



**AGENDA ITEM REQUEST FORM
CITY OF JOHNSON CITY, TEXAS
CITY COUNCIL**

ITEM NOS. 8 & 9

MEETING DATE: April 6, 2021

AGENDA PLACEMENT:

- Ceremonial
- Consent
- Individual
- Closed Session

CAPTION:

Approval of a Resolution of the City Council of the City of Johnson City, Texas authorizing the submission of a Texas Community Development Block Grant Program Application to the Texas Department of Agriculture for the Community Development Fund; and authorizing the Chief Administrative Officer to act as the City's Executive Officer and authorized representative in all matters pertaining to the City's participation in the Texas Community Development Block Grant Program. (Staff)

Approval of an Engineering Services Agreement between the City of Johnson City, Texas and S.D. Kallman, L.P. for the Texas Community Development Block Grant Program, including, but not limited to, the addition, repair, and/or replacement of fire hydrants and valves for fire protection and water loss mitigation purposes for an amount not to exceed Thirty-Nine Thousand Five Hundred Dollars (\$39,500.00). (Staff)

EXECUTIVE SUMMARY:

Item Nos. 8 and 9 seek approval of:

1. A Resolution authorizing the submittal of a Texas Community Development Block Grant Program application for the addition, repair, and/or replacement of fire hydrants and valves for water loss mitigation and fire protection purposes. Specifically, the Resolution names the amount of the grant request (\$350,000.00), designates the Chief Administrative Officer as the grant's Authorized Representative, and commits the City to a cash match/contribution of 10% of the grant request (\$35,000.00).
2. An Engineering Services Agreement between the City and S.D. Kallman, L.P. for the abovementioned grant, including pre- and post-award engineering and construction-related matters. The negotiated fee is \$39,500.00, which is 12% of the total grant amount; City Staff initially estimated \$70,000.00 or 20% of the total grant amount for the engineering fee. The City Attorney has reviewed and approved the proposed Agreement.

FINANCIAL:

- \$35,000.00 cash match/contribution
- \$39,500.00 engineering fee
- \$74,500.00 total (22% of total grant amount)

ATTACHMENTS:

- Resolution No. R21-058
- Engineering Services Agreement

SUGGESTED ACTION:

Motion to approve a Resolution of the City Council of the City of Johnson City, Texas authorizing the submission of a Texas Community Development Block Grant Program Application to the Texas Department of Agriculture for the Community Development Fund; and authorizing the Chief Administrative Officer to act as the City's Executive Officer and authorized representative in all matters pertaining to the City's participation in the Texas Community Development Block Grant Program; and

An Engineering Services Agreement between the City of Johnson City, Texas and S.D. Kallman, L.P. for the Texas Community Development Block Grant Program, including, but not limited to, the addition, repair, and/or replacement of fire hydrants and valves for fire protection and water loss mitigation purposes for an amount not to exceed Thirty-Nine Thousand Five Hundred Dollars (\$39,500.00).

PREPARED BY: CAO/City Secretary Rick Schroder

DATE SUBMITTED: 3/29/21

**ENGINEERING SERVICES AGREEMENT
FY 2021/2022 TEXAS COMMUNITY DEVELOPMENT GRANT**

**PART I
AGREEMENT**

THIS AGREEMENT, entered this 6th day of April 2021 by and between the CITY OF JOHNSON CITY, hereinafter called the "City", acting herein by Mayor Rhonda Stell hereunto duly authorized, and S.D. KALLMAN, L.P., hereinafter called the "Firm," acting herein by Steven D. Kallman, P.E., President.

WITNESSETH THAT:

WHEREAS, the City of Johnson City desires to add, repair, and/or replace the following: fire hydrants and valves for water loss mitigation under the general direction of the Texas Community Development Block Grant (hereinafter called "TxCDBG") Program administered by the Texas Department of Agriculture (TDA); and

WHEREAS, the City desires to engage S.D. Kallman, L.P. to render certain engineering services in connection with the TxCDBG Project, Contract Number: TBD.

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services
The Firm will perform the services set out in Part II, Scope of Services.
2. Effective Date and Term of Agreement – Upon award of the TxCDBG grant to the City, this Agreement shall take effect and services of the Firm shall commence on _____. This Agreement shall terminate upon release and close of the project by TDA. In any event, all the services required and performed hereunder shall be completed no later than _____.
3. Local Program Liaison - For purposes of this Agreement, the Chief Administrative Officer, Rick Schroder, or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Firm. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.
4. Access to Records - The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the Texas Department of Agriculture (TDA), and the City, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Firm which are pertinent to the TxCDBG award, to make audits, examinations, excerpts, and transcripts, and to close out the City's TxCDBG contract with TDA.
5. Retention of Records - The Firm shall retain all required records for three years after the City makes its final payment and all pending matters are closed.
6. Compensation and Method of Payment - The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed \$39,500. No compensation is due unless the

Grant Application is approved by TDA and executed. Payment to the Firm shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule of this Agreement.

7. Indemnification – The Firm shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the City to the extent permitted by law, and its agency members from and against any and all claims, costs, suits, and damages, including attorney’s fees, arising out of the Firm’s performance or nonperformance of the activities, services or subject matter called for in this Agreement, and 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.

8. Miscellaneous Provisions

- a. This Agreement shall be construed under and accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Blanco County, Texas.
- b. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
- c. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- d. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the venue shall be in Blanco County, Texas.
- e. This Agreement may be amended by mutual agreement of the parties hereto, with City Council approval for the City, and a writing to be attached to and incorporated into this Agreement.
- f. Any notice required by this Agreement shall be in writing, addressed to the Parties at the addresses provided herein, and shall be deemed given and delivered when deposited in the United States mail, postage prepaid.
- g. It is understood by the Parties that the Contractor is an independent contractor and not an employee, agent, or officer of the City. The City will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, including worker’s compensation insurance, for the benefit of the Contractor. The City shall not be responsible for the day-to-day supervision of the Contractor, its officers, agents, or employees.

9. Extent of Agreement

This Agreement, which includes Parts I-V, represents the entire and integrated agreement between the City and the Firm and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both City and the Firm.

IN WITNESSETH WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

BY: **CITY OF JOHNSON CITY**
303 E. Pecan Drive (Physical)
P.O. Box 369 (Mailing)
Johnson City, TX 78636

Mayor Rhonda Stell

ATTEST: _____
Rick Schroder, CAO/City Secretary

BY: **S.D. KALLMAN, L.P.**
1106 S. Mays, Suite 101
Round Rock, Texas 78664

Steven D. Kallman, P.E., R.P.L.S.
President, Steven D. Kallman, L.L.C.
General Partner, S.D. Kallman, L.P.

PART II
SCOPE OF SERVICES
FY 2021/2022 TEXAS COMMUNITY DEVELOPMENT GRANT

The Firm shall render the following professional services necessary for the development of the project:

SCOPE OF SERVICES

1. Attend preliminary conferences with the City regarding the requirements of the project.
2. Determine necessity for acquisition of any additional real property/easements/right-of-ways (ROWs) for the TxCDBG project, and for temporary construction work sites, and, if applicable, furnish to the City:
 - a. Name and address of property owners;
 - b. Legal description of parcels to be acquired; and
 - c. Map showing entire tract with designation of part to be acquired.

Contractor shall provide this information as soon as possible to the City for action.

3. Make any necessary surveys of existing rights-of-way, topography, utilities, or other field data required for proper design of the project. Provide consultation and advice as to the necessity of the City providing or obtaining other services such as auger borings, core borings, soil tests, or other subsurface explorations; laboratory testing and inspecting of samples or materials; other special consultations. The Firm will review any tests required and act as the City's representative in connection with any such services.
4. Prepare railroad/highway permits.
5. Prepare a preliminary engineering study and report in both electronic and written formats on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the City, to include preliminary layouts, sketches, and cost estimates for the project, and to set forth clearly the Firm's recommendations; to be completed within sixty (60) days of execution of this Agreement.
6. Furnish the City copies of the preliminary report, if applicable (additional copies will be furnished to the City at direct cost of reproduction).
7. Make periodic visits, no less than every 30 days during the construction period, to the construction site to observe the progress and quality of the work, to ensure that the work conforms with the approved plans and specifications, and to determine if the work is proceeding in accordance with the Agreement.
8. Furnish the City a written monthly status report at least seven (7) days prior to the regularly scheduled council/commissioner's court meeting until the project is closed by TDA. The format for this report is attached to this Agreement as Exhibit 1.
9. Submit detailed drawings and plans/specifications to appropriate regulatory agency(ies) and obtain clearance.
10. Prepare bid packet/contract documents/advertisement for bids. At the time the bid packet is completed, the Firm shall also furnish to the City an updated written Estimate of Probable Costs for the Project.
11. Incorporate all wage rate modifications or supersedes via bid addendum (if applicable).
12. Conduct bid opening and prepare minutes.

13. Tabulate, analyze, and review bids for completeness and accuracy.
14. Conduct pre-construction conference and prepare copy of report/minutes.
15. Issue Notice to Proceed to construction contractor.
16. Provide in all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive base bid for construction exceed the funds available, deductive alternatives can be taken to reduce the bid price.
17. Design for access by persons with disabilities for those facilities to be used by the public in accordance with Public Law 504.
18. Use TDA-approved forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond-
19. Consult with and advise the City during construction; issue to contractors all instructions requested by the City; and prepare routine change orders if required, at no charge for engineering services to the City when the change order is required to correct errors or omissions by the Firm; provide price analysis for change orders; process change orders approved by City and the Firm and submit to TDA for approval prior to execution with the construction contractor.
20. Review shop and working drawings furnished by contractors for compliance with design concept and with information given in contract documents (contractors will be responsible for dimensions to be confirmed and correlated at job site).
21. Resolve all payment requests within 14 days of receipt of signed pay request from the construction contractor.
22. Based on the Firm's on-site observations and review of the contractor's applications for payment, determine the amount owed to the contractor in such amounts; such approvals of payment to constitute a representation to the City, based on such observations and review, that the work has progressed to the point indicated and that the quality of work is in accordance with the plans, specifications, and contract documents.
23. Recommend that a 10% retainage is withheld from all payments on construction contracts until final acceptance by the City and approval by TDA, unless State or local law provides otherwise.
24. Prepare Certificate of Construction Completion and obtain Clean Lien Certificate(s) from the Contractor(s). A Clean Lien Certificate may be prepared for each of the Prime Contractor(s) and each of the subcontractor(s).
25. Conduct interim/final inspections.
26. Revise contract drawings to show the work as actually constructed and furnish the City with a set of "record drawings" plans.
27. The Firm will provide a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the owner. The digital copy provided shall not include a digital representation of the engineer's seal but the accompanying documentation from the Firm shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the City. In addition, complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be provided to the owner in written form.

SUBCONTRACTS

1. No work under this Agreement shall be subcontracted by the Firm without prior approval, in writing, from the City.
2. The Firm 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.
3. If any time during progress of the work, the City determines that any subcontractor is incompetent or undesirable, the City will notify the Firm 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.
4. The Firm will include in all contracts and subcontracts of more than \$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).
5. The Firm will include in all contracts and subcontracts of more than \$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.
6. The Firm will include in all contracts and subcontracts of more than \$10,000 provisions addressing termination for cause and for convenience by the City including how it will be affected and the basis for settlement.
7. The Firm will include in all contracts and subcontracts provisions requiring compliance with the following, if applicable:
 - a. Prime construction contracts of more than \$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);
 - b. Prime construction contracts of more than \$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)
 - c. Contracts greater than \$10,000, the inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b) (Executive Order 11246);
 - d. Section 3 of the Housing and Urban Development Act of 1968;
 - e. Contracts exceeding \$100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); and
 - f. For contracts more than \$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).
8. The Firm 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.

9. The Firm will include in all negotiated contracts and subcontracts a provision to the effect that the City, TDA, the Texas Comptroller of Public Accounts, the Comptroller General of the United States, the U.S. Department of Housing and Urban Development (HUD), 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.
10. The Firm 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.

STANDARD OF PERFORMANCE AND DEFICIENCIES

1. All services of the Firm and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable, and prudent manner in accordance with generally accepted professional practice. The Firm represents that it has the required skills and capacity to perform work and services to be provided under this Agreement.
2. The Firm represents that services provided under this Agreement shall be performed within the limits prescribed by the City in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.
3. Any deficiency in Firm's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from City and at the Firm's expense if the deficiency is due to Firm's negligence. The City shall notify the Firm in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the City under applicable state or federal law.
4. The Firm agrees to and shall hold harmless, to the extent permitted by law, the City, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the Firm, its officers, agents, employees, subcontractors, and others acting for or under the direction of the Firm doing the work herein contracted for or by or in consequence of any negligence in the performance of this Agreement, or by or on account of any omission in the performance of this Agreement.

**PART III –
PAYMENT SCHEDULE**

City shall reimburse the Firm for professional services provided upon completion of the following project milestones per the following percentages of the maximum contract amount:

Milestone	% of Contract Fee
<u>Design Phase:</u>	
• Submittal of Preliminary Engineering Report to City.	15%
• Completion of Design Surveys	5%
• Completion of Plans and Specifications; Submittal to Regulatory Agency(ies)	25%
• Approval of Plans and Specifications by Regulatory Agency(ies)	5%
Total of 50% Prior to Construction Commencement	
<u>Construction Phase:</u>	
• Completion of Bid Advertisement and Contract Award.	5%
• Hold Pre-Construction Conference and Issue Notice to Proceed.	25%
• Ongoing Construction Inspections – 50% Complete	5%
• Ongoing Construction Inspections – 100% Complete	5%
Total of 40% Prior to Construction Completion	
<u>Close-Out Phase:</u>	
• Completion of Final Closeout Assessment and Submittal of “As Built” Plans and Completion to City.	5%
• Completion of Final Inspection and Acceptance by the City.	5%
Total of 10% after Construction Completion and Submittal	
Total	100%

**PART IV
TERMS AND CONDITIONS**

1. Termination of Agreement for Cause. If the Firm fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Firm 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 Firm 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, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Firm pursuant to this Agreement shall, at the option of the City, be turned over to the City / County and become the property of the City / County. In the event of termination for cause, the Firm shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.
 - a. Notwithstanding the above, the Firm 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 Firm, and the City may set-off the damages it incurred because of the Firm's breach of the contract from any amounts it might otherwise owe the Firm.
2. Termination for Convenience of the City.
 - a. City may at any time and for any reason terminate Contractor's services and work at City's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor 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.
 - b. Upon the effective date of termination, Contractor shall supply all project materials and resources to the City, and, upon receipt, the City shall submit payment to Contractor for work performed up to and including the effective date.
3. Changes. The City may, from time to time, request changes in the services the Firm will perform under this Agreement. Services exclude work change orders. Such changes, including any increase or decrease in the amount of the Firm's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.
4. 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 because of non-compliance with federal, state or TxCDBG 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. Each party shall be responsible for its own court costs.

5. Personnel.
 - a. The Firm represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.
 - b. All the services required hereunder will be performed by the Firm or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
 - c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.
6. Assignability. The Firm shall not assign any interest on this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto; Provided, however, that claims for money by the Firm from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.
7. Reports and Information. The Firm, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.
8. Records and Audits. The Firm shall insure 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 Firm 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.
9. Findings Confidential. All the reports, information, data, etc., prepared or assembled by the Firm under this contract are confidential and the Firm agrees that they shall not be made available to any individual or organization without the prior written approval of the City. Public information requests for any report, information, data, et cetera prepared or assembled by the Firm under this Agreement shall be directed to the City.
10. Copyright. No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Firm.
11. Compliance with Local Laws. The Firm shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Firm shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.

12. Conflicts of interest.

- a. 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 TxCDBG award between TDA and the City / County, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.
- b. 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 TxCDBG award between TDA and the City, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.

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

14. Debarment and Suspension (Executive Orders 12549 and 12689)

- a. The Firm 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 Firm. The Firm 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.”

Federal Civil Rights Compliance.

15. 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:

- a. The Firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Firm 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 Firm 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.
- b. The Firm will, in all solicitations or advertisements for employees placed by or on behalf of the Firm, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - c. The Firm 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.
 - d. The Firm 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 Firm's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - e. The Firm 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.
 - f. The Firm 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.
 - g. In the event of the Firm'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 Firm 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.
 - h. The Firm 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 Firm 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 Firm becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Firm may request the United States to enter into such litigation to protect the interests of the United States.

16. 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.
17. Section 109 of the Housing and Community Development Act of 1974. The Firm 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.
18. Section 504 of the Rehabilitation Act of 1973, as amended. The Firm 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.
19. Age Discrimination Act of 1975. The Firm shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall based on 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.
20. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (if contract greater than or equal to \$100,000)
 - a. The Firm 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 Firm shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
21. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.
 - a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - b. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the

parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

- c. The Firm agrees to send to each labor organization or representative of workers with which the Firm has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Firm's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The Firm agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Firm will not subcontract with any subcontractor where the Firm has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- e. The Firm will certify that any vacant employment positions, including training positions, that are filled (1) after the Firm is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Firm's obligations under 24 CFR part 135.
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

PART V
PROPOSED PROJECT TIME SCHEDULE
ENGINEERING PROFESSIONAL SERVICES

The following hypothetical timeline has been developed by *S.D. KALLMAN, L.P.* for design, bid preparation, contract award, and construction phases of the FY 2021/2022 Water Loss Mitigation Improvement Project.

TENTATIVE PROJECT SCHEDULE

To be determined, and provided by Engineer, following receipt of Grant.
The project schedule is subject to City approval.