



PROFESSIONAL SERVICES AGREEMENT

For

Staff Augmentation and Professional Engineering Services for the City of Keller

Mr. Alonzo Liñán, P.E., P.T.O.E. – Public Works Director
City of Keller
1100 Bear Creek Parkway
Keller, Texas, 76248
817.743.4000
CITY Project Number – N/A

W. Todd Estes, P.E. – Group Leader
HR Green, Inc.
4508 Colleyville Boulevard, Suite A
Colleyville, Texas, 75024
HR Green Project Number: 210216

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THIS **AGREEMENT** is between the CITY OF KELLER (hereafter "CITY") and HR GREEN, INC. (hereafter "COMPANY").

1.0 Project Understanding

1.1 General Understanding

The CITY is seeking a person or team to serve as the CITY's assistant director of public works, as the primary service requested for this contract, with capital program assistance, project management, and traffic engineer, planning, and operations services provided on an as needed basis.

1.2 Design Criteria/Assumptions

The CITY is not requesting specific engineering design services at this time, but any such services (such as traffic signal design) would need to meet or exceed the City of Keller's and the State of Texas's codes, criteria, policies and ordinances.

2.0 Scope of Services

The CITY agrees to employ COMPANY to perform staff augmentation services as outlined in Attachment A along with a list of possible additional services available are detailed in attachment A of this contract.

3.0 Deliverables and Schedules Included in this Agreement

The COMPANY shall provide qualified personnel as demonstrated in Attachment B of this contract to serve as the CITY's assistant public works director up to 24-hours a week (out of a standard 40-hour work week). The schedule shall be agreed upon in writing by the CITY and the COMPANY prior to COMPANY personnel starting work. Deliverables for TASKS 1-4 shall be communicated in a written form by the CITY to the COMPANY's onsite personnel with reasonable time frame to execute the work required. The COMPANY will not make changes to personnel as defined in attachment B of this contract without 30-days written notice by either party

The overall duration of this contract shall be for 1-year with up to two (2) 1-year extensions. The proposed fees under this contract are annual and shall be renewed each year of this contract unless contract changes are formally requested in writing by the CITY and agreed to by the COMPANY. Fees associated with this contract shall be billed at an hourly rate as set forth in attachment C up to an annual maximum not to exceed amount of up to \$125,000 unless amended by City Council and executed by the Mayor of the City of Keller.

4.0 Items not included in Agreement/Supplemental Services

The following items are not included as part of this AGREEMENT:

Roadway, Drainage, Water and Wastewater Design services larger than \$50,000
Structural Engineering Services
Development Review Services



Public Works/Civil Site Inspections
Building Review, Permitting and Inspections
Fiber & Broadband Master Planning and Design Services
Geotechnical Services

Supplemental services not included in the AGREEMENT can be provided by COMPANY under separate agreement, if desired.

5.0 Services by Others

Surveying services.

6.0 CITY Responsibilities

The City shall provide adequate workspace and technical support (including, but not limited to, server access, City email, City phone number, computer, etc...) for COMPANY personnel to perform the duties of the CITY's assistant director of public works and any additional services.

7.0 Professional Services Fee

7.1 Fees

The fee for services will be based on COMPANY standard hourly rates current at the time the AGREEMENT is signed. These standard hourly rates are subject to change upon 30 days' written notice. Non-salary expenses directly attributable to the project such as: (1) living and traveling expenses of employees when away from the home office on business connected with the project; (2) identifiable communication expenses; (3) identifiable reproduction costs applicable to the work; and (4) outside services will be charged in accordance with the rates current at the time the service is done.

7.2 Invoices

Invoices for COMPANY's services shall be submitted, on a monthly basis. Invoices shall be due and payable upon receipt. If any invoice is not paid within 30 days, COMPANY may, without waiving any claim or right against the CITY, and without liability whatsoever to the CITY, suspend or terminate the performance of services. The retainer shall be credited on the final invoice. Accounts unpaid 30 days after the invoice date may be subject to a monthly service charge of 1.5% (or the maximum legal rate) on the unpaid balance. In the event that any portion of an account remains unpaid 60 days after the billing, COMPANY may institute collection action and the CITY shall pay all costs of collection, including reasonable attorneys' fees.

7.3 Extra Services

Any service required but not included as part of this AGREEMENT shall be considered extra services. Extra services will be billed on a Time and Material basis with prior approval of the CITY.



7.4 Exclusion

This fee does not include attendance at any meetings or public hearings other than those specifically listed in the Scope of Services. These service items are considered extra and are billed separately on an hourly basis.

7.5 Retainer

The CITY shall make an initial payment of \$ 0.00 upon execution of this AGREEMENT. This retainer shall be held by COMPANY and applied against the final invoice.

7.6 Payment

The CITY AGREES to pay COMPANY on a monthly basis per current Rate Schedule shown in Attachment C with an estimated annual fee up to a maximum of \$125,000.00.

8.0 Terms and Conditions

The following Terms and Conditions are incorporated into this AGREEMENT and made a part of it.

8.1 Standard of Care

Services provided by COMPANY under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality.

8.2 Entire Agreement

This AGREEMENT and its attachments constitute the entire understanding between CITY and COMPANY relating to COMPANY's services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this AGREEMENT shall be in writing and signed by the parties to this AGREEMENT. If the CITY, its officers, agents or employees request COMPANY to perform extra services pursuant to this AGREEMENT, CITY will pay for the additional services even though an additional written agreement is not issued or signed.

8.3 Time Limit and Commencement of Services

This AGREEMENT must be executed within ninety (90) days to be accepted under the terms set forth herein. The services will be commenced immediately upon receipt of this signed AGREEMENT.

8.4 Suspension of Services

If the Project or the COMPANY'S services are suspended by the CITY for more than thirty (30) calendar days, consecutive or in the aggregate, over the term of this AGREEMENT, the COMPANY shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the CITY shall compensate the COMPANY for expenses incurred as a result of the suspension and resumption of its services, and the COMPANY'S schedule and fees for the remainder of the Project shall be equitably adjusted.



If the COMPANY'S services are suspended for more than ninety (90) days, consecutive or in the aggregate, the COMPANY may terminate this AGREEMENT upon giving not less than five (5) calendar days' written notice to the CITY.

If the CITY is in breach of this AGREEMENT, the COMPANY may suspend performance of services upon five (5) calendar days' notice to the CITY. The COMPANY shall have no liability to the CITY, and the CITY agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this AGREEMENT by the CITY. Upon receipt of payment in full of all outstanding sums due from the CITY, or curing of such other breach which caused the COMPANY to suspend services, the COMPANY shall resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.

8.5 Books and Accounts

COMPANY will maintain books and accounts of payroll costs, travel, subsistence, field, and incidental expenses for a period of five (5) years. Said books and accounts will be available at all reasonable times for examination by CITY at the corporate office of COMPANY during that time.

8.6 Insurance

COMPANY will maintain insurance for claims under the Worker's Compensation Laws, and from General Liability and Automobile claims for bodily injury, death, or property damage, and Professional Liability insurance caused by the negligent performance by COMPANY'S employees of the functions and services required under this AGREEMENT.

8.7 Termination or Abandonment

Either party has the option to terminate this AGREEMENT. In the event of failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, then the obligation to provide further services under this AGREEMENT may be terminated upon seven (7) days' written notice. If any portion of the services is terminated or abandoned by CITY, the provisions of this Schedule of Fees and Conditions in regard to compensation and payment shall apply insofar as possible to that portion of the services not terminated or abandoned. If said termination occurs prior to completion of any PART of the project, the fee for services performed during such PART shall be based on COMPANY'S reasonable estimate of the portion of such PART completed prior to said termination, plus a reasonable amount to reimburse COMPANY for termination costs.

8.8 Waiver

COMPANY'S waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

8.9 Severability

If any provision of this AGREEMENT is declared invalid, illegal, or incapable of being enforced by any Court of competent jurisdiction, all of the remaining provisions of this AGREEMENT shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.



8.10 Successors and Assigns

All of the terms, conditions, and provisions hereof shall inure to the benefit of and are binding upon the parties hereto, and their respective successors and assigns, provided, however, that no assignment of this AGREEMENT shall be made without written consent of the parties to this AGREEMENT.

8.11 Third-Party Beneficiaries

Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third party against either the CITY or the COMPANY. The COMPANY's services under this AGREEMENT are being performed solely for the CITY's benefit, and no other party or entity shall have any claim against the COMPANY because of this AGREEMENT or the performance or nonperformance of services hereunder. The CITY and COMPANY agree to require a similar provision in all contracts with contractors, subcontractors, sub-consultants, vendors and other entities involved in this project to carry out the intent of this provision.

8.12 Governing Law and Jurisdiction

The CITY and the COMPANY agree that this AGREEMENT and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of Texas without regard to any conflict of law provisions, which may apply the laws of other jurisdictions.

It is further agreed that any legal action between the CITY and the COMPANY arising out of this AGREEMENT or the performance of the services shall be brought in a court of competent jurisdiction in the State of Texas.

8.13 Dispute Resolution

Mediation. In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the CITY and COMPANY agree that all disputes between them arising out of or relating to this AGREEMENT shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The CITY and COMPANY further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

8.14 Attorney's Fees

If litigation arises for purposes of collecting fees or expenses due under this AGREEMENT, the Court in such litigation shall award reasonable costs and expenses, including attorney fees, to the party justly entitled thereto. In awarding attorney fees, the Court shall not be bound by any Court fee schedule, but shall, in the interest of justice, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.

8.15 Ownership of Instruments of Service

All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other documents including all documents on electronic media prepared by COMPANY as instruments of service shall remain the property of COMPANY. COMPANY

shall retain these records for a period of five (5) years following completion/submission of the records, during which period they will be made available to the CITY at all reasonable times.

8.16 Reuse of Documents

All project documents including, but not limited to, plans and specifications furnished by COMPANY under this project are intended for use on this project only. Any reuse, without specific written verification or adoption by COMPANY, shall be at the CITY's sole risk, and CITY shall defend, indemnify and hold harmless COMPANY from all claims, damages and expenses including attorneys' fees arising out of or resulting therefrom.

Under no circumstances shall delivery of electronic files for use by the CITY be deemed a sale by the COMPANY, and the COMPANY makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the COMPANY be liable for indirect or consequential damages as a result of the CITY's use or reuse of the electronic files.

8.17 Failure to Abide by Design Documents or To Obtain Guidance

The CITY agrees that it would be unfair to hold COMPANY liable for problems that might occur should COMPANY'S plans, specifications or design intents not be followed, or for problems resulting from others' failure to obtain and/or follow COMPANY'S guidance with respect to any errors, omissions, inconsistencies, ambiguities or conflicts which are detected or alleged to exist in or as a consequence of implementing COMPANY'S plans, specifications or other instruments of service. Accordingly, the CITY waives any claim against COMPANY, and agrees to defend, indemnify and hold COMPANY harmless from any claim for injury or losses that results from failure to follow COMPANY'S plans, specifications or design intent, or for failure to obtain and/or follow COMPANY'S guidance with respect to any alleged errors, omissions, inconsistencies, ambiguities or conflicts contained within or arising as a result of implementing COMPANY'S plans, specifications or other instruments of service. The CITY also agrees to compensate COMPANY for any time spent and expenses incurred remedying CITY's failures according to COMPANY'S prevailing fee schedule and expense reimbursement policy.

8.18 Opinion of Probable Construction Cost

As part of the Deliverables, COMPANY may submit to the CITY an opinion of probable cost required to construct work recommended, designed, or specified by COMPANY, if required by CITY. COMPANY is not a construction cost estimator or construction contractor, nor should COMPANY'S rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. This requires COMPANY to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals engaged; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which COMPANY has no control. Given the assumptions which must be made, COMPANY cannot guarantee the accuracy of its opinions of cost, and in recognition of that fact, the CITY waives any claim against COMPANY relative to the accuracy of COMPANY'S opinion of probable construction cost.

8.19 Design Information in Electronic Form

Because electronic file information can be easily altered, corrupted, or modified by other parties, either intentionally or inadvertently, without notice or indication, COMPANY reserves the right to remove itself from its ownership and/or involvement in the material from each electronic medium not held in its possession. CITY shall retain copies of the work performed by COMPANY in electronic form only for information and use by CITY for the specific purpose for which COMPANY was engaged. Said material shall not be used by CITY or transferred to any other party, for use in other projects, additions to this project, or any other purpose for which the material was not strictly intended by COMPANY without COMPANY's express written permission. Any unauthorized use or reuse or modifications of this material shall be at CITY'S sole risk. Furthermore, the CITY agrees to defend, indemnify, and hold COMPANY harmless from all claims, injuries, damages, losses, expenses, and attorneys' fees arising out of the modification or reuse of these materials.

The CITY recognizes that designs, plans, and data stored on electronic media including, but not limited to computer disk, magnetic tape, or files transferred via email, may be subject to undetectable alteration and/or uncontrollable deterioration. The CITY, therefore, agrees that COMPANY shall not be liable for the completeness or accuracy of any materials provided on electronic media after a 30-day inspection period, during which time COMPANY shall correct any errors detected by the CITY to complete the design in accordance with the intent of the contract and specifications. After 40 days, at the request of the CITY, COMPANY shall submit a final set of sealed drawings, and any additional services to be performed by COMPANY relative to the submitted electronic materials shall be subject to separate agreement. The CITY is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the COMPANY and electronic files, the signed or sealed hard-copy construction documents shall govern.

8.20 Information Provided by Others

The CITY shall furnish, at the CITY's expense, all information, requirements, reports, data, surveys and instructions required by this AGREEMENT. The COMPANY may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The COMPANY shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the CITY and/or the CITY's consultants and contractors.

COMPANY is not responsible for accuracy of any plans, surveys or information of any type including electronic media prepared by any other consultants, etc. provided to COMPANY for use in preparation of plans. The CITY agrees, to the fullest extent permitted by law, to indemnify and hold harmless the COMPANY from any damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising out of or connected in any way with the services performed by other consultants engaged by the CITY.

COMPANY is not responsible for accuracy of topographic surveys provided by others. A field check of a topographic survey provided by others will not be done under this AGREEMENT unless indicated in the Scope of Services.



8.21 Force Majeure

The CITY agrees that the COMPANY is not responsible for damages arising directly or indirectly from any delays for causes beyond the COMPANY's control. CITY agrees to defend, indemnify, and hold COMPANY, its consultants, agents, and employees harmless from any and all liability, other than that caused by the negligent acts, errors, or omissions of COMPANY, arising out of or resulting from the same. For purposes of this AGREEMENT, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; disease epidemic or pandemic; failure of any government agency to act in a timely manner; failure of performance by the CITY or the CITY'S contractors or consultants; or discovery of any hazardous substances or differing site conditions. Severe weather disruptions include but are not limited to extensive rain, high winds, snow greater than two (2) inches and ice. In addition, if the delays resulting from any such causes increase the cost or time required by the COMPANY to perform its services in an orderly and efficient manner, the COMPANY shall be entitled to a reasonable adjustment in schedule and compensation.

8.22 Job Site Visits and Safety

Neither the professional activities of COMPANY, nor the presence of COMPANY'S employees and sub-consultants at a construction site, shall relieve the general contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. COMPANY and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The CITY agrees that the general contractor is solely responsible for job site safety, and warrants that this intent shall be made evident in the CITY's AGREEMENT with the general contractor. The CITY also agrees that the CITY, COMPANY and COMPANY'S consultants shall be indemnified and shall be made additional insureds on the general contractor's and all subcontractor's general liability policies on a primary and non-contributory basis.

8.23 Hazardous Materials

CITY hereby understands and agrees that COMPANY has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at CITY's premises, or in connection with or related to this project with respect to which COMPANY has been retained to provide professional services. The compensation to be paid COMPANY for said professional services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, CITY agrees to defend, indemnify, and hold COMPANY, its officers, directors, employees, and consultants, harmless from and against any and all claims, damages, and expenses, whether direct, indirect, or consequential, including, but not limited to, attorney fees and Court costs, arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the

surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

It is acknowledged by both parties that COMPANY'S Scope of Services does not include any services related to asbestos or hazardous or toxic materials. In the event COMPANY or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of COMPANY'S services, COMPANY may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until the CITY retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrants that the job site is in full compliance with applicable laws and regulations.

Nothing contained within this AGREEMENT shall be construed or interpreted as requiring COMPANY to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C.A., §6901 et seq., as amended, or within any State statute governing the generation, treatment, storage, and disposal of waste.

8.24 Certificate of Merit

The CITY shall make no claim for professional negligence, either directly or in a third party claim, against COMPANY unless the CITY has first provided COMPANY with a written certification executed by an independent design professional currently practicing in the same discipline as COMPANY and licensed in the State in which the claim arises. This certification shall: a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a design professional performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to COMPANY not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any judicial proceeding.

8.25 Limitation of Liability

In recognition of the relative risks and benefits of the Project to both the CITY and the COMPANY, the risks have been allocated such that the CITY agrees, to the fullest extent permitted by law, to limit the liability of the COMPANY and COMPANY'S officers, directors, partners, employees, shareholders, owners and sub-consultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of the COMPANY and COMPANY'S officers, directors, partners, employees, shareholders, owners and sub-consultants shall not exceed \$50,000.00, or the COMPANY'S total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

8.28 Construction Observation Without Design

It is agreed that the professional services of COMPANY are limited to a review and observation of the work of the contractor to ascertain that such work is proceeding in general accordance with the contract documents and that such contract documents have not been



prepared by the COMPANY. Unless otherwise stated, the CITY warrants that any documents provided to COMPANY by the CITY or by the prior consultant may be relied upon as to their accuracy and completeness without independent investigation by the successor consultant and that the CITY has the right to provide such documents to COMPANY free of any claims of copyright or patent infringement or violation of any other party's rights in intellectual property. It is further agreed that the CITY will defend, indemnify and hold harmless COMPANY from any claim or suit whatsoever, including all payments, expenses or costs, arising from or alleged to have arisen from an error or omission in the plans, specifications or contract documents. COMPANY agrees to be responsible for its employees own negligent acts, errors or omissions in the performance of their professional services.

8.29 Design Without Construction Observation

It is agreed that the professional services of COMPANY do not extend to or include the review or site observation of the contractor's work or performance and the CITY assumes all responsibility for interpretation of the contract documents and for construction observation. It is further agreed that the CITY will defend, indemnify and hold harmless COMPANY from any claim or suit whatsoever, including but not limited to all payments, expenses or costs involved, arising from the contractor's performance or the failure of the contractor's work to conform to the design intent and the contract documents. COMPANY agrees to be responsible for its employees' negligent acts, errors or omissions.

8.31 Soliciting Employment

Neither party to this AGREEMENT will solicit an employee of the other nor hire or make an offer of employment to an employee of the other that is working on this PROJECT, without prior written consent of the other party, during the time this AGREEMENT is in effect.

8.32 Municipal Advisor

The COMPANY is not a Municipal Advisor registered with the Security and Exchange Commission (SEC) as defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act. When the CITY is a municipal entity as defined by said Act, and the CITY requires project financing information for the services performed under this AGREEMENT, the CITY will provide the COMPANY with a letter detailing who their independent registered municipal advisor is and that the CITY will rely on the advice of such advisor. A sample letter can be provided to the CITY upon request.

This AGREEMENT is approved and accepted by the CITY and COMPANY upon both parties signing and dating the AGREEMENT. Services will not begin until COMPANY receives a signed agreement. COMPANY's services shall be limited to those expressly set forth in this AGREEMENT and COMPANY shall have no other obligations or responsibilities for the Project except as agreed to in writing. The effective date of the AGREEMENT shall be the last date entered below.

Sincerely,



HR GREEN, INC.

W. Todd Estes, P.E.

Approved by: _____

Printed/Typed Name: _____

Title: _____ Date: 11/28/2022

CITY NAME

Accepted by: _____

Printed/Typed Name: _____

Title: _____ Date: _____