

PROFESSIONAL SERVICE AGREEMENT BURNET COUNTY, TEXAS

BURNET COUNTY, a political subdivision of the State of Texas (hereinafter the "County") with administrative offices at 220 S. Pierce St. Burnet, Texas 78611, and K.C. Engineering, Inc. (hereinafter "Contractor"), whose primary place of business is located at 705 N. Highway 281, Suite 103, Marble Falls, Texas 78654, hereby enter into this Professional Services Agreement (hereinafter "Agreement") effective this 10th day of March, 2020 (hereinafter "Effective Date"). The County and Contractor (collectively "the parties to this Agreement" or "the parties") agree as follows:

1. OVERVIEW

Contractor shall provide planning, design and construction management services to implement Burnet County transportation projects approved for federal, state or local funding. Contractor may also provide technical analyses, reviews, and consultation on programs, ordinances, and other matters as they may arise, in order to improve the transportation system in Burnet County.

2. SERVICES

Contractor agrees to perform services for the County in accordance with the County Commissioners Court instructions and in conformance with the descriptions, definitions, terms, and conditions of this Agreement. The Scope of Services shall be described by Exhibit "A" (Work Order) attached hereto, and any subsequent versions of Exhibit "A", if and when they are attached hereto and signed by the parties (collectively "the Work"). If the parties to this Agreement amend the Work required under this Agreement (by adding or removing specific services and/or terms enumerated in Exhibit "A"), the Compensation cited in Section 5 of this Agreement may also be amended to conform with the change on Scope of Services, as agreed by the parties.

3. ADDITIONAL TERMS

Additional Terms and Obligations of the parties to this Agreement, if any, are stated in Exhibit "B", attached hereto.

4. DURATION

The parties agree that the Work shall be open-ended and this Agreement completed by March 10, 2023 (hereinafter the "Completion Date"). Upon mutual agreement of the parties in writing, this agreement may be extended beyond the Completion Date for another three-year period. The duration of each Work Order shall be negotiated between the parties.

5. COMPENSATION

Contractor will be compensated for the Work on a negotiated basis between the parties and shown on the Work Order, which is attached hereto as Exhibit "A."

6. PAYMENT

Contractor shall invoice the County for the Work performed under this Agreement on a monthly basis, beginning at the end of the first full month following the Effective Date. The County agrees to promptly pay all invoices by sending payment to Contractor's address stated in Section 8, below.

7. NOTICE OF COMPLETION

Upon completion of the Work, Contractor shall provide a Notice of Completion to the County using an agreed-upon method, and the County shall have the option to inspect the Work (or the product thereof) before it is considered complete under this Agreement. If the County is satisfied that the Work under this Agreement is complete, the County shall notify the Contractor by a Notice of Completion using an agreed-upon method. If, after inspection, the County does not agree that the Work is complete or believes that the Work is of deficient quality, the County shall send Contractor a Deficiency Letter, stating the specific aspects of the Work that are incomplete and/or deficient. If, after ten (10) business days from the County's

receipt of Contractor's Notice of Completion, provided that no Deficiency Letter has been issued, the Work under this Agreement shall be considered complete.

8. NOTICE (GENERAL)

All notices issued by Contractor under or regarding this Agreement shall be provided in writing to the County at: Burnet County, Attn: County Judge, 220 S. Pierce St., Burnet, Texas 78611; facsimile 512-715-5217; email countyjudge@burnetcountytexas.org. All notices issued by the County under or regarding this Agreement shall be provided in writing to Contractor at: K.C. Engineering, Inc., Attn: Greg Haley, P.E., 705 N. Highway 281, Suite 103, Marble Falls, Texas 78654. Notices from one party to another under this Section may be made by U.S. Mail, parcel post, Facsimile, or Electronic Mail, sent to the designated contact at the designated addresses cited above.

9. INSURANCE

Contractor agrees that, during the performance of all terms and conditions of this Agreement, from the Effective Date until the County's acceptance of Contractor's Notice of Completion or until this Agreement is otherwise considered completed as a matter of law, Contractor shall maintain Commercial General Liability insurance that meets or exceeds the industry standard employment and for the type of services that are being performed by Contractor under this Agreement. The Contractor shall maintain Worker's Compensation Insurance in the form required by law. The Contractor shall maintain Professional Liability Insurance with a minimum of \$1,000,000 for each claim and \$1,000,000 in the aggregate.

10. MUTUAL INDEMNITY

Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the County, its officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Contractor's negligent performance of the Work under this Agreement and that of its subcontractors or anyone for whom the Consultant is responsible or legally liable. The County agrees, to the fullest extent permitted by law, to indemnify and hold harmless Contractor, its officers, directors, employees and subcontractors against all damages, liabilities of costs, including reasonable attorneys' fees and defense costs, to the extent caused by the County's negligent acts in connection with this Agreement. Neither the County nor Contractor shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.

11. COMPLIANCE WITH LAWS

Each party agrees to comply with all laws, regulations, rules, and ordinances applicable to this Agreement and/or applicable to the parties performing the terms and conditions of this Agreement.

12. SURVIVAL

Notwithstanding any termination of this Agreement, the following Sections, and the terms and conditions contained therein, shall remain in effect: 2,3,4,5,10,12,14,15,16,17,18,20, and 21.

13. FORCE MAJEURE

Either of the parties to this Agreement shall be excused from any delays and/or failures in the performance of the terms and conditions of this Agreement, to the extent that such delays and/or failures result from causes beyond the delaying/failing party's reasonable control, including but not limited to Acts of God, Forces of Nature, Civil Riot or Unrest, and Governmental Action that was unforeseeable by all parties at the time of the execution of the Agreement. Any delaying/failing party shall, with all reasonable diligence, attempt to remedy the cause of delay and/or failure and shall recommence all remaining duties under this Agreement within a reasonable time of such remedy.

14. SEVERABILITY

If any Section of provisions of this Agreement is held to be invalid or void, the other Sections and provisions of this Agreement shall remain in full force and effect to the greatest extent as is possible, and all remaining Sections or provisions of this Agreement shall be construed so that they are all consistent with the parties' intents as possible.

15. SECTION HEADINGS, EXHIBITS

The Section and Subsection headings of this Agreement, as well as Section 1, Entitled "Overview," shall not enter in the interpretation of the terms and conditions contained herein, as those portions of the Agreement are included merely for organization and ease of review. The Exhibit(s) that may be referred to herein and may be attached hereto, are incorporated herein to the same extent as if fully set forth herein.

16. WAIVER BY PARTY

Unless otherwise provided in writing by the waiving party, a waiver by either of the parties to this Agreement of any covenant, term, condition, agreement, right, or duty that arises under this Agreement shall be considered a one-time waiver and shall not be construed to be a waiver of any succeeding breach thereof or any other covenant, term, condition, agreement, right, or duty that arises under this Agreement.

17. GOVERNING LAW AND VENCE

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORANCE WITH THE LAWS OF THE STATE OF TEXAS. Any lawsuit, claim, or action, whether in law or in equity, arising from this Agreement will be brought in Burnet County, Texas.

18. ASSIGNMENT

Neither party to this Agreement may assign it duties, interests, rights, benefits and/or obligations under this Agreement, in whole or in part, without the other party's prior written consent thereto.

19. BINDING EFFECT

Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors, permitted assigns, heirs, executors, and/or administrators.

20. ENTIRE AGREEMENT; AMENDMENT

This Agreement (including any and all Exhibits attached hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any amendments to this Agreement must be made in writing and signed by the parties to this Agreement prior to the performance of any terms or conditions contained in said amendments.

21. WORK PRODUCT

Any and all product, whether in the form of calculations, letters, findings, opinions, or the like, shall be the property of Burnet County during and after performance of the Work. Contactor shall have a right to retain a copy of all Work product for record-keeping purposes.

Signatures of the parties are on the next page.

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Professional Services Agreement, and hereby declare that THEY HAVE READ AND SO UNDERSTAND AND AGREE TO EACH AND EVERY TERM, CONDITION, AND COVENANT CONTAINED IN THIS AGREEMENT AND IN ANY DOCUMENT INCORPORATED BY REFERENCE.



Burnet County Texas

By: Judge James Oakley



K.C. Engineering, Inc.

By: Greg Haley, P.E.

EXHIBIT "A"

WORK ORDER

WORK ORDER NO. _____

COUNTY Project No.: _____ COUNTY Project Name: _____

In accordance with the terms and conditions of the Professional Services Agreement ("AGREEMENT") between Burnet County ("COUNTY") and K.C. Engineering, Inc. ("ENGINEER"), dated April 11, 2017, ENGINEER is hereby authorized to perform the following services:

Scope of Basic Services

Authorization

In signing this Work Order, the COUNTY grants ENGINEER specific authorization to proceed under the AGREEMENT.

Fee

ENGINEER shall be paid the lump sum fee of \$ _____

Or,

In accordance with the terms of Exhibit "B".

AGREED AND EXECUTED this _____ day of _____, 20____.

ATTEST:

K.C. ENGINEERING, INC.
(ENGINEER)

BURNET COUNTY
(COUNTY)

By: _____

By:  _____

Title: _____ President

Title: County Judge

EXHIBIT "B"

Additional Terms to the Services provided by Contractor, if any, are as follows:

A.

B.

C.

D.