

**CITY OF BURNET
PROFESSIONAL SERVICES AGREEMENT
FUNDED IN PART BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT**

THE STATE OF TEXAS

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§

KNOW ALL BY THESE PRESENTS

BURNET COUNTY

This Professional Services Agreement ("*Agreement*"), Funded by the Federal Department of Housing and Urban Development (HUD) for the Pedestrian Crossing at Highway 281 in the City of Burnet, Tx (Project), is made and entered by and between the City of Burnet, Texas, (the "*City*") a Texas home-rule municipality, and Pape Dawson Engineers, a Professional Engineering Firm Registration #: F - 470 form under the laws of The State of Texas ("*Professional*" or "*Firm*") .

Section 1. Duration. This Agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

Section 2. Scope of Work. The scope of work Professional shall provide under this Agreement is as follows:

- (A) *Scope of Work.* Professional shall perform the Services as more particularly described in the Scope of Work attached hereto as **Exhibit "A"**. The work as described in the Scope of Work constitutes the "*Project*". Unless otherwise provided in the Scope of Work, the anticipated submittal of all Project deliverables is immediately upon completion of the Project.
- (B) *Quality of Work.* The Quality of Services provided under this Agreement shall be of the level of professional quality performed by Professionals regularly rendering this type of service.
- (C) *Requirements.* The Professional shall perform its Services for the Project in compliance with all statutory, regulatory, and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- (D) *Reliance.* The Professional may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

- (A) *Compensation.* The Professional shall be paid in the manner set forth in **Exhibit "B"** and as provided herein. The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed **\$55,570.00**. Payment to the Professional shall be based on satisfactory completion of identified milestones in the Scope of Work.

- (B) *Billing Period:* The Professional may submit monthly, or less frequently, an invoice for payment based on the estimated completion of the described tasks and approved work schedule. Subject to Chapter 2251, Texas Government Code (the "*Prompt Payment Act*"), payment is due within thirty (30) days of the City's receipt of the Professional's invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.
- (C) *Reimbursable Expenses:* Any and all reimbursable expenses related to the Project shall be included in the scope of services in **Exhibit "A"** and accounted for in the total contract amount in **Exhibit "B"**. If these items are not specifically accounted for in **Exhibit "A"** they shall be considered subsidiary to the total contract amount.

Section 4. Changes to the Project Work; Additional Work.

- (A) *Changes to Work:* Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work at no costs to City. If the City finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by the City and such services will be considered as additional work and paid for as specified under following paragraph. Such changes, including any increase or decrease in the amount of the Professional's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.
- (B) *Additional Work:* The City retains the right to make changes to the Scope of Work at any time by written order. Work that is clearly not within the general description of the Scope of Work and does not otherwise constitute special services under this Agreement must be approved in writing by the City by supplemental agreement before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Professional shall promptly notify the City of that opinion, in writing. If the City agrees that such work does constitute additional work, then the City and the Professional shall execute a supplemental agreement for the additional work and the City shall compensate the Professional for the additional work based on the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by Professional not previously approved as additional work shall be at risk of the Professional.

Section 5. Time of Performance. The services of the Professional shall commence on _____. In any event, all the services required and performed hereunder shall be completed no later than _____ or the project's administrative closure date, as defined by HUD, whichever is later. The prompt

completion of the services under the Scope of Work is critical to the City. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Professional and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Professional prior to the time of as.

Section 6. Insurance. Before commencing work under this Agreement, Professional shall obtain and maintain the liability insurance provided for in attached **Exhibit "C"** throughout the term of this Agreement and thereafter as required herein.

In addition to the insurance provided for in **Exhibit "C"**, Professional shall maintain the following limits and types of insurance:

Professional Liability Insurance: Professional errors and omissions liability insurance with limits of liability of \$1,000,000 per occurrence covering all work performed by the Professional, its employees, sub-contractors, or independent contractors.

Workers Compensation Insurance: The Professional shall carry and maintain during the term of this Agreement, workers compensation and employers' liability insurance meeting the requirements of the State of Texas on all the Professional's employees carrying out the work involved in this contract.

General Liability Insurance: The Professional shall carry and maintain during the term of this Agreement general liability insurance on a per occurrence basis with limits of liability of \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be \$1,000,000. Coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Professional or its employees carrying out the work involved in this Agreement. The general aggregate shall be \$2,000,000.

Automobile Liability Insurance: Professional shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of \$1,000,000 per occurrence for bodily injury and property damage or split limits of \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Professional or its employees.

Subcontractor: In the case of any work sublet, the Professional shall require subcontractor and independent contractors working under the direction of either the Professional or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Professional.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form; provided however, subject to the City's City

Manager's prior written approval and verification that any coverage can only be obtained on a "claims made" basis, the certificate of insurance for such coverage must clearly state coverage is on a "claims made" basis and coverage must remain in effect for at least two years after final payment with the Professional continuing to furnish the City certificates of insurance.

Evidence of such insurance shall be attached as **Exhibit "D"**.

Section 7. Subletting. Subject to the prohibition prescribed in Section 15 (K) (entitled "*No Assignment*"), the Professional shall not sublet or transfer any portion of the work under this Agreement, or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor.

Section 8. Ownership of Documents. Upon completion or termination of this Agreement and payment of all compensation owed to Professional, all documents prepared by the Professional or furnished to the Professional by the City shall be delivered to and become the property of the City. All drawings, charts, calculations, plans, specifications, and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT LIABILITY TO THE PROFESSIONAL.

- A) Where applicable, Professional shall retain all pre-existing proprietary rights in the materials provided to the City but shall grant to the City a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at Professional's expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement.
- B) *Access to Records.* The HUD, Inspectors General, the Comptroller General of the United States, and the City of Burnet, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Professional which are pertinent to the Project award, in order to make audits, examinations, excerpts, and transcripts, and to closeout the City's contract with HUD .
- C) *Retention of Records.* The Professional shall retain all required records for three years after the City makes its final payment and all pending matters are closed.
- D) *Records and Audits.* The Professional shall ensure that the City maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The Professional and the City shall retain such records, and any supporting

documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.

Section 9. Professional's Seal. To the extent that the Professional has a professional seal, it shall be placed on all documents and data furnished by the Professional to the City. All work and services provided under this Agreement shall conform to the accepted standards and practices of the Professional's industry. The plans, specifications and data provided by Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by the City and Professional. The City acknowledges that Professional has no control over the methods or means of work nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of costs by the Professional are for informational purposes only and are not guarantees.

Section 10. Compliance with Laws. The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish the City with satisfactory proof of compliance.

Section 11. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornadoes] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

Section 12. Termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Professional pursuant to this Agreement shall, at the option of the City, be turned over to the City and become the property of the City. Termination, of this Agreement, prior to the time stated in the Section 1 (entitled "*Duration*") shall be as follows:

- (A) *Termination of Agreement for Cause:* This Agreement may be terminated:
 - (1) By the mutual agreement and consent of both Professional and City;

- (2) By the City: If the Professional fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Professional violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the Professional of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination.

In the event of termination for cause, the Professional shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Professional shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Professional, and the City may set-off the damages it incurred because of the Professional's breach of the contract from any amounts it might otherwise owe the Professional.

- (3) If the City terminates this Agreement pursuant to Section 5 (entitled "Time of Completion") or subsection 8(A)(2) or (3), above, the Professional shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Professional considering the actual costs incurred by the Professional in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Professional to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination.

- (B) *Termination for Convenience of the City:* City may at any time and for any reason terminate Professional's services and work at City's convenience upon providing written notice to the Professional specifying the extent of termination and the effective date. Upon receipt of such notice, Professional shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Professional shall be entitled to payment only as follows:

- (1) the actual cost of the work completed in conformity with this Agreement plus,
- (2) such other costs actually incurred by Professional as are permitted by the prime contract and approved by City.

There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Professional prior to the date of the termination of this Agreement. Professional shall not be entitled to any claim or claim of lien against City/County for any additional compensation or damages in the event of such termination and payment.

Section 13. Indemnification. Professional agrees to indemnify and hold the City of Burnet, Texas and all of its present, future and former agents, employees, officials

and representatives harmless in their official, individual and representative capacities from any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, for injuries to persons (including death) or to property (both real and personal) created by, arising from or in any manner relating to the services or goods performed or provided by Professional – expressly including those arising through strict liability or under the constitutions of the United States or Texas – **BUT ONLY TO THE EXTENT ALLOWABLE BY SEC. 271.904(a) OF THE TEXAS LOCAL GOVERNMENT CODE AS APPLICABLE.** Additionally, the professional shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.

Section 14. Notices. Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 15. Miscellaneous Provisions. Additional provisions of this Agreement are set out in the subsections below as follows:

- (A) *Agreement governs.* In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Services, this Agreement shall govern. The Scope of Services is intended to detail the technical scope of services, fee schedule, and contract time only and shall not dictate Agreement terms.
- (B) *Binding Effect.* Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors, and assigns.
- (C) *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- (D) *Contract requirements for subdivisions of Texas state government.* Under Texas law, the City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that of the following: (i) the company neither boycotts Israel; nor will not boycott Israel during the term of the contract (Chapter 2271, Texas Government Code); (ii) the company is neither identified on a list prepared and maintained by the comptroller; nor does business with Iran, Sudan, or a foreign terrorist organization (Chapter 2252,

subchapter F, Texas Government Code); (iii) the company neither has a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; nor will not discriminate during the term of the contract against a firearm entity or firearm trade association (Chapter 2274, Texas Government Code); and (iv) neither boycott energy companies; nor will not boycott energy companies during the term of the contract (Chapter 2274, Texas Government Code).

The signatory executing this Agreement on behalf of Professional verifies that the Professional, at the time of execution of this Agreement is, and during the term of this Agreement shall be, in full compliance with the requirements of Chapters 2270, 2252 subchapter F, and 2274 Texas Government Code as those chapters apply to the matters discussed in the paragraph above. The violation of this subsection shall be a material breach of this Agreement.

(E) *Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire.* Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code as noted below.

(1) *Governing Body.* No member of the governing body of the City and no other officer, employee, or agent of the City, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of Project award between HUD and the City, shall have any personal financial interest, direct or indirect, in the Professional or this Agreement; and the Professional shall take appropriate steps to assure compliance.

(2) *Other Local Public Officials.* No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the Project award between HUD and the City, shall have any personal financial interest, direct or indirect, in the Professional or this Agreement; and the Professional shall take appropriate steps to assure compliance.

(3) *The Professional and Employees.* The Professional warrants and represents that it has no conflict of interest associated with the Project award between HUD and the City or this Agreement. The Professional further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the Project award between HUD and the City, or in any business, entity, organization or person that may benefit from the award. The Professional further agrees that it will not employ an individual with a conflict of interest as described herein.

(4) *Conflicts Disclosure Statement.* Per Sec. 176.003 in Chapter 176 of the Local Government Code A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- i. the vendor enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the vendor; and the vendor:
- ii. has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period

preceding the date that the officer becomes aware that: (i) a contract between the local governmental entity and vendor has been executed; or (ii) the local governmental entity is considering entering into a contract with the vendor;

- iii. has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that: (i) a contract between the local governmental entity and vendor has been executed; or (ii) the local governmental entity is considering entering into a contract with the vendor; or has a family relationship with the local government officer.
- iv. (a-1). A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is: (1) a political contribution as defined by Title 15, Election Code; or (2) food accepted as a guest.
- v. (a-2). A local government officer is not required to file a conflicts disclosure statement under Subsection (a) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section 791.013, Government Code.
- vi. A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a).

(F) *Dispute Resolution of Program Non-Compliance and Disallowed Costs.* In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or HUD program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate and attempt to reach a just and equitable solution satisfactory to both parties. by taking the following steps:

- (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute.
- (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute.
- (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

If the matter is not resolved by negotiation within 30 days of receipt of written notice

or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Amendment and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. The selection of mediator shall be agreed to by both parties. If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

- (G) *Exhibits.* All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same. Exhibits are as follows:

Exhibit "A": Scope of Work

Exhibit "B": Compensation

Exhibit "C": Requirements for all Insurance Documents

Exhibit "D": Evidence of Insurance

Exhibit "E": Byrd Anti-Lobbying Amendment

- (H) *Entire Agreement.* It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

- (I) *Gender.* Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

- (J) *Governing Law; Venue.* This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Burnet County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Burnet County, Texas.

- (K) *No Assignment.* Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Procedures for subcontract or assignment application for City approval:

- (1) The Professional shall, prior to proceeding with the work, notify the City in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.
- (2) If any time during progress of the work, the City determines that any subcontractor is incompetent or undesirable, the City will notify the Professional who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.
- (3) The Professional will include in all contracts and subcontracts in excess of \$150,000 a provision which requires compliance with all applicable

standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). The provisions shall require reporting of violations to TDA and to the Regional Office of the Environmental Protection Agency (EPA).

- (4) The Professional will include in all contracts and subcontracts in excess of \$150,000 provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate.
- (5) The Professional will include in all contracts and subcontracts in excess of \$10,000 provisions addressing termination for cause and for convenience by the City including the manner by which it will be effected and the basis for settlement.
- (6) The Professional will include in all contracts and subcontracts provisions requiring compliance with the following, if applicable:
 - i. Prime construction contracts in excess of \$2,000, compliance with the Davis-Bacon Act, as amended (40 U.S.C.3141-3144, 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
 - ii. Prime construction contracts in excess of \$2,000, compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3)
 - iii. The inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b) (Executive Order 11246);
 - iv. The inclusion of the Economic Opportunities for Section 3 Residents and Section 3 Business Concerns of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3).
 - v. Contracts exceeding \$100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
 - vi. For contracts in excess of \$100,000 that involve the employment of mechanics or laborers, compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), including work week requirements and safety conditions for workers, as supplemented by Department of Labor regulations (29 CFR Part 5); and
- (7) The Professional will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 2 CFR Part 2424. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.
- (8) The Professional will include in all negotiated contracts and subcontracts a provision to the effect that the City, HUD, the Texas Comptroller of Public Accounts, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to that

specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

- (9) The Professional will include in all contracts and subcontracts a requirement that the contractor maintain all relevant project records for three (3) years after the City has made final payment to the contractor and all other pending matters are closed.
- (L) *Non-Collusion.* Professional represents and warrants that Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Professional further agrees that Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the services performed by Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Professional, Professional shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Professional under or pursuant to this Agreement.
- (M) *Paragraph Headings; Construction.* The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.
- (N) *Relationship of Parties.* Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.
- (O) *Right To Audit.* City shall have the right to examine and audit the books and records of Professional with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- (P) *Severability.* If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.
- (Q) *Waiver.* Either City or the Professional shall have the right to waive any

requirement contained in this Agreement that is intended for the waiving party's benefit. Except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

- (R) *Local Program Liaison.* For purposes of this Agreement, the City Manager, or equivalent authorized person, or designee will serve as the Local Program Liaison and primary point of contact for the Professional. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.
- (S) Equal Opportunity Clause (applicable to federally assisted construction contracts and subcontracts over \$10,000). During the performance of this contract, the Firm agrees as follows:
 - (1) The Professional will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Professional will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (2) The Professional will, in all solicitations or advertisements for employees placed by or on behalf of the Professional, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - (3) The Professional will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
 - (4) The Professional will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Professional's commitments under this section, and shall

post copies of the notice in conspicuous places available to employees and applicants for employment.

- (5) The Professional will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Professional will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Professional's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Professional may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Professional will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Professional will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Professional becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Professional may request the United States to enter into such litigation to protect the interests of the United States.
- (T) *Civil Rights Act of 1964*. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- (U) *Section 109 of the Housing and Community Development Act of 1974*. The Professional shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
- (V) *Section 504 of the Rehabilitation Act of 1973*, as amended. The Professional agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.

(W) *Age Discrimination Act of 1975*. The Professional shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

(X) *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)* If this agreement is over \$100,000 the Professional certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining this contract. The Professional shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

(Y) *Debarment and Suspension (Executive Orders 12549 and 12689)*.

(1) The Professional certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Professional.

(2) The Professional understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

(Z) *Prohibition on Contracting for Covered Telecommunications Equipment or Services*. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons. Refer to FEMA Policy 405-143-1 for additional information and exceptions. Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(1) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(2) Enter, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or

(3) Enter, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(4) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered

telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(AA) Domestic Preference for Procurements. Build America, Buy America Act (BABAA). Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the Build America, Buy America Act shall file the required certification to (insert name of recipient/subrecipient) with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA. Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirements. Such disclosures shall be forwarded to the recipient who, in turn, will forward the disclosures to FEMA, the federal agency; subrecipients will forward disclosures to the pass-through entity, who will, in turn, forward the disclosures to FEMA."

EXECUTED, by the City on this the _____ day of _____,
202____.

CITY:

PROFESSIONAL:

By: _____
David Vaughn, City Manager

By: _____

Name: _____

Title: _____

ADDRESS FOR NOTICE:

CITY

City of Burnet
Attn: City Manager
P.O. Box 1369
1001 Buchanan Drive, Suite 4
Burnet, Texas 78154

PROFESSIONAL

Pape Dawson Engineers
Attn. Valerie Collins
10801 N Mopac Expressway,
Ste 200
Austin, Tx 78759

Exhibit “A”

Scope of Services

Exhibit “B”

Compensation

Exhibit “C”

REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Professional shall comply with each and every condition contained herein. The Professional shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Professional shall maintain insurance coverage equal to that required of the Professional. It is the responsibility of the Professional to assure compliance with this provision. The City of Burnet accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Professional shall specifically endorse applicable insurance policies as follows:

1. The City of Burnet shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement.**
2. A waiver of subrogation in favor of The City of Burnet shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement.**
3. All insurance policies shall be endorsed to the effect that the City of Burnet will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name the City of Burnet as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify the City of Burnet of any material change in the insurance coverage.
7. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Professional may maintain reasonable and customary deductibles, subject to approval by the City of Burnet.
10. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Professionals obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.

13. Upon request, Professional shall furnish the City of Burnet with certified copies of all insurance policies.
14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Burnet within ten (10) business days after contract award and prior to starting any work by the successful Professional's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Burnet, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Burnet. The certificate of insurance and endorsements shall be sent to:

**City of Burnet
Attn: City Manager
1001 Buchanan Drive, #4
P.O. Box 1369
Burnet, TX 78154**

**Emailed to: dvaughn@cityofburnet.com
Faxed to: (512) 756-8560**

(Instructions for completing and submitting a certificate to the City of Burnet)

Complete the certificate of insurance with the information listed below:

- A) Certificate of Insurance date
- B) Producer (Insurance Agency) Information – complete name, address, telephone information, & email address.
- C) Insured's (Insurance Policy Holder) Information – complete name & address information
- D) Insurer (name/names of insurance company) **(Remember the city requires all insurance companies to be authorized to do business in the State of Texas, be rated by A.M. Best with a rating of B+ (or better), Class VI (or higher) or otherwise be acceptable to the City if not rated by A.M. Best)
- E) NAIC # (National Association of Insurance Commissioners, a # that is assigned by the State to all insurance companies)
- F) Insurer letter represents which insurance company provides which type of coverage from D
- G) General Liability Insurance Policy – must have an (x) in box. Also, "Occurrence" type policy – must have an (x) in the box (occurrence policy preferred but claims made policy can be accepted with special approval)
- H) This section shall be filled in with "Y" for yes under Additional Insured for all coverages, except for Professional Liability and Workers' Compensation. There shall also be a "Y" for yes under all coverages for subrogation waived.
- I) Automobile Liability Insurance – must be checked for Any Auto, All Owned Autos, Hired Autos
- J) Umbrella Coverage – must be checked in this section and by occurrence whenever it is required by written contract and in accordance with the contract value.
- K) Worker's Compensation and Employers Liability Insurance – information must be completed in this section of the certificate of insurance form (if applicable).
- L) Builder's Risk Policy – for construction projects as designated by the City of Burnet.
Professional Liability Coverage – for professional services if required by the City of Burnet.
- M) Insurance Policy #'s
- N) Insurance policy effective dates (always check for current dates)
- O) Insurance Policy limits (See Insurance Requirements Checklist)
- P) This section is to list projects, dates of projects, or location of project. Endorsements to the insurance policy(ies) must be provided separately and not in this section. The following endorsements are required by the City of Burnet.
 - (1) Adding the City of Burnet as an additional insured. The "additional insured" endorsement is not required for professional liability and workers compensation insurance; and
 - (2) Waiver of Subrogation
 - (3) Primary and Non-Contributory
 - (4) Cancellation Notice
- Q) City of Burnet's name and address information must be listed in this section
- R) Notice of cancellation, non-renewal, or material change to the insurance policy(ies) must be provided to the City of Burnet in accordance with a cancellation notice endorsement to the policy and/or per the policy provisions based on the endorsement adding the City as an additional insured. (Sec. 1811.155, Tex. Ins. Code)
- S) The certificate must be signed by the Authorized Agent in this section of the certificate form.

Exhibit “D”

Evidence of Insurance