the date Engineer is

adjudged in default of this Contract, the City is permitted to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the work and documents for the purposes of completing, using and maintaining the Project.

The City shall not assign, delegate, sublicense, pledge or otherwise transfer any permission granted herein to another party without the prior written consent of Engineer. However, the City shall be permitted to authorize the contractor, subcontractors and material or equipment suppliers to reproduce applicable portions of the Engineering Work Products appropriate to and for use in the execution of the Work. Submission or distribution of Engineering Work Products to meet official regulatory requirements or for similar purposes in connection with the Project is permitted. Any unauthorized use of the Engineering Work Products shall be at the City's sole risk and without liability to Engineer and its Engineers.

Prior to Engineer providing to the City any Engineering Work Products in electronic form or the City providing to Engineer any electronic data for incorporation into the Engineering Work Products, the City and Engineer shall by separate written contract set forth any special limitations not otherwise provided in this Contract governing such Engineering Work Products or electronic data. Any electronic files are provided by Engineer for the convenience of the City, and use of them is at the City's sole risk. In the case of any defects in electronic files or any discrepancies between them and any hardcopy of the same documents prepared by Engineer, the hardcopy shall prevail.

Engineer shall have no liability for changes made to the drawings by other engineers subsequent to the completion of the Project. Any such change shall be sealed by the engineer making that change and shall be appropriately marked to reflect what was changed or modified.

ARTICLE 16

PERSONNEL, EQUIPMENT AND MATERIAL

Engineer shall furnish and maintain, at its own expense, quarters for the performance of all Engineering Services, and adequate and sufficient personnel and equipment to perform the Engineering Services as required. All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Engineer who, in the reasonable opinion of the City's Designated Representative is incompetent or whose conduct becomes detrimental to the Engineering Services shall immediately be removed from association with the Project when so instructed by the City. Engineer certifies that it presently has adequate qualified personnel in its employment for performance of the Engineering Services required under this Contract, or will obtain such personnel from sources other than the City. Engineer may not change the Project Manager without prior written consent of the City.

ARTICLE 17

SUBCONTRACTING

Engineer shall not assign, subcontract or transfer any portion of the Engineering Services under this Contract without prior written approval from the City. All subcontracts shall include

the provisions required in this Contract. No subcontract shall relieve Engineer of any responsibilities under this Contract.

ARTICLE 18

REVIEW OF ENGINEERING SERVICES

Engineer's Engineering Services will be reviewed by the City under its applicable technical requirements and procedures.

A. Completion. Reports, plans, specifications, and supporting documents shall be submitted by Engineer on or before the dates specified in the applicable Work Authorization or Supplemental Work Authorization related thereto. Upon receipt of same, the submission shall be checked for completion. "Completion" or "Complete" shall be defined as all of the required items, as set out in the applicable Work Authorization, have been included in compliance with the requirements of this Contract. The completeness of any Engineering Services submitted to the City shall be determined by the City within thirty (30) days of such submittal and the City shall notify Engineer in writing within such thirty (30) day period if such Engineering Services have been found to be incomplete. If the submission is Complete, the City shall notify Engineer and the City's technical review process will begin.

If the submission is not Complete, the City shall notify Engineer, who shall perform such professional services as are required to complete the Engineering Services and resubmit it to the City. This process shall be repeated until a submission is Complete.

B. Acceptance. The City shall review the completed Engineering Services for compliance with this Contract. If necessary, the completed Engineering Services shall be returned to Engineer, who shall perform any required Engineering Services and resubmit it to the City. This process shall be repeated until the Engineering Services are Accepted. "Acceptance" or "Accepted" shall mean that in the City's reasonable opinion, substantial compliance with the requirements of this Contract has been achieved.

C. Final Approval. After Acceptance, Engineer shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive Final Approval by the City. "Final Approval" in this sense shall mean formal recognition that the Engineering Services have been fully carried out.

D. Errors and Omissions. After Final Approval, Engineer shall, without additional compensation, perform work required as a result of Engineer's development of the work which is found to be in error or omission due to Engineer's negligence. However, any work required or occasioned for the convenience of the City after Final Approval shall be paid for as Additional Engineering Services.

E. Disputes Over Classifications. In the event of any dispute over the classification of Engineer's Engineering Services as Complete, Accepted, or having attained Final Approved under this Contract, the decision of the City shall be final and binding on Engineer, subject to any

civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

F. City's Reliance on Engineer. ENGINEER'S DUTIES AS SET FORTH HEREIN SHALL AT NO TIME BE IN ANY WAY DIMINISHED BY REASON OF ANY REVIEW, EVALUATION OR APPROVAL BY THE CITY NOR SHALL THE ENGINEER BE RELEASED FROM ANY LIABILITY BY REASON OF SUCH REVIEW, EVALUATION OR APPROVAL BY THE CITY, IT BEING UNDERSTOOD THAT THE CITY AT ALL TIMES IS ULTIMATELY RELYING UPON THE ENGINEER'S SKILL, ABILITY AND KNOWLEDGE IN PERFORMING THE ENGINEERING SERVICES REQUIRED HEREUNDER.

ARTICLE 19

VIOLATION OF CONTRACT TERMS/BREACH OF CONTRACT

Violation of contract terms or breach of contract by Engineer shall be grounds for termination of this Contract, and any increased costs arising from Engineer's default, breach of contract, or violation of contract terms shall be paid by Engineer.

ARTICLE 20

TERMINATION

This Contract may be terminated as set forth below.

- A.** By mutual agreement and consent, in writing, of both parties.
- B.** By the City, by notice in writing to Engineer, as a consequence of failure by Engineer to perform the Engineering Services set forth herein in a satisfactory manner.
- C.** By either party, upon the failure of the other party to fulfill its obligations as set forth herein.
- D.** By the City, for reasons of its own and not subject to the mutual consent of Engineer, upon not less than thirty (30) days' written notice to Engineer.
- E.** By satisfactory completion of all Engineering Services and obligations described herein.

Should the City terminate this Contract as herein provided, no fees other than fees due and payable at the time of termination plus reimbursable expenses incurred shall thereafter be paid to Engineer. In determining the value of the Engineering Services performed by Engineer prior to termination, the City shall be the sole judge. Compensation for Engineering Services at termination will be based on a percentage of the Engineering Services completed at that time. Should the City terminate this Contract under Subsection (D) immediately above, then the amount charged during the thirty-day notice period shall not exceed the amount charged during the preceding thirty (30) days, without prior written consent of the City.

If Engineer defaults in the performance of this Contract or if the City terminates this Contract for fault on the part of Engineer, then the City shall give consideration to the actual costs incurred by Engineer in performing the Engineering Services to the date of default, the amount of Engineering Services required which was satisfactorily completed to date of default, the value of

the Engineering Services which are usable to the City, the cost to the City of employing another firm to complete the Engineering Services required and the time required to do so, and other factors which affect the value to the City of the Engineering Services performed at the time of default.

The termination of this Contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the City under this Contract. If the termination of this Contract is due to the failure of Engineer to fulfill his/her/its contractual obligations, then the City may take over the Project and prosecute the Engineering Services to completion. In such case, Engineer shall be liable to the City for any additional and reasonable costs incurred by the City.

Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurements made by Engineer in support of the Engineering Services under this Contract.

ARTICLE 21

COMPLIANCE WITH LAWS

A. Compliance. Engineer shall comply with applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the administrative/executive orders of any court, or administrative bodies or tribunals in any manner affecting the performance of this Contract, including without limitation, minimum/maximum salary and wage statutes and regulations, and licensing laws and regulations. Engineer shall furnish the City with satisfactory proof of his/her/its compliance.

Engineer shall further obtain all permits and licenses required in the performance of the Engineering Services contracted for herein.

B. Taxes. Engineer will pay all taxes, if any, required by law arising by virtue of the Engineering Services performed hereunder. The City is qualified for exemption pursuant to the provisions of Texas Tax Code Section 151.309.

ARTICLE 22

INDEMNIFICATION

ENGINEER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST LIABILITIES, LOSSES, PENALTIES, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REIMBURSEMENT OF REASONABLE ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARISE FROM A NEGLIGENT ACT OR OMISSION, NEGLIGENCE, OR INTENTIONAL TORT COMMITTED BY ENGINEER, ENGINEER'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON OR ENTITY UNDER CONTRACT WITH ENGINEER INCLUDING, WITHOUT LIMITATION, ENGINEER'S SUBCONSULTANTS, OR ANY OTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL.

ENGINEER FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM ENGINEER'S FAILURE TO PAY ENGINEER'S EMPLOYEES, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, IN CONNECTION WITH ANY OF THE WORK PERFORMED OR TO BE PERFORMED UNDER THIS CONTRACT BY ENGINEER.

ENGINEER FURTHER AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY ARISING OUT OF THE USE OF ANY PLANS, DESIGN, DRAWINGS, OR SPECIFICATIONS FURNISHED BY ENGINEER IN THE PERFORMANCE OF THIS CONTRACT.

THE LIMITS OF INSURANCE REQUIRED IN THIS CONTRACT AND/OR THE CONTRACT DOCUMENTS SHALL NOT LIMIT ENGINEER'S OBLIGATIONS UNDER THIS SECTION. THE TERMS AND CONDITIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THE CONTRACT AND/OR CONTRACT DOCUMENTS OR THE SUSPENSION OF THE WORK HEREUNDER. TO THE EXTENT THAT ANY LIABILITIES, PENALTIES, DEMANDS, CLAIMS, LAWSUITS, LOSSES, DAMAGES, COSTS AND EXPENSES ARE CAUSED IN PART BY THE ACTS OF THE CITY OR THIRD PARTIES FOR WHOM ENGINEER IS NOT LEGALLY LIABLE, ENGINEER'S OBLIGATIONS SHALL BE IN PROPORTION TO ENGINEER'S FAULT. THE OBLIGATIONS HEREIN SHALL ALSO EXTEND TO ANY ACTIONS BY THE CITY TO ENFORCE THIS INDEMNITY OBLIGATION.

IN THE EVENT THAT CONTRACTORS INITIATE LITIGATION AGAINST THE CITY IN WHICH THE CONTRACTOR ALLEGES DAMAGES AS A RESULT OF ANY NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ENGINEER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, INCLUDING, BUT NOT LIMITED TO, DEFECTS, ERRORS, OR OMISSIONS, THEN THE CITY SHALL HAVE THE RIGHT TO JOIN ENGINEER IN ANY SUCH PROCEEDINGS AT THE CITY'S COST. ENGINEER SHALL ALSO HOLD THE CITY HARMLESS AND INDEMNIFY THE CITY TO THE EXTENT THAT ENGINEER, ANY OF ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, CAUSED SUCH DAMAGES TO CONTRACTOR, INCLUDING ANY AND ALL COSTS AND ATTORNEYS' FEES INCURRED BY THE CITY IN CONNECTION WITH THE DEFENSE OF ANY CLAIMS WHERE ENGINEER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, ARE ADJUDICATED AT FAULT.

ARTICLE 23

ENGINEER'S RESPONSIBILITIES

Engineer shall be responsible for the accuracy of his/her/its Engineering Services and shall make necessary revisions or corrections to its work product resulting from errors, omissions, or negligent acts, and same shall be done without compensation. The City shall determine Engineer's responsibilities for all questions arising from design errors and/or omissions, subject to the dispute

resolution provisions of Article 33. Engineer shall not be relieved of responsibility for subsequent correction of any such errors or omissions in its work product, or for clarification of any ambiguities until after the construction phase of the Project has been completed.

ARTICLE 24 **ENGINEER'S SEAL**

The responsible engineer shall sign, seal and date all appropriate engineering submissions to the City in accordance with the Texas Engineering Practice Act and the rules of the State Board of Registration for Professional Engineers.

ARTICLE 25 **INSURANCE**

Engineer must comply with the following insurance requirements at all times during this Contract:

A. Coverage Limits. Engineer, at Engineer's sole cost, shall purchase and maintain during the entire term while this Contract is in effect the following insurance:

1. Worker's Compensation in accordance with statutory requirements.
2. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.
3. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate.
4. Professional Liability Errors and Omissions Insurance in the amount of \$2,000,000.00 per claim.

B. Additional Insureds; Waiver of Subrogation. The City, its directors, officers and employees shall be added as additional insureds under policies listed under (2) and (3) above, and on those policies where the City, its directors, officers and employees are additional insureds, such insurance shall be primary and any insurance maintained by the City shall be excess and not contribute with it. Such policies shall also include waivers of subrogation in favor of the City.

C. Premiums and Deductible. Engineer shall be responsible for payment of premiums for all of the insurance coverages required under this section. Engineer further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the Engineer is responsible hereunder, Engineer shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over \$50,000 in the Engineer's insurance must be declared and approved in writing by the City in advance.

D. Commencement of Work. Engineer shall not commence any field work under this Contract until he/she/it has obtained all required insurance and such insurance has been approved by the City. As further set out below, Engineer shall not allow any subcontractor/subconsultant(s) to commence work to be performed in connection with this

Contract until all required insurance has been obtained and approved and such approval shall not be unreasonably withheld. Approval of the insurance by the City shall not relieve or decrease the liability of Engineer hereunder.

E. Insurance Company Rating. The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A-rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued.

F. Certification of Coverage. Engineer shall furnish the City with a certification of coverage issued by the insurer. Engineer shall not cause any insurance to be canceled nor permit any insurance to lapse. **In addition to any other notification requires set forth hereunder, Engineer shall also notify the City, within twenty-four (24) hours of receipt, of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.**

G. No Arbitration. It is the intention of the City and agreed to and hereby acknowledged by the Engineer, that no provision of this Contract shall be construed to require the City to submit to mandatory arbitration in the settlement of any claim, cause of action or dispute, except as specifically required in direct connection with an insurance claim or threat of claim under an insurance policy required hereunder or as may be required by law or a court of law with jurisdiction over the provisions of this Contract.

H. Subcontractor/Subconsultant's Insurance. Without limiting any of the other obligations or liabilities of Engineer, Engineer shall require each subcontractor/subconsultant performing work under this Contract (to the extent a subcontractor/subconsultant is allowed by the City) to maintain during the term of this Contract, at the subcontractor/subconsultant's own expense, the same stipulated minimum insurance required in this Article above, including the required provisions and additional policy conditions as shown below in this Article.

Engineer shall obtain and monitor the certificates of insurance from each subcontractor/subconsultant in order to assure compliance with the insurance requirements. Engineer must retain the certificates of insurance for the duration of this Contract, and shall have the responsibility of enforcing these insurance requirements among its subcontractor/subconsultants. The City shall be entitled, upon request and without expense, to receive copies of these certificates of insurance.

I. Insurance Policy Endorsements. Each insurance policy shall include the following conditions by endorsement to the policy:

1. The City shall be notified thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, and such notice thereof shall be given to the City by certified mail to:

Pina Iuffredo
205 N. River Street

Seguin, Texas 78155

With copy to: Mark D. Kennedy
Via email at MKennedy@seguintexas.gov

2. The policy clause “Other Insurance” shall not apply to any insurance coverage currently held by the City, to any such future coverage, or to the City’s Self-Insured Retentions of whatever nature.

J. Cost of Insurance. The cost of all insurance required herein to be secured and maintained by Engineer shall be borne solely by Engineer, with certificates of insurance evidencing such minimum coverage in force to be filed with the City. Such Certificates of Insurance are evidenced as **Exhibit F** herein entitled “Certificates of Insurance.”

ARTICLE 26 **COPYRIGHTS**

The City shall have the royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any reports developed by Engineer for governmental purposes.

ARTICLE 27 **SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon and inure to the benefit of the parties hereto, their successors, lawful assigns, and legal representatives. Engineer may not assign, sublet or transfer any interest in this Contract, in whole or in part, by operation of law or otherwise, without obtaining the prior written consent of the City.

ARTICLE 28 **SEVERABILITY**

In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE 29 **PRIOR AGREEMENTS SUPERSEDED**

This Contract constitutes the sole agreement of the parties hereto for the scope of work defined herein and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein. This Contract may only be amended or supplemented by mutual agreement of the parties hereto in writing.

ARTICLE 30
ENGINEER'S ACCOUNTING RECORDS

Engineer agrees to maintain, for a period of three (3) years after final payment under this Contract, detailed records identifying each individual performing the Engineering Services, the date or dates the services were performed, the applicable hourly rates, the total amount billed for each individual and the total amount billed for all persons, records of reimbursable costs and expenses of other providers and provide such other details as may be requested by the Director of Finance for the City for verification purposes. Engineer agrees that the City or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and photocopy any and all books, documents, papers and records of Engineer which are directly pertinent to the services to be performed under this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. Engineer further agrees that the City shall have access during normal working hours to all necessary Engineer facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City shall give Engineer reasonable advance notice of intended audits.

ARTICLE 31
NOTICES

All notices to either party by the other required under this Contract shall be personally delivered or mailed to such party at the following respective addresses:

City: Steve Parker, City Manager
205 N. River Street
Seguin, Texas 78155

With copy to: Mark Kennedy, City Attorney
205 N. River Street
Seguin, Texas 78155

Engineer: Troy Dorman, PhD, P.E.,
Halff Associates, Inc.
100 NE Loop 410, Suite 701
San Antonio, Texas 78216
tdorman@halff.com

With a copy to: Halff Associates, Inc.
Attn: Legal Department
1201 N. Bowser Rd.
Richardson, TX 75081
legalhelp@halff.com

ARTICLE 32

GENERAL PROVISIONS

A. Time of Performance. Subject to Article 3 and 32(D.) hereof, Engineer understands and agrees that any failure of Engineer to complete the Engineering Services for each phase of this Contract within the agreed work schedule set out in the applicable Work Authorization may constitute a material breach of this Contract. Engineer shall be fully responsible for his/her/its delays or for failures to use his/her/its reasonable efforts in accordance with the terms of this Contract and the Engineer's standard of performance as defined herein. Where damage is caused to the City due to Engineer's negligent failure to perform the City may accordingly withhold, to the extent of such damage, Engineer's payments hereunder without waiver of any of the City's additional legal rights or remedies.

B. Force Majeure. Neither the City nor Engineer shall be deemed in violation of this Contract if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

C. Enforcement and Venue. This Contract shall be enforceable in Seguin, Guadalupe County, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Guadalupe County, Texas. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas excluding, however, its choice of law rules.

D. Standard of Performance. The standard of care for all professional engineering, consulting and related services performed or furnished by Engineer and its employees under this Contract will be the care and skill ordinarily used by members of Engineer's profession practicing under the same or similar circumstances at the same time and in the same locality.

E. Opinion of Probable Cost. Any opinions of probable Project cost or probable construction cost provided by Engineer are made on the basis of information available to Engineer and on the basis of Engineer's experience and qualifications and represents its judgment as an experienced and qualified professional engineer. 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 does not guarantee that proposals, bids or actual Project or construction cost will not vary from opinions of probable cost Engineer prepares.

F. Opinions and Determinations. Where the terms of this Contract provide for action to be based upon opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

G. Reports of Accidents. Within 72 hours after Engineer becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person

or property of any third person (other than an employee of the Engineer), whether or not it results from or involves any action or failure to act by the Engineer or any employee or agent of the Engineer and which arises in any manner from the performance of this Contract, the Engineer shall send a written report of such accident or other event to the City, setting forth a full and concise statement of the facts pertaining thereto. The Engineer shall also send the City a copy of any summons, subpoena, notice, or other documents served upon the Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Engineer's performance of work under this Contract.

H. Gender, Number and Headings. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Contract.

I. Construction. Each party hereto acknowledges that it and its counsel have reviewed this Contract and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Contract.

J. Independent Contractor Relationship. Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

K. No Waiver of Immunities. Nothing in this Contract shall be deemed to waive, modify or amend any legal defense available at law or in equity to the City, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. The City does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

L. Texas Public Information Act. To the extent, if any, that any provision in this Contract is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that the City, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to the City as to whether or not the same are available to the public. It is further understood that the City's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that the City, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to the City by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

M. Governing Terms and Conditions. If there is an irreconcilable conflict between the terms and conditions set forth in this Contract or any Contract Amendment and the terms and conditions set forth in any Exhibit, Appendix, Work Authorization or Supplemental Work Authorization to this Contract, the terms and conditions set forth in this Contract or any Contract

Amendment shall control over the terms and conditions set forth in any Exhibit, Appendix, Work Authorization or Supplemental Work Authorization to this Contract.

N. Meaning of Day. For purposes of this Contract, all references to a “day” or “days” shall mean a calendar day or calendar days.

O. Appropriation of Funds by the City. The City believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract. Engineer understands and agrees that the City’s payment of amounts under this Contract is contingent on the City receiving appropriations or other expenditure authority sufficient to allow the City, in the exercise of reasonable administrative discretion, to continue to make payments under this Contract. It is further understood and agreed by Engineer that the City shall have the right to terminate this Contract at the end of any City fiscal year if the Seguin City Council does not appropriate sufficient funds as determined by the City’s budget for the fiscal year in question. The City may effect such termination by giving written notice of termination to Engineer.

ARTICLE 33 **DISPUTE RESOLUTION**

Except as otherwise specifically set forth herein, the City and Engineer shall work together in good faith to resolve any controversy, dispute or claim between them which arises out of or relates to this Contract, whether stated in tort, contract, statute, claim for benefits, bad faith, professional liability or otherwise ("Claim"). If the parties are unable to resolve the Claim within thirty (30) days following the date in which one party sent written notice of the Claim to the other party, and if a party wishes to pursue the Claim, such Claim shall be addressed through non-binding mediation. A single mediator engaged in the practice of law, who is knowledgeable about subject matter of this Contract, shall be selected by agreement of the parties and serve as the mediator. Any mediation under this Contract shall be conducted in Guadalupe County, Texas, or in a location agreeable to the parties. The mediator’s fees shall be borne equally between the parties. Such non-binding mediation is a condition precedent to seeking redress in a court of competent jurisdiction, but this provision shall not preclude either party from filing a lawsuit in a court of competent jurisdiction prior to completing a mediation if necessary to preserve the statute of limitations, in which case such lawsuit shall be stayed pending completion of the mediation process contemplated herein. This provision shall survive the termination of the Contract.

ARTICLE 34 **EQUAL OPPORTUNITY IN EMPLOYMENT**

During the performance of this Contract and to the extent the Project is a federally funded project, Engineer, for itself, its assignees and successors in interest agrees as follows:

A. Compliance with Regulations. The Engineer shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

B. Nondiscrimination. The Engineer, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor/subconsultant or supplier shall be notified by the Engineer of the Engineer's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports. The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer shall so certify to the City and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance. In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the City shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Engineer under the contract until the Engineer complies, and/or;
2. cancellation, termination or suspension of the Contract, in whole or in part.

F. Incorporation of Provisions. The Engineer shall include the provisions of Subsections (A) through (E) above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor/subconsultant or supplier as a result of such direction, the Engineer may request the City to enter into such litigation to protect the interests of the City.

SIGNATORY WARRANTY

The undersigned signatory for Engineer hereby represents and warrants that the signatory is an officer of the organization for which he/she has executed this Contract and that he/she has full and complete authority to enter into this Contract on behalf of the firm. The above-stated representations and warranties are made for the purpose of inducing the City to enter into this Contract.

IN WITNESS WHEREOF, the City has caused this Contract to be signed in its name by

for the faithful and full performance of the terms and provisions hereof, to be effective as of the date of the last party's execution below. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE CITY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, TERMINATE OR MODIFY THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE SEGUIN CITY COUNCIL.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

CITY

CITY OF SEGUIN, TEXAS

By: _____
Stever Parker, City Manager

Date: _____, 20____

ATTEST: _____
Kimberly Allison
Deputy City Secretary

ENGINEER

Halff Associates, Inc.

By Troy Dorman

Printed Name: Troy Dorman

Title: Vice President

Date: April 07, 2025

LIST OF EXHIBITS ATTACHED

- | | |
|----------------------|---------------------------|
| (1) Exhibit A | Debarment Certification |
| (2) Exhibit B | Engineering Services |
| (3) Exhibit C | Work Authorization |
| (4) Exhibit D | Rate Schedule |
| (5) Exhibit E | Certificates of Insurance |

EXHIBIT A
DEBARMENT CERTIFICATION

STATE OF TEXAS

§

§

COUNTY OF GUADALUPE

§

I, the undersigned, being duly sworn or under penalty of perjury under the laws of the United States and the State of Texas, certifies that Engineer and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public* transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity* with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions* terminated for cause or default; and
- (e) Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

Half

Name of Firm

Troy Dorman

Signature of Certifying Official

Troy Dorman

Printed Name of Certifying Official

Vice President

Title of Certifying Official

April

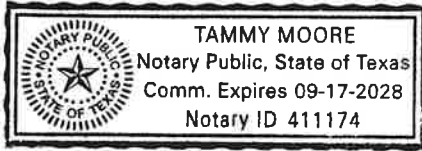
Date

08, 2025

(2) Where the PROVIDER is unable to certify to any of the statements in this certification, such PROVIDER shall attach an explanation to this certification.

* federal, state, or local

SUBSCRIBED and sworn to before me the undersigned authority by Troy Dorman
the Vice President of Halff, on behalf of
said firm.



Tammy Moore
Notary Public in and for the
State of Texas

My commission expires: 09/17/2028

EXHIBIT B

ENGINEERING SERVICES

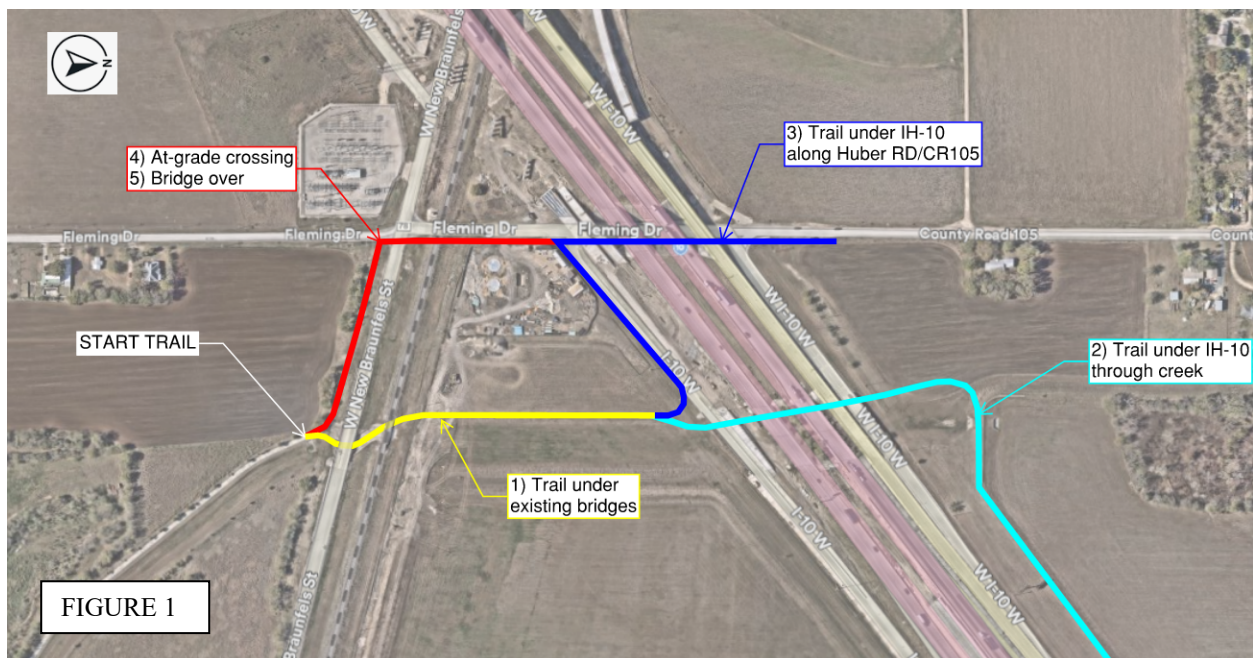
April 7, 2025

Melissa Reynolds, P.E.
Director of Engineering and Capital Projects
City of Seguin Capital Projects/Engineering
108 E Mountain Street
Seguin, TX 78155

RE: Walnut Springs Pedestrian Route PER

Mrs. Reynolds,

As requested, Halff is pleased to submit this scope and fee proposal to prepare a schematic level design in the form of a Preliminary Engineering Report (PER) to connect the Walnut Springs Pedestrian hike and bike trail to the north side of IH-10 as shown on Figure 1. The following describes the scope of services.



Scope of Services

Task 1: Project Management and Data Collection

Halff project management activities shall include task leadership and direction, telephone and written communication, project status reports, project progress meetings, project invoicing, and personnel and data management among other general project management activities. Specific meetings beyond staff management coordination and regular communication include the following:

a. Project Coordination and Correspondence

- i. Tasks include resource allocation, schedule tracking, budget tracking, communication, quality control and team coordination.
- ii. Monthly project status reports shall be provided to the City with the monthly invoice. Progress shall include notes regarding work completed in the preceding billing cycle, work expected to be completed in the next cycle, and any outstanding questions or issues for discussion. Meetings are anticipated to be virtual by Microsoft Teams, or other City required electronic means.

b. Project Meetings and Collaboration

- i. Attend one (1) project kickoff meeting with staff from the City. The meeting will be coordinated by the City's PM with the Halff Project Manager and is intended to discuss key items such as project schedule, budget, and any specific directives. Halff will provide a preliminary schedule of tasks.
- ii. During Design - Attend up to four (4) virtual progress meetings, over the course of the project schedule, to discuss specific tasks such as data collection and inventory, field verifications, and alternative analysis.
- iii. Meeting minutes shall be submitted to the City Project Manager within three (3) working days after each meeting.

c. Quality Assurance / Control

- i. Quality Assurance: Halff will implement a quality assurance program for the project that focuses on the completeness, quality, and timeliness of deliverables. All Halff's sub-consultants will adhere to the QA program.
- ii. Quality Control: Technical data and analysis will be reviewed for accuracy, with appropriate comments and responses documented and submitted to the City at each relevant milestone.
- iii. Each task will be subjected to internal QC by one of Halff's Water Resources or Public Works Professional Engineers. Associated documentation will be provided with the final report. The QA/QC program will include a multi-level approach to ensure that senior members review, comment, and approve the completed work.
- iv. Each checklist shall include milestone review events that describe the items to be reviewed and include documentation of the comments by the reviewer and responses from the Project Manager. All project materials presented to the City as draft or final products will be accompanied by QA/QC certification.

Task 2: Site Assessment / Data Collection

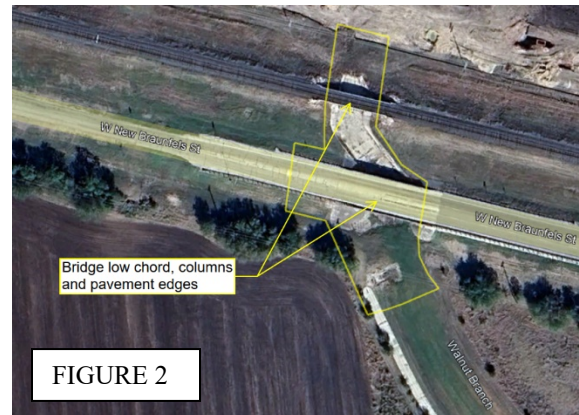
The Halff team will develop a schematic level design in the form of a Preliminary Engineering Report, and supporting documents, to a level of detail sufficient for producing an opinion of probable construction cost for use in the AAMPO 2025 STP call for projects grant submittal. TxDOT design standards and criteria will be used where applicable.

a. Collect and review previous studies and design plans (City / TxDOT / UPRR)

- i. Previous studies (Thoroughfare Plan, corridor studies, drainage)
- ii. Ongoing design project data (Water treatment facility; Walnut Branch Sanitary Sewer Phase III project)
- iii. Record drawings (Trail, Roadway, drainage, water, sanitary sewer, gas, power, etc.)
- iv. Traffic data, crash data, roadway/sidewalk inventory
- v. Land use maps and overlay studies
- vi. Survey

b. Survey. See Exhibit survey services will include the following:

- i. Establish project control for the site in NAD 83, TXSC surface coordinates and NAVD 88 vertical datum.
- ii. Perform topographic survey of site as shown on Figure 2 below, in general conformance to a Category 6 Condition 1 standard as referenced in the Manual of Practice for Land Surveying in the State of Texas, latest edition. Topo elements within the existing ROW shall include surface features such as pavement edges, concrete curb, driveways, sidewalks & ramps, handrails, fences, street signs, trees, ground boxes, fire hydrants, manholes, valves, meters, utility risers, utility poles, mailboxes, etc. Survey of underground utilities is not included in this scope, only visible utilities will be collected by survey.
- iii. Survey outside of Figure 2 will be supplemented with survey from TxDOT IH10 plans dated May 2023 and 2018 LiDAR terrain by TNRIS.
- iv. Deliverables include the survey base file (dgn) and excel points file.



c. Opportunities and Constraints Summary

- i. Halff will summarize all opportunities and constraints identified from the data collection in a short memo and identify up to 5 alternatives to analyze.

Task 3: Develop Trail Alternatives to cross New Braunfels/UPRR and IH-10

- a. **Preliminary alignments for up to 5 alternatives.** These alternatives will generally follow Figure 1 on page one of this proposal with descriptions below. Three (3) alternatives cross the New Braunfels/UPRR corridor and two (2) cross the Interstate. Each alignment will be modified to best fit existing terrain, avoid conflicts and minimize cost. Exhibits will be provided with each alignment with utilities, contours, right-of-way lines / easements and aerial imagery. Trails will be 12' wide with a 2' buffer on either side and include a short memo summarizing pros and cons,

traffic impacts, drainage issues, permitting requirements, access, lighting, maintenance considerations and a high-level cost estimate.

1. **Trail under existing bridges (preferred):** Determine the feasibility of the trail to be routed under the existing W. New Braunfels Street bridge (currently 8-foot clearance) and existing UPRR bridge (currently 6.67-foot clearance) along the bottom of Walnut Branch, then follow along the upper bank of the creek towards IH-10 frontage road.
2. **Trail under IH-10 through creek:** Determine the feasibility of the trail to be routed under IH-10 along the creek bottom and continue along the North regional detention pond embankment.
3. **Trail under IH-10 along Huber Road/CR 105:** Determine the feasibility of the trail to be routed along IH-10 northbound frontage road and continue under IH-10 at Huber Road/CR 105.
4. **Trail at grade crossings:** Determine the feasibility of the trail to be routed west with an at-grade roadway and UPRR crossing along Fleming/Huber Road.
5. **Trail bridge over roadway and railroad:** Halff will coordinate with UPRR to recommend a bridge configuration to the proposed trail to span over New Braunfels St and UPRR.

MILESTONE 1: Trail Alternatives

Deliverable 1: Trail Alternatives Exhibit for each of the trail alignment alternatives discussed above, including

1. Plan view schematic map
 2. Description of improvements
 3. High level Benefit / Cost Analysis
- b. **Coordination with UPRR and TxDOT.** Halff will provide coordination efforts with the goal of obtaining UPRR and TxDOT feedback on the alternatives to cross the rail and interstate with agreement on a preferred option to advance. Effort specific to UPRR includes:
- Prepare and submit Public Project Inquiry on the City's behalf to UPRR for outlining the project location, project description, and potential options for consideration as part of the UPRR Public Projects Process.
 - Attend a Diagnostic Meeting (onsite) with UPRR, the City, and other parties as necessary to review project constraints and requirements and discuss the options.
 - Submit conceptual exhibits to UPRR for review (up to two submittals).

Assumptions:

- A reimbursement agreement with UPRR will be required to engage UPRR. This will be executed between UPRR and the City. The City will be responsible for negotiations of the agreement and any associated fees as a result of the Public Project Inquiry submittal.

- UPRR Public Projects process is defined in the UPRR Public Project Manual.
- Review cycles for UPRR are estimated between 4 and 6 weeks each submittal as defined by UPRR; however, review timelines are at the discretion of UPRR and can take longer. Reviews are not able to be expedited.
- Scope does not include coordination of flaggers and for right of entry/non-intrusive survey permit if access to the railroad ROW is needed.

Task 4: Preliminary Engineering Report (PER) Milestones and Deliverables

The Halff team will develop a schematic level design in the form of a Preliminary Engineering Report, and supporting documents, to a level of detail sufficient for producing an opinion of probable construction cost for use in grant applications. TxDOT design standards and criteria will be used where applicable.

a. 40% PER Submittal

- ii. Prepare draft Preliminary Engineering Report (40% complete) for the preferred trail route identified from Task 3, which illustrate general locations, sizes and relationships of Project elements and improvements, and materials. PER will include:
 - a. Schematic level design including horizontal alignment and vertical profile, pavement edges, barriers, retaining walls, and any other pertinent pedestrian trail features as required. Trail will be designed for 12 mph speed and follow TxDOT standards.
 - b. Preliminary proposed trail cross sections to be used for determination of right-of-way or easement requirements, location of potential retaining walls, and estimated earthwork quantities. The cross sections will utilize standard TxDOT items for curb, sidewalk, walls, barrier, etc. and be limited to locations that do not fit the typical cross section (limited to 10 locations along the full alignment).
 - c. Extent of drainage improvements.
 - d. Show locations of utilities and alignments of existing utilities in immediate project area.
 - e. Existing and proposed right-of-way lines
- iii. Prepare a preliminary estimate of probable construction cost for improvements based on 40% design schematic.
- iv. Review PER with City staff and incorporate comments into preparation of 100% PER for the Project.

MILESTONE 2: 40% PER Submittal

Deliverable 2:

1. Draft Report summarizing traffic impacts, drainage, permitting, ROW & access, lighting and maintenance requirements.
2. Preferred alignment with up to 10 typical cross sections at key locations
3. Opinion of Probable Construction Cost

b. 100% Final PER

- i. Prepare final Preliminary Engineering Report (100% complete) for project improvements, including Preliminary Design Schematic, Typical Cross Sections, Cost Estimate and Preliminary Engineering Report. Final deliverables will include:
 - a. Address city's comments from 40% PER submittal.
 - b. Final schematic level design including horizontal alignment and vertical profile, pavement edges, barriers, retaining walls, and any other pertinent pedestrian trail features as required.
 - c. Final trail cross sections to be used for determination of right-of-way or easement requirements, location of potential retaining walls, and estimated earthwork quantities. The cross sections will utilize standard TxDOT items for curb, sidewalk, walls, barrier, etc. and be limited to locations that do not fit the typical cross section (limited to 10 locations along the full alignment).
 - d. Extent of drainage improvements.
 - e. Show locations of utilities and alignments of existing utilities in immediate project area.
 - f. Existing and proposed right-of-way lines
- ii. Prepare an estimate of probable construction cost for improvements based on 100% preliminary design schematic. The cost estimate includes the final engineer's detailed estimates of probable construction cost for the authorized construction project, including summaries of bid items and quantities using TxDOT's standard bid items and format.
- iii. One review and comment session of the draft PER with City staff. PER to be delivered after all City comments have been received and addressed.

MILESTONE 3: Final PER

Deliverable 3:

1. Final Report summarizing traffic impacts, drainage, permitting, ROW & access, lighting and maintenance requirements.
2. Utility information
3. Final preliminary design schematic with up to 10 typical cross sections
4. Opinion of Probable Construction Cost

Exclusions

Our proposal excludes the following services:

- Detailed design/construction plans (only schematic level) including but not limited to signals, traffic control, utilities, SUE, structural, survey and geotechnical analysis.
- Public Involvement
- Traffic Impact Analysis (T.I.A.)/Traffic Studies and to conduct any traffic counts for the project
- Conduct any operational / Level-of-service analyses of site driveways, street intersections or other roadways in the study area
- Preparation of O&M cost and/or a life cycle cost

- Evaluation of the development of recommendations for infrastructure not associated with the proposed project
- An environmental investigation will not be required for this project.
- Jurisdictional determination is not required for this project.

Fee and Schedule

Halff will perform the tasks described above in the Scope of Services for lump sum fee of **\$141,018.00**. This fee does not include the excluded services described above. Fee breakdown is included below and in the attached Project Work Plan spreadsheet.

Task 1: Project Management	\$ 14,438.00
Task 2: Site Assessment / Data Collection	\$ 27,880.00
Task 3: Develop Trail Alternatives	\$ 49,640.00
Task 4: PER Deliverable	\$ 49,060.00
TOTAL	\$ 141,018.00

Halff estimates the entire project will be completed in approximately ten (10) months, pending typical City, TxDOT and UPRR review times, from the date of notice to proceed to perform these services.

Walnut Springs Pedestrian Route PER - Estimated Project Schedule

Task	2025								2026	
	May	June	July	August	Sept	Oct	Nov	Dec	Jan	Feb
NTP										
Project Initiation										
Survey / Data Collection										
Trail Alternatives										
TxDOT / UPRR coordination										
City Review of Alternatives										
PER										
City Review of PER										
Final PER Submittal										

We appreciate this opportunity to work with you on this project. If you have any questions or need additional information, please feel free to contact me by phone at (210) 798-1895 or email at sedwards@halff.com.

Respectfully,
HALFF ASSOCIATES, INC.



Sam Edwards, PE, CFM
Sr. Project Manager



Troy Dorman, PhD, PE, CFM
Vice President



APPROVED:

It is understood and agreed that by signing this proposal you agree with the attached "General Terms and Conditions."

City of Seguin:

By: _____
Print Name Signature

Title: _____

Date: _____

Fee/Price Proposal Breakdown for Professional Services: This level of effort is for estimating purposes only. This is a lump sum fee structure so, effort will be billed on a percent complete basis.

Project Name:	Walnut Springs Pedestrian Route PER
Name of Firm/Prime:	Halff
Date Proposal Submitted:	4/3/25
Project Manager:	Sam Edwards

Position/Personnel Title	QA/QA Manager	Project Manager	Senior Engineer V	Engineer III (PE)	EIT	Admin / Accountin g	Survey Tech	Senior Survey Tech	RPLS	Senior RPLS PSM	2-Man Survey Crew		Expenses	Sub-total	Notes
Fully-Loaded Hourly Wage Rates * (as defined below)	\$280.00	\$220.00	\$255.00	\$155.00	\$130.00	\$121.00	\$110.00	\$145.00	\$190.00	\$245.00	\$200.00				
Task to be performed/Phase Description (including Sub-consultant work)	Hours	Hours	Hours	Hours	Hours	Hours	Hours		Hours		Hours	Total Hours			
Task 1: Project Management															
a. Project Coordination and Correspondence		8	12		24	8						52		\$8,908.00	Expense for travel
b. Project Meetings and Collaboration (5 meetings)		8	8		12							28	\$ 170.00	\$5,530.00	
c. QAQC - distrubuted per task												0		\$0.00	
												0		\$0.00	
Sub-total Task 1:													\$170.00	\$14,438.00	
Task 2: Site Assessment / Data Collection															
a. Review policies, previous studies, plans & criteria (City/TxDOT/UPRR)		8	8	8	16							40		\$7,120.00	Expense for travel
b. Survey							16	24	2	2	36	80	\$ 170.00	\$13,480.00	
c. Opportunities & constraints summary		8	8	8								24		\$5,040.00	
QAQC	8											8		\$2,240.00	
Sub-total Task 2:													\$170.00	\$27,880.00	
Task 3: Develop Trail Alternatives															
a. Preliminary alignments (limited to 5)												0		\$0.00	Expense for HDR sub
Plan view schematic maps		4	20		40							64		\$11,180.00	
Writeup of improvments (Traffic impacts, drainage, permitting, maintenance, etc)		4	12		24							40		\$7,060.00	
High Level Benefit/Cost Analysis		4	12		24							40		\$7,060.00	
b. Coordination with UPRR and TxDOT for review and comment		20	20		20							60	\$ 10,000.00	\$22,100.00	
QAQC	8											8		\$2,240.00	
Sub-total Task 3:													\$10,000.00	\$49,640.00	
Task 4: PER Deliverable for chosen alternative															
Preliminary Engineering Report and Schematic Plan (PER)															
40% Preliminary Engineering Design Schematic		4	8	40	60							112		\$16,920.00	
100% Preliminary Engineering Design Schematic		4	8	20	40							72		\$11,220.00	
Summary Report		4	8	20	40							72		\$11,220.00	
Opinion of Probable Construction Cost (OPCC)		4	4	8	16							32		\$5,220.00	
QAQC	16											16		\$4,480.00	
Sub-total Task 4:													\$0.00	\$49,060.00	
Total Hours:	32	80	128	104	316	8	16	24	2	2	36	748			
Total Fee Proposal (Not to Exceed):	\$8,960.00	\$17,600.00	\$32,640.00	\$16,120.00	\$41,080.00	\$968.00	\$1,760.00	\$3,480.00	\$380.00	\$490.00	\$7,200.00	\$130,678.00	\$10,340.00	\$141,018.00	

* A fully-loaded Hourly Wage Rate is defined as an employee's base hourly rate plus labor overhead (including fringe benefits), general and administrative (indirect) expenses, profit and escalation (if applicable).

EXHIBIT C

WORK AUTHORIZATION

(To Be Completed and Executed After Contract Execution)

WORK AUTHORIZATION NO. 1

PROJECT: Walnut Springs Pedestrian Route PER ("Project")

This Work Authorization is made pursuant to the terms and conditions of the Contract for Engineering Services, being dated **April 8, 2025** and entered into by and between the City of Seguin, a Texas home rule municipality, (the "City") and Halff Associates, Inc. (the "Engineer").

Part 1. The Engineer will provide the following Engineering Services set forth in Attachment "B" of this Work Authorization.

Part 2. The maximum amount payable for services under this Work Authorization without modification is One Hundred Forty-One thousand eighteen Dollars and no Cents **(\$141,018.00)**.

Part 3. Payment to the Engineer for the services established under this Work Authorization shall be made in accordance with the Contract.

Part 4. This Work Authorization shall become effective on the date of final acceptance and full execution of the parties hereto and shall terminate on **October 8, 2026**. The Engineering Services set forth in Attachment "B" of this Work Authorization shall be fully completed on or before said date unless extended by a Supplemental Work Authorization.

Part 5. This Work Authorization does not waive the parties' responsibilities and obligations provided under the Contract.

Part 6. The City believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Work Authorization. Engineer understands and agrees that the City's payment of amounts under this Work Authorization is contingent on the City receiving appropriations or other expenditure authority sufficient to allow the City, in the exercise of reasonable administrative discretion, to continue to make payments under this Contract. It is further understood and agreed by Engineer that the City shall have the right to terminate this Contract at the end of any City fiscal year if the Seguin City Council does not appropriate sufficient funds as determined by the City's budget for the fiscal year in question. The City may effect such termination by giving written notice of termination to Engineer.

Part 7. This Work Authorization is hereby accepted and acknowledged below.

EXECUTED this 08 day of April, 2025.

ENGINEER:

Halff Associates, Inc.

By: Troy Dorman
Signature

Troy Dorman
Printed Name

Vice President
Title

CITY:

City of Seguin, Texas

By: _____
Signature

Printed Name

Title

LIST OF ATTACHMENTS

Attachment A - Services to be Provided by City – provided in “Exhibit B”

Attachment B - Services to be Provided by Engineer – provided in “Exhibit B”

Attachment C - Work Schedule – provided in “Exhibit B”

Attachment D - Fee Schedule – provided in “Exhibit B”

EXHIBIT D

RATE SCHEDULE

CPI Rate Adjustments: Rates will remain firm for the initial first year of the Contract and such rates shall be deemed the “Initial Base Rates”. Engineer must request rate adjustments, in writing, at least thirty (30) days prior to each annual anniversary date of the Contract and any rate changes will take effect on the first day following the prior year. If Engineer fails to request a CPI rate adjustment, as set forth herein, the adjustment will be effective thirty (30) days after the City receives Engineer’s written request. No retroactive rate adjustments will be allowed.

Price adjustments will be made in accordance with changes in the U.S. Department of Labor Consumer Price Index (CPI-U) for All Urban Consumers, All Items, South Region (Base 1982-84 = 100).

The rate adjustment will be determined by multiplying the Initial Base Rates by a fraction, the numerator of which is the index number for most recently released index before each annual anniversary date of the Contract and the denominator of which is the index number for the first month of the Contract (the index number for the month in which the Contract was originally executed). If the products are greater than the Initial Base Rates, the City will pay the greater amounts as the rates during the successive year until the next rate adjustment. Rates for each successive year will never be less than the Initial Base Rates.

EXHIBIT E

CERTIFICATES OF INSURANCE

ATTACHED BEHIND THIS PAGE