



**MASTER SERVICE AGREEMENT
FOR ONGOING CONSULTING SERVICES FOR
AS NEEDED ENVIRONMENTAL SUPPORT
BETWEEN CITY OF KELLER
AND HARDIN AND ASSOCIATES CONSULTING, LLC
FOR PROFESSIONAL CONSULTING SERVICES**

THIS MASTER SERVICE AGREEMENT (MSA) is made and entered into on this 1st day of October, 2019, and effective through September 30, 2020, by and between the City of Keller, hereinafter referred to as "Client," and Hardin & Associates Consulting, LLC, a Texas company, its affiliates and subsidiaries, hereinafter referred to as "Consultant."

RECITALS:

WHEREAS, Client desires that from time to time Consultant furnish Client certain consulting services;

WHEREAS, Consultant has available and offers to provide personnel and facilities necessary to perform the services desired under this Agreement;

NOW, THEREFORE, Client and Consultant agree as follows:

I. DESCRIPTION OF PROJECT

Services to be provided shall be as described in written task orders made pursuant to and referencing this Agreement.

II. SCOPE OF CONSULTANT SERVICES

The primary service(s) to be provided by the Consultant are as-needed Environmental Support for the Client's water/wastewater systems and may include, but are not limited to the following:

- Conduct TCEQ Required Customer Service Inspections (CSI)
- Backflow Prevention ordinance review
- Conduct benchmark survey of other cities backflow prevention programs
- In-the-field training as needed for water quality and environmental compliance inspections
- Review of plans, specifications, technical memos, reports, and standard details
- MS-4 Program assistances
- Other client requested environmental support tasks

Consultant agrees to perform those basic services described in separate written task or purchase orders signed by Client and Consultant (the "Services"). This Agreement provides the terms, obligations and conditions which shall control all work. The printed terms and conditions, if any, contained on the reverse sides of an accepted task or purchase order shall not apply to services provided under this



Agreement. Unless modified in writing by both parties, duties of Consultant shall not be construed to exceed those services specifically described in each task order. In the event work is authorized prior to the issuance of a written task order, any services performed by Consultant will be presumed to have been completed under the terms of this Agreement.

III. RESPONSIBILITIES OF CLIENT

In addition to payment for the Services performed under this Agreement, Client shall:

1. Assist and cooperate with Consultant in any manner necessary and within its ability to facilitate Consultant's performance under this Agreement.
2. Designate in writing a person to act as Client's representative with respect to this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Client's policies, make decisions and execute documents on Client's behalf.
3. Furnish Consultant with all technical data in Client's possession including, but not limited to, maps, surveys, drawings, soils or geotechnical reports, and any other information required by or useful to, Consultant in performance of its Services under this Agreement. Consultant shall be entitled to rely upon the information supplied by Client.
4. Notify Consultant of any known or potential health or safety hazards existing at or near the project site.
5. Provide access to and/or obtain permission for Consultant to enter upon all property, whether or not owned by Client, as required to perform and complete the Services.

IV. AMERICANS WITH DISABILITIES ACT

Any other provision of this Agreement to the contrary notwithstanding, unless otherwise specified in the Scope of Services, Client shall have sole responsibility as between Client and Consultant for compliance with the Americans With Disabilities Act ("ADA") 42 U.S.C. 12101 et. Seq. and the related regulations.

V. AUTHORIZATION AND COMPLETION

In signing this Agreement, Client grants Consultant specific authorization to proceed with work as directed in executed task orders.

VI. COMPENSATION

For the Services described in each task order, Client agrees to pay, and Consultant agrees to accept the total compensation in accordance with compensation terms included in the task order. Where Consultant has provided Client with a breakdown of the total compensation into subtasks, such breakdowns are estimates only. Consultant may re-allocate compensation between tasks, provided total compensation is not exceeded without the approval of Client. Time charges shall be in



accordance with the Rate Schedule and Fee Table contained in **Exhibit A**. The rate schedule may be revised annually, and shall be submitted prior to the date that they take effect. The revised Rate Schedule shall take effect unless written notice is received from the Client that the revised rates are not accepted. Compensation shall be billed monthly in summary form. Payment to Consultant is due upon presentation of invoice to Client.

As long as Consultant has not defaulted under this Agreement, Client shall pay Consultant within 30 days of the date of Consultant's invoices for services performed and reimbursable expenses incurred under this Agreement. If Client has reason to question or contest any portion of any such invoice, amounts questioned or contested shall be identified and notice given to Consultant within 15 days of the date of the invoice. Any portion of any invoice not contested shall be deemed to be accepted and approved for payment and shall be paid to Consultant within 30 days of the date of the invoice. The Client agrees to cooperate with Consultant in a mutual effort to resolve promptly any contested portions of the Consultant's invoices.

In the event any uncontested portions of any invoice are not paid within 30 days of the date of Consultant's invoice, interest on the unpaid balance shall accrue beginning with the 31st day at the maximum interest rate permitted by law, and Consultant shall have the right to suspend work per Article XV, Suspension of Work.

VII. RESPONSIBILITY OF CONSULTANT

A. Standard of Care Professional Services

Subject to the limitations inherent in the agreed scope of work as to the degree of care, amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement, Consultant shall perform its Services in accordance with generally accepted standards and practices customarily utilized by competent engineering firms in effect at the time Consultant's Services are rendered. Consultant does not expressly or impliedly warrant or guarantee its Services.

B. Reliance upon Information Provided by Others

If Consultant's performance of services hereunder requires Consultant to rely on information provided by other parties (excepting Consultant's subcontractors), Consultant shall not independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so in writing by Client.



C. Consultant's Opinion of Costs

Client acknowledges that construction cost estimates, financial analyses and feasibility projections are subject to many influences including, but not limited to, price of labor and materials, unknown or latent conditions of existing equipment or structures, and time or quality of performance by third parties. Client acknowledges that such influences may not be precisely forecasted and are beyond the control of Consultant and that actual costs incurred may vary substantially from the estimates prepared by Consultant. Consultant does not warrant or guarantee the accuracy of construction or development cost estimates.

VIII. HAZARDOUS MATERIALS

Consultant and Consultant's subcontractors shall have no responsibility for the discovery, handling, removal, or disposal of or exposure of persons to asbestos or hazardous or toxic materials that are present in any form at the Project site. Professional services related to or in any way connected with the investigation, detection, abatement, replacement, use, specification, or removal of products, materials, or processes containing asbestos or hazardous or toxic materials are beyond the scope of this Agreement. Client shall be solely responsible for notifying all appropriate governmental agencies, including the potentially effected public, of the existence of any hazardous or toxic materials located on or at the project site at any time.

In the event Consultant encounters asbestos or hazardous materials at the jobsite, Consultant may, at its option and without liability for damages, suspend the performance of services on the Project until such time as Client and Consultant mutually agree on an amendment to this Agreement to address the issue, or Client retains another specialist consultant or contractor to identify, classify, abate and/or remove the asbestos and/or hazardous materials.

IX. CONSULTANT'S WORK PRODUCT

A. Scope

Consultant's work product, which is prepared solely for the purposes of this Agreement, including, but not limited to, drawings, test results, recommendations and technical specifications, whether in hard copy or electronic form, shall become the property of Client when Consultant has been fully compensated as set forth herein. Consultant may keep copies of all work products for its records.

Consultant and Client recognize that Consultant's work product submitted in performance of this Agreement is intended only for the project described in this Agreement. Client's alteration of Consultant's work product or its use by Client for any other purpose shall be at Client's sole risk, and Client shall hold harmless and indemnify Consultant against all losses, damages, costs and expense, including attorneys' fees, arising out of or related to any such alteration or unauthorized use.



B. Electronic Copies

If requested, solely as an aid and accommodation to Client, Consultant may provide copies of its work product documents in computer-readable media ("electronic copies"). These documents will duplicate the documents provided as work product, but will not bear the signature and professional seals of the registered professionals responsible for the work. Client is cautioned that the accuracy of electronic document copies may be compromised by electronic media degradation, errors in format translation, file corruption, printing errors, and incompatibilities, operator inexperience, and file modification. Consultant will maintain the original copy, which shall serve as the official, archived record of the electronic documents. Client agrees to hold harmless, indemnify and defend Consultant from any claims arising out of or relating to any unauthorized change or alteration of electronic copies of documents.

X. INDEMNIFICATION

A. Indemnification of Client

Consultant agrees to indemnify and hold Client harmless from and against any liability to the extent arising out of the negligent errors or negligent omissions of Consultant, its agents, employees, or representatives, in the performance of Consultant's duties under this Agreement.

B. Consequential Damages

Regardless of any other term of this Agreement, in no event shall either party be responsible or liable to the other for any incidental, consequential, or other indirect damages.

XI. CONSULTANT'S INSURANCE

Consultant shall procure and maintain the following minimum insurance:

1. Commercial general liability insurance, including personal injury liability, blanket contractual liability and broad-form property damage liability coverage. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000.
2. Automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired cars. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000.

Client shall be named as additional insured on policies 1 and 2 above. Upon request, a certificate of insurance will be provided to Client with a 30-day written notice in the event the above policies are cancelled.



XII. CONFIDENTIALITY

Consultant agrees it will maintain the confidentiality of material it receives from Client which Client has clearly identified as "Confidential" and will not disclose, distribute, or publish to any third party such confidential information without the prior permission of Client. Notwithstanding the foregoing, Consultant shall have no confidentiality obligation with respect to information that:

- 1) becomes generally available to the public other than as a result of disclosure by Consultant or its agents or employees;
- 2) was available to Consultant on a non-confidential basis prior to its disclosure by Client;
- 3) becomes available to Consultant from a third party who is not, to the knowledge of Consultant, bound to retain such information in confidence.

In the event Consultant is compelled by subpoena, court order, or administrative order to disclose any confidential information, Consultant shall promptly notify Client and shall cooperate with Client prior to disclosure so that Client may take necessary actions to protect such confidential information from disclosure.

XIII. SUBCONTRACTS

Consultant shall be entitled, to the extent determined appropriate by Consultant, to subcontract any portion of the services to be performed under this Agreement. Any sub-contracted services shall be noted in the written task orders issued under this agreement.

XIV. SUSPENSION OF WORK

Work under this Agreement may be suspended as follows:

1. By Client. By written notice to Consultant, Client may suspend all or a portion of the Work under this Agreement if unforeseen circumstances beyond Client's control make normal progress of the Work impracticable. Consultant shall be compensated for its reasonable expenses resulting from such suspension including mobilization and demobilization. If suspension is greater than 30 days, then Consultant shall have the right to terminate this Agreement in accordance with Article XV, Termination of Work.
2. By Consultant. By written notice to Client, Consultant may suspend the Work if Consultant reasonably determines that working conditions at the Site (outside Consultant's control) are unsafe, or in violation of applicable laws, or in the event Client has not made timely payment in accordance with Article VI, Compensation, or for other circumstances not caused by Consultant that are interfering with the normal progress of the Work. Consultant's suspension of Work hereunder shall be without prejudice to any other remedy of Consultant at law or equity.

XV. TERMINATION OF WORK

- A. This Agreement may be terminated by Client as follows: (1) for its convenience on 30 days' notice to Consultant, or (2) for cause, if Consultant materially breaches this



Agreement through no fault of Client and Consultant neither cures such material breach nor makes reasonable progress toward cure within 15 days after Client has given written notice of the alleged breach to Consultant.

- B. This Agreement may be terminated by Consultant as follows: (1) for cause, if Client materially breaches this Agreement through no fault of Consultant and Client neither cures such material breach nor makes reasonable progress toward cure within 15 days after Consultant has given written notice of the alleged breach to Client, or (2) upon five days' notice if work under this Agreement has been suspended by either Client or Consultant for more than 30 days in the aggregate.

C. Payment upon Termination

In the event of termination, Consultant shall perform such additional work as is reasonably necessary for the orderly closing of the Work. Consultant shall be compensated for all work performed prior to the effective date of termination, plus work required for the orderly closing of the Work, including: (1) authorized work performed up to the termination date plus termination expenses, including all labor and expenses, at Consultant's standard billing rates, directly attributable to termination; (2) all efforts necessary to document the work completed or in progress; and (3) any termination reports requested by Client.

Except for termination of Consultant by Client for cause, Consultant shall also receive a termination fee equal to 15 percent of the total compensation yet to be earned under existing authorizations at the time of termination to account for Consultant's rescheduling adjustments, reassignment of personnel, and related costs incurred due to termination.

XVI. ASSIGNMENT

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. Except as otherwise set forth under Article VIII, Assignment of Tasks to Affiliates, this Agreement may not be assigned by Client or Consultant without prior, written consent of the other.

XVII. NO BENEFIT FOR THIRD PARTIES

The services to be performed by Consultant are intended solely for the benefit of Client, and no benefit is conferred on, nor contractual relationship established with any person or entity not a party to this Agreement. No such person or entity shall be entitled to rely on Consultant's services, opinions, recommendations, plans, or specifications without the express written consent of Consultant. No right to assert a claim against the Consultant, its officers, employees, agents, or consultants shall accrue to the construction Contractor or to any subcontractor, supplier, manufacturer, lender, insurer, surety, or any other third party as a result of this Agreement or the performance or nonperformance of the Consultant's services hereunder.



XVIII. FORCE MAJEURE

Consultant shall not be responsible for delays caused by circumstances beyond its reasonable control, including, but not limited to (1) strikes, lockouts, work slowdowns or stoppages, or accidents, (2) acts of God, (3) failure of Client to furnish timely information or to approve or disapprove Consultant's instruments of service promptly, and (4) faulty performance or nonperformance by Client, Client's independent consultants or contractors, or governmental agencies. Consultant shall not be liable for damages arising out of any such delay, nor shall the Consultant be deemed to be in breach of this Agreement as a result thereof.

XIX. INTEGRATION

This Agreement represents the entire understanding of Client and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing signed by both parties. Any purchase order issued by Client, whether or not signed by Consultant, and any terms and conditions contained in such purchase order which are inconsistent with this Agreement shall be of no force and effect.

XX. SEVERABILITY

If any part of this Agreement is found unenforceable under applicable laws, such part shall be inoperative, null, and void insofar as it conflicts with said laws, but the remainder of this Agreement shall be in full force and effect.

XXI. CHOICE OF LAW/JURISDICTION

This Agreement shall be administered and interpreted under the laws of the state of Texas.

XXII. ATTORNEYS' FEES

In the event either party commences legal proceedings against the other, then the prevailing party shall, in addition to any other recovery, be entitled to recover its reasonable attorneys' fees and all other costs of such proceeding.

XXIII. NOTICES

All notices required under this Agreement shall be delivered by facsimile, personal delivery or mail and shall be addressed to the following persons:



**HARDIN &
ASSOCIATES
CONSULTING, LLC**

Byron R. Hardin, CPM
Project Manager
Hardin & Associates Consulting, LLC
2105 Luna Road, Suite 310
Carrollton, Texas 75006
e-mail: bhardin@hactexas.com
Office (972) 823-8800
Fax: (972) 823-8802

Linan Alonzo, P.E., P.T.O.E.
Director of Public Works
City of Keller
1100 Bear Creek
Texas, 76244
alinan@cityofkeller.com
Office (817) 743-4081
Fax: (817) 743-4091

Notice shall be effective upon delivery to the above addresses. Either party may notify the other that a new person has been designated by it to receive notices, or that the address or Fax number for the delivery of such notices has been changed, provided that, until such time as the other party receives such notice in the manner provided for herein, any notice addressed to the previously-designated person and/or delivered to the previously-designated address or Fax number shall be effective.

XXIV. AUTHORIZATION

The persons executing this Agreement on behalf of the parties hereto represent and warrant that the parties have all legal authority and authorization necessary to enter into this Agreement, and that such persons have been duly authorized to execute this Agreement on their behalf.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Hardin & Associates Consulting, LLC

City of Keller

Signature 

Signature _____

Printed Name Byron R. Hardin, CPM

Printed Name Mark Hafner

Title President

Title City Manager

Federal Tax ID number: **26-4555939**



EXHIBIT A
HARDIN & ASSOCIATES CONSULTING, LLC
RATE SCHEDULE
(INCLUDES MILEAGE AND EXPENSES)

Classification	Labor Rate
Senior Engineer	\$175.00
Senior Project Manager	\$150.00
Regulatory Compliance Analyst	\$ 125.00
Senior Water Quality Inspector	\$110.00
Administrative	\$35.00

FEE TABLE
TCEQ CROSS-CONNECTION CONTROL INSPECTION
HARDIN & ASSOCIATES CONSULTING, LLC

Items	Cross-Connection Control Program Inspections	Admin \$35 / hour	SR. Water Quality Inspector \$110 / hour	SR. PM \$150 / hour	Cost
1	Project Management			26 (1/2 hr. / week)	\$ 3,900
2	Administrative	284 approx. (5 hr. / week)			\$ 9,940
3	Conduct TCEQ Compliance Inspections and Re- inspections		774 (15 / week)		\$ 85,140
4	US Postage (Regular and Certified Mail)				\$1,000
	Total				\$99,980