Agreement for Professional Services

This Agreement for Professional Services is made and entered into on __________, 20__, by and between Walker Partners, LLC, a Texas limited liability company (the “Owner’s Representative”), and the City of Buda (the “Owner”) upon the following terms and conditions.

1. SCOPE OF SERVICES

Owner’s Representative will provide the services for a project (the “project”), which shall consist of the services described on the attached Exhibit A.

2. COMPENSATION

Owner agrees to pay Owner’s Representative for the services set forth in Exhibit A on the basis of standard hourly rates (identified on the attached Exhibit B) charged by Owner’s Representative constitute full and complete compensation for Owner’s Representative’s services, including labor costs, overhead, and profit; the standard hourly rates do not include reimbursable expenses or Owner’s Representative’s Consultants’ charges.

3. INVOICES

Owner’s Representative will submit monthly invoices for services rendered and Owner will make payments to Owner’s Representative within thirty (30) days of Owner’s receipt of Owner’s Representative’s invoice.

Owner's Representative will retain receipts for reimbursable expenses in accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by Owner's auditors upon request.

If Owner disputes any items in Owner’s Representative’s invoice for any reason, including the lack of supporting documentation, Owner may temporarily delete the disputed item and pay the remaining amount of the invoice. Owner will promptly notify Owner’s Representative of the dispute and request clarification and/or correction. After any dispute has been settled, Owner’s Representative will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

Owner recognizes that late payment of invoices results in extra expenses for Owner’s Representative. Owner’s Representative retains the right to assess Owner interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of Owner’s Representative’s invoice. In the event undisputed portions of Owner’s Representative's invoices are not paid when due, Owner’s Representative shall have the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

4. TERMINATION OF AGREEMENT

Owner or Owner’s Representative may terminate the Agreement, in whole or in part, by giving seven (7) days written notice to the other party. The Owner’s Representative will submit the final invoice which will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs Owner’s Representative incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed. Termination under this paragraph shall not relieve Owner's Representative of any obligation or liability that has occurred prior to termination, which shall survive termination.

Regardless of how this Agreement is terminated, Owner’s Representative shall affect an orderly transfer to Owner or to such person(s) or firm(s) as the Owner may designate of all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Owner's Representative, or provided to Owner's Representative, hereunder, regardless of storage medium, if so requested by Owner, or shall otherwise be retained by Owner's Representative. Owner’s Representative shall be entitled to reasonable out-of-pocket expenses in connection with the transfer of records. Any record transfer shall be completed within thirty (30) calendar days of a written request by City.

5. SERVICES AND INFORMATION FROM OWNER

Owner will provide all criteria and information pertaining to Owner's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. Owner will also provide copies of any Owner-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project.

Owner will furnish the services of soils/geotechnical Engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by Engineer. The Owner agrees to bear full responsibility for the technical accuracy and content of Owner-furnished documents and services; provided, however, this provision does not limit any rights or remedies Owner may have against third parties who prepared such Owner-furnished documents or services.

In performing professional engineering and related services hereunder, it is understood by Owner that Owner's Representative is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the Owner’s sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the Owner’s legal and financial interests. To that end, the Owner agrees that Owner or the Owner’s representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by Owner’s Representative, and will obtain the advice of an attorney, insurance counselor or other consultant as the Owner deems necessary to protect the Owner’s interests before Owner takes action or forebears to take action based upon or relying upon the services provided by Owner’s Representative.

6. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by Owner’s Representative and its employees under this Agreement shall be the skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer. Other than as set forth above, Owner’s Representative makes no warranties, express or implied, under this Agreement or otherwise, in connection with Owner’s Representative’s services.

7. RESPONSIBILITY FOR CONSTRUCTION OBSERVATION

a. Unless otherwise provided in writing, construction visits and observations are performed to observe the progress and quality of the work completed by the contractor. Such visits are not intended to be an exhaustive check or an inspection of the contractor’s work, but rather are to allow Owner’s Representative, as an experienced professional, to become familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the contract documents. Project observation are detailed under Exhibit A.
programs associated with the work. These rights and responsibilities are selected by the contractor, nor for the contractor's safety precautions or programs associated with the work. These rights and responsibilities are solely those of the contractor.

c. Owner waives any claim against Owner’s Representative, and agrees to defend Owner’s Representative from, any claim for injury or loss that results from failure to follow Engineer’s plans, specifications or design intent, or for failure to obtain and/or follow Engineer’s guidance with respect to any alleged errors, omissions, inconsistencies, ambiguities or conflicts contained within or arising as a result of implementing Engineer’s plans, specifications or other instruments of service. Owner’s Representative does not guarantee the performance of contractor or its subcontractors, employees, or agents, and shall not be responsible for their failure to work in accordance with the contract documents or any applicable laws, codes, rules, or regulations. Owner also agrees to compensate Owner’s Representative for any time and expenses incurred by Owner’s Representative in defense of any such claim, with such compensation to be based upon the Owner’s Representative’s prevailing fee schedule.

d. Owner agrees to include Owner’s Representative as an indemnified party in Owner’s construction contracts for the project, which shall protect Owner’s Representative to the same degree as Owner. Further, Owner agrees that Owner’s Representative shall be listed as an additional insured under the construction contractor’s liability insurance policies.

8. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by Owner’s Representative are made on the basis of information available to Owner’s Representative and on the basis of Owner’s Representative’s experience and qualifications and represents its judgment as an experienced and qualified professional Owner’s Representative. However, since Owner’s Representative has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s’) methods of determining prices, or over competitive bidding or market conditions, Owner’s Representative does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost Owner’s Representative prepares.

9. INSURANCE/INDEMNITY

Owner’s Representative agrees to procure and maintain, at its expense, the types of insurance listed below with limits of liability for such insurance as follows:

1. By Owner’s Representative:
   a. Workers Compensation
   b. Employer’s Liability -
      1) Each Accident: $1,000,000
      2) Disease, Policy Limit: $1,000,000
      3) Disease, Each Employee: $1,000,000
   c. General Liability -
      1) Each Occurrence (Bodily Injury and Property Damage): $1,000,000
      2) General Aggregate: $2,000,000
      3) Products & Completed Operations Aggregate: $2,000,000
      4) Personal & Advertising Injury: $1,000,000
   d. Excess or Umbrella Liability -
      1) Per Occurrence: $2,000,000
      2) General Aggregate: $2,000,000
   e. Automobile Liability – Combined Single Limit Each Accident: $1,000,000
   f. Professional Liability -

The Owner, its officers, officials, employees, volunteers and elected representatives shall be named as additional insureds on the Automobile Liability, General Liability and Excess Liability. Additional insured status on the General Liability shall be provided using ISO Additional Endorsements CG 2010 10 01 and CG 2037 10 01. Automobile Liability insurance policies and certificates of insurance will be furnished to the Owner.

Owner’s Representative covenants and agrees to INDEMNIFY and HOLD HARMLESS, the Owner from and against any and all liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Owner’s Representative. Such acts may include personal or bodily injury, death and property damage, made upon the Owner directly or indirectly arising out of, resulting from or related to Owner’s Representative’s negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of Owner in instances where such negligence causes or contributes to personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.

The provisions of this INDEMNITY are solely for the benefit of the parties here to and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Owner’s Representative shall advise the Owner in writing as soon as practical of any claim or demand against the Owner or Owner’s Representative known to Owner’s Representative related to or arising out of Owner’s Representative’s activities under this Agreement.

Owner’s Representative covenants and agrees to DEFEND the Owner from and against any and all liability for which Owner’s Representative owes indemnity hereunder; provided that in no event shall Owner’s Representative have any duty to defend Owner’s act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier. Owner’s Representative is required under this Section 9 and fully satisfies this paragraph by naming the Owner as an additional insured under the Owner’s Representative’s general liability insurance policy.

The “other insurance” clause of the Owner’s Representative General Liability policy shall be amended as follows:

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

Where required by a written contract or agreement, this insurance is primary and/or noncontributory as respects any other insurance policy issued to the additional insured, and such other insurance policy shall be excess and/or noncontributing, whichever applies, with this insurance.

Any insurance provided by this endorsement shall be primary to other insurance available to the additional insured except:

Walker Partners Professional Services Agreement (02.15.17)
1. As otherwise provided in section IV – Commercial General Liability Conditions, 5. Other Insurance, b. Excess Insurance; or
2. For any other valid and collectible insurance available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, the coverage provided under this endorsement shall also be excess.

Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the Owner.

Owner’s Representative shall provide thirty (30) calendar days advance written notice directly to Owner of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Owner’s Representative shall provide a replacement Certificate of Insurance and applicable endorsements to Owner. Owner shall have the option to suspend Owner’s Representative performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies the Owner may have upon Owner's Representative’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the Owner shall have the right to order Owner's Representative to stop work hereunder, and/or withhold any payment(s) which become due to Owner's Representative hereunder until Owner's Representative demonstrates compliance with the requirements hereof.

10. RE-USE OF DOCUMENTS
All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by Owner’s Representative pursuant to this Agreement, are instruments of service with respect to the project. Owner’s Representative retains Ownership of all such documents. Owner may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by Owner or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by Owner’s Representative for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Owner’s Representative, and Owner will defend Owner’s Representative from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle Owner’s Representative to further compensation at rates to be agreed upon by Owner and Owner’s Representative.

11. SUCCESSORS, ASSIGNS AND BENEFICIARIES
Owner and Owner’s Representative, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither Owner nor Owner’s Representative will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other. No third party beneficiaries are intended under this Agreement.

12. SEVERABILITY
If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

13. CHANGES
The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in a manner binding upon the Owner. Adjustments in the period of services and in compensation shall be in accordance with applicable sections of this Agreement. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. Owner’s Representative will inform Owner of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

14. CONTROLLING AGREEMENT
This Agreement (including Exhibits hereto) shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

15. CONTROLLING LAW
This Agreement is to be governed by the law of the state of Texas and venue for any matter arising under this Agreement or relating to the services performed hereunder shall be in Hayes County, Texas.

16. HAZARDOUS MATERIALS
Owner represents to Owner’s Representative that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, Owner represents that to the best of its knowledge it has disclosed to Owner’s Representative the existence of all such hazardous materials, including but not limited to asbestos, PCB’s, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that Owner’s Representative’s scope of services does not include services related in any way to hazardous materials. In the event Owner’s Representative or any other party encounters undisclosed hazardous materials, Owner’s Representative shall have the obligation to notify Owner and, to the extent required by law or regulation, the appropriate governmental officials, and Owner’s Representative may, at its option and without liability for delay, consequential or any other damages to Owner, suspend performance of services on that portion of the project affected by hazardous materials until Owner: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. Owner acknowledges that Owner’s Representative is performing professional services for Owner and that Owner’s Representative is not and shall not be required to become an “arranger,” “operator,” “generator,” or “transporter” of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with Owner’s Representative’s services under this
Agreement. If Owner’s Representative’s services hereunder cannot be performed because of the existence of hazardous materials, Owner’s Representative shall be entitled to terminate this Agreement for cause on seven (7) days written notice. Owner shall defend Owner’s Representative, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of Owner’s Representatives, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to defend any individual or entity from and against the consequences of that individual’s or entity’s sole negligence or willful misconduct.

17. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between Owner’s Representative and Owner, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

18. LITIGATION SUPPORT

In the event Owner’s Representative is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which Owner’s Representative is not a party, Owner shall reimburse Owner’s Representative for reasonable costs in responding and compensate Owner’s Representative at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

19. UTILITY LOCATION

A local utility locating service shall be contacted by Owner’s Representative to make arrangements for all utilities to determine the location of underground utilities. In addition, Owner shall notify Owner’s Representative of the presence and location of any underground utilities located on the Owner’s property which are not the responsibility of private/public utilities. Owner’s Representative shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The Owner agrees to waive any claim against Owner’s Representative and will indemnify and hold Owner’s Representative harmless from any claim of liability, injury or loss caused by or allegedly caused by Owner’s Representative damaging of underground utilities that are not properly marked or are not called to Owner’s Representative’s attention prior to beginning the underground sampling/testing.

20. SCHEDULE FOR SERVICES – OR – TIME OF COMPLETION

Owner’s Representative acknowledges the importance to the Owner of the project schedule and agrees to put forth its best professional efforts to perform its services under this proposal in a manner consistent with that schedule. The Owner understands, however, that Owner’s Representative’s performance must be governed by sound professional practices. If requested, Owner’s Representative will develop a project schedule outlining the duration of each of the items described in the Scope of Services.

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

21. DISPUTE RESOLUTION

Arbitration: Certain disputes (as set for in Section 21(b) below) between Owner and Owner’s Representative shall be settled by arbitration in accordance with the American Arbitration Association rules effective at the date of this Agreement, subject to the conditions stated below. This Agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Section 21 will be specifically enforceable under prevailing law of any court having jurisdiction.

a. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations.

b. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than 100% of the amount payable to Owner’s Representative under this Agreement, but not to exceed $500,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any dispute if the amount in controversy in such dispute is more than 100% of the amount payable to Owner’s Representative under this Agreement, but not to exceed $500,000 (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.

c. With respect to matters resolved in court, OWNER AND OWNER’S REPRESENTATIVE HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. OWNER AND OWNER’S REPRESENTATIVE REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

d. The rules of any arbitration shall be supplemented to include the following: The award rendered by the arbitrators shall be in writing, and shall include (a) a precise breakdown of the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.

e. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment
may be entered upon it in any court having jurisdiction thereof, and
will not be subject to appeal or modification.

f. If a dispute in question between Owner and Owner’s Representative involves the work of a Contractor, Subcontractor, or consultants to the Owner or Owner’s Representative (each a “Joinable Party”), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this project, then either Owner or Owner’s Representative may join such Joinable Party as a party to the arbitration between Owner and Owner’s Representative hereunder. Nothing in this Section 21 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Owner’s Representative that does not otherwise exist.

22. LIMITATIONS OF OWNER’S REPRESENTATIVE’S LIABILITY

A. Owner’s Representative’s Liability Limited to Amount of Insurance Proceeds: Owner’s Representative shall procure and maintain insurance as required by and set forth in Section 9 of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by laws and regulation, the total liability, in the aggregate, of Owner’s Representative and Owner’s Representative’s officers, directors, members, partners, agents, employees, and consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs or damages whatsoever arising out of, resulting from, or in any way related to the project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Owner’s Representative or Owner’s Representative’s officers, directors, members, partners, agents, employees or Consultants (hereafter “Owner’s Claims”), shall not exceed the total insurance proceeds paid on behalf of or to Owner’s Representative by Owner’s Representative’s insurers in settlement or satisfaction of Owner’s Claims under the terms and conditions of Owner’s Representative’s insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. If no such insurance coverage is provided with respect to Owner’s Claims, then the total liability, in the aggregate, of Owner’s Representative and Owner’s Representative’s officers, directors, members, partners, agents, employees and consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner’s Claims shall not exceed amount paid to Owner’s Representative by Owner under this Agreement.

B. Exclusion of Special, Incidental, Indirect, and Consequential Damages: To the fullest extent permitted by laws and regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of this Section 22, the Owner’s Representative and Owner’s Representative’s officers, directors, members, partners, agents, employees and consultants shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the project, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, or warranties, express or implied, of Owner’s Representative or Owner’s Representative’s officers, directors, members, partners, agents, employees or Consultants, or any of them.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Professional Services on the ____ day of __________________, 20__.  

Owner’s Representative:

WALKER PARTNERS, LLC

By: ________________________________
Name: _______________________________
Title: ________________________________

Owner:

CITY OF BUDA

By: ________________________________
Name: _______________________________
Title: ________________________________
EXHIBIT A
SCOPE OF SERVICES

GENERAL
The City of Buda (OWNER) is completing an expansion (Phase III) of the Buda Wastewater Treatment Plant (WWTP). It is anticipated that the expanded WWTP will provide 3.5 million gallons per day (MGD) treatment capacity to meet capacity requirements through 2040. The WWTP is an activated sludge system with clarifiers for phosphorous and biosolids removal and aerobic sludge digestion with dewatering by belt filter press. The Engineer-of-Record for the Project is AECOM Technical Services, Inc. (ENGINEER).

Walker Partners (OWNER’S REPRESENTATIVE) with assist OWNER with overall Project implementation. The primary tasks and major subtasks of this agreement include:

1.0 Design Phase Services
   1.1 Constructability Review
   1.2 Construction Contract Packaging Analysis
   1.3 Technical Memorandum

2.0 Bid Phase Services
   2.1 Bidder Outreach
   2.2 Competitive Sealed Proposal Workshop

3.0 Construction Phase Services

GENERAL ASSUMPTIONS
The following general assumptions apply to all tasks set forth in this Exhibit. Assumptions specific to each primary task are provided in the Basic Scope of Services.

1. OWNER shall furnish OWNER’S REPRESENTATIVE with information pertinent to the Project including 90% Construction Contract Documents and cost estimates prepared by ENGINEER.

2. Draft and final deliverables will be provided in electronic (PDF) format and 5 printed copies will be provided to OWNER for review and filing.

3. OWNER’S REPRESENTATIVE shall provide construction observation equivalent of one part-time to full-time (30 hours per week average) representative for a duration of 24 months.
BASIC SCOPE OF SERVICES

Task 1.0 - Design Phase Services

Assist OWNER with assessing overall Project design. The following assumptions have been made in preparing the scope of services for Task 1.0 – Design Phase Services:

- ENGINEER is designing the following three Projects.
  - Influent Gravity Sewer Replacement
  - WWTP Expansion
  - Effluent Force Main

- Design Phase Services described under Task 1.0 apply only to the WWTP Expansion Project.

- OWNER’S REPRESENTATIVE shall review and evaluate civil, process mechanical, electrical, and instrumentation and control components of the Project. OWNER shall perform a separate review of architectural and structural components of the Project.

- OWNER’S REPRESENTATIVE will document concepts and ideas for consideration by OWNER and ENGINEER. OWNER’S REPRESENTATIVE shall have not authority to authorize deviations or changes to the Construction Contract Documents or assume the responsibilities of the ENGINEER.

  1.1 Constructability Review. Perform a quality assurance and constructability review to assess if the Project can be bid and constructed effectively as designed. Inspect the design documents for conflicts ambiguities or omissions and provide recommendations to improve clarity and constructability. Evaluate construction contract interface risks.

  1.2 Construction Contract Packaging Analysis. Assess construction contract packaging and bid form development to identify project elements that may be packaged as additive alternate bid items to accommodate the volatility of the current bid environment and OWNER project budget requirements.

  1.3 Technical Memorandum. Prepare a draft and final versions of a Technical Memorandum summarizing the value engineering review, constructability and quality assurance review and recommendations on construction contract packaging.

Task 2.0 - Bid Phase Services

Assist OWNER during Bidding Phase. The following assumptions have been made in preparing the scope of services for Task 2.0 – Bid Phase Services.

- OWNER’S REPRESENTATIVE has no authority or obligation to conduct Bid Phase Services scoped under ENGINEER’S contract including conducting or attending Pre-Bid meetings, issuing addenda, reviewing contractor substitutions, negotiating with prospective contractors, prequalifying contractors or subcontractors, evaluating bids, and preparing conforming documents.

- Task 2.2 shall consist of a half day workshop. No formal reports or specifications shall be issued.
2.1 **Bidder Outreach.** Contact prospective bidders to inform them of the advertisement for the construction documents. OWNER’S REPRESENTATIVE shall coordinate this effort with OWNER and ENGINEER.

2.2 **Competitive Sealed Proposal Workshop.** Consult with OWNER with a workshop to evaluate the suitability of utilizing a design/competitive sealed proposal (D/CSP) project delivery model on future OWNER projects.

**Task 3.0 - Construction Phase Services**

Provide the following construction management and observation services. The following assumptions have been made in preparing the scope of services for Task 3.0 – Construction Phase Services.

- OWNER’S REPRESENTATIVE’S scope shall comprise of quality assurance work as opposed to quality control work which is the contractual obligation of the Contractor. OWNER’S REPRESENTATIVE is an observer of how the Contractor executes its construction phase work but not as an inspector. OWNER’S REPRESENTATIVE’S services shall comprise such observation, facilitation, and liaison activities.

- OWNER’S REPRESENTATIVE asserts that its team is highly experienced in construction observation and management and is seasoned in dealing with issues that may be encountered during this Project. OWNER’S REPRESENTATIVE shall supply field staff with all necessary safety and communication equipment, documentation materials, and measurement devices to perform all job tasks in a safe, efficient, and timely manner.

- OWNER shall make an on-site field office available for OWNER’S REPRESENTATIVE.

- OWNER’S REPRESENTATIVE shall conduct the following services in a manner to avoid delaying the progress of the construction work.

- Construction observation shall require the equivalent of one part-time to full-time (30 hours per week) representative during normal working hours. Normal working hours are Monday through Friday.

3.1 **Schedule Review.** Review and analyze contractor’s detailed construction schedule for completeness and optimization.

3.2 **Construction Observation.** Perform daily visits to the project site on a full-time basis to observe construction in progress. Daily site visits shall provide a visual observation of materials, equipment, and construction work for ascertaining that the work is in substantial conformance with the contract documents and the design intent. Items that will be closely monitored for conformance include: site preparation and security, excavations and embankments, bedding and backfill materials used, backfill material placements and compaction, existing utility line tie-ins and relocations, new utility installations to proper elevation and grade, traffic control, subgrade preparation and compaction, base material processing, placement and compaction, paving operations and testing, proper coordination of materials sampling and testing, public notification and coordination, project cleanliness and restoration.
3.3 **Daily Reports.** Summarize daily construction activities in a daily report. Daily reports will allow for the complete description and documentation of the conditions, work force, activities, production and issues performed by the contractor on a daily basis. The daily reports shall assist OWNER and ENGINEER with troubleshooting problems and serve as a comprehensive report of all issues encountered on the project and how they were corrected. Photo documentation shall also be kept and made available as part of the Project documentation. A copy of the daily report shall be forwarded to the designated OWNER representative.

3.4 **Review of Contractor Pay Applications.** Review and certify the accuracy and validity of Contractor monthly pay applications prior to submittal to OWNER and ENGINEER based on a review of materials on-site and the construction progress to date. At the completion of OWNER REPRESENTATIVE’S review, the contractor shall be required to correct any erroneous pay items before the final pay application is submitted for payment.

3.5 **Submittals, Change Orders and Requests for Information (RFIs).** Review all submittals including change orders and requests for information to ensure that the documents being submitted are complete, correct, and in accordance with the project standard requirements. Copies of these documents shall be retained as part of the Project documentation.

3.6 **Construction Testing.** Assist in scheduling of construction materials testing with the approved independent testing laboratory on behalf of OWNER or the Contractor as required in the contract documents. Observe testing and review testing results. Notify all parties immediately of test results that do not meet the minimum requirements of the contract specifications. OWNER will hire the testing lab firm directly. A copy of the test results shall be retained as part of the Project documentation.

3.7 **Project Meetings.** Attend and maintain active involvement in all meetings related to the Project as directed by OWNER. Types of meetings include preconstruction, construction progress, on-site troubleshooting, pre-paving, resolution, special review, community impact, punch list and final walkthrough meetings, startup, and close-out meetings. It is anticipated that there will be bi weekly construction progress meetings. Provide comments on meeting minutes prepared by others. Meeting minutes will be retained as part of the Project documentation.

3.8 **Project Documentation.** As described herein, copies of all relevant Project documentation shall be compiled and retained by OWNER’S REPRESENTATIVE. Types of documentation anticipated include, but are not limited to, daily reports, photographs, monthly high resolution ortho-mosaic aerial imagery (total of 18), submittals, RFIs, and change orders. OWNER’S REPRESENTATIVE shall make Project records available to OWNER upon request for OWNER’S review, audit and/or examination at OWNER’S cost and expense.

3.9 **Construction Deviations, Deficiencies, and Non-Conforming Work.** Identify and record any observed construction deviations and deficiencies. Notify Owner and ENGINEER of the deviation or deficiency and monitor the issue until it is addressed and resolved. Advise Owner as required to determine appropriate actions. Record noted deficiency and action taken in daily reports. Any stop-work orders or other penalties related to the noted deficiency shall be initiated by the appropriate OWNER representative.
3.10 **Design Conflicts.** Summarize and present any design conflicts determined by contractor or OWNER’S REPRESENTATIVE for OWNER review and action. OWNER’S REPRESENTATIVE shall assist OWNER by also providing an opinion of appropriate action and shall further assist in the preparation of the necessary documents to initiate action and record the changes.

3.11 **Coordination of Stakeholders.** OWNER’S REPRESENTATIVE shall attempt to include all Project stakeholders in any given aspect of the Project as necessary and as directed by OWNER. OWNER’S REPRESENTATIVE shall attempt to keep all stakeholders current and fully informed of Project progress and help identify potential issues before they arise. Such coordination shall include the WWTP operator (GBRA).

3.12 **Project Close Out.** Verify weekly that the Contractor is preparing and maintaining as-built or record documents. Work with OWNER and ENGINEER to compile a work list of known punch-list items. Coordinate a punch list walk-through. Follow-up with contractor on a regular basis until all items are complete. Assist Owner in compiling and confirming that all required project close out documentation has been received.

**ADDITIONAL SERVICES**

The following Additional Services are not included in the Scope of Services and will not be performed unless specifically authorized by the OWNER:

A. Services resulting from significant changes in the scope, extent, or character of the portions of the Project or its design requirements including, but not limited to, changes in size, complexity, OWNER’S schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to other causes.

B. Services required due to delays or other causes beyond OWNER’S REPRESENTATIVE’S control.

C. Furnishing services of Consultants for other than Basic Services.

D. Services attributable to assisting the OWNER in prequalifying prime contractors and/or subcontractors/suppliers for this Project.

E. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.

F. Providing construction surveys and staking to enable Contractor to perform its work.

G. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration, or other dispute resolution process related to the Project including obtaining easements.

H. Other services performed or furnished by OWNER’S REPRESENTATIVE not otherwise provided for in this Agreement.
OWNER’S RESPONSIBILITIES

OWNER shall provide to OWNER’S REPRESENTATIVE at its expense in addition to other responsibilities of OWNER set forth in this Agreement:

A. OWNER’S REPRESENTATIVE shall be authorized to act on OWNER’S behalf with respect to the Project. The OWNER or OWNER’S REPRESENTATIVE shall render decisions in a timely manner pertaining to documents submitted by OWNER’S REPRESENTATIVE in order to avoid unreasonable delay in the orderly and sequential progress of OWNER’S REPRESENTATIVE’S services.

B. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof.

C. Review and comment on all deliverables in a timely manner. OWNER will provide a single set of consolidated OWNER review comments on all deliverables.

D. Provide prompt written notice if the OWNER becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies.

E. Coordinate with cooperating jurisdictional and environmental permitting agencies as needed and issue payment for required reviews, approvals, and permits.

F. Provide a final approved set of plans and specifications for the Project.

G. Participate in project meetings, workshops, and conference as described in the scope of services.

H. Provide OWNER’S REPRESENTATIVE in a timely manner with all criteria and full information as to OWNER’S requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations and furnish copies of all design and construction documents and standards.

I. Furnish to OWNER’S REPRESENTATIVE any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

J. Following OWNER’S REPRESENTATIVE’S assessment of initially-available Project information and data and upon OWNER’S REPRESENTATIVE’S request, furnish or otherwise make available in a timely manner such additional Project related information and data as is reasonably required to enable OWNER’S REPRESENTATIVE’S to complete its Basic and Additional Services.

K. Give prompt written notice to OWNER’S REPRESENTATIVE’S whenever OWNER observes or otherwise becomes aware of the presence at the Site (OWNER’S WWTP) of any Constituent of Concern, or of any other development that affects the scope or time of performance of OWNER’S REPRESENTATIVE’S services.

L. Authorize OWNER’S REPRESENTATIVE to provide Additional Services as set forth in this Agreement as required.

2/12/2018
M. Advise OWNER’S REPRESENTATIVE of the identity and scope of services of any other consultants employed by OWNER to perform or furnish services in regard to the Project.

N. Provide OWNER’S REPRESENTATIVE with the findings and reports generated by the entities providing services to OWNER pursuant to this paragraph.

O. Arrange for safe access to and make all provisions for OWNER’S REPRESENTATIVE to enter upon public and private property as required for OWNER’S REPRESENTATIVE to perform services under the Agreement.
EXHIBIT B
COMPENSATION

Total compensation for Basic Services set forth in Exhibit A is estimated to be $487,100. OWNER shall pay OWNER’S REPRESENTATIVE for Basic Services set forth in Exhibit A on the basis of Standard Hourly Rates as described in Paragraph 1.0. ENGINEER’S labor and fee summaries are attached as Appendix 1.

1.0 OWNER shall pay OWNER’S REPRESENTATIVE for Basic Services set forth in Exhibit A as follows:

A. An amount equal to the cumulative hours charged to the Project by each class of OWNER’S REPRESENTATIVE’S personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and ENGINEER’S Consultants’ charges, if any.

A. The Standard Hourly Rates charged by OWNER’S REPRESENTATIVE constitute full and complete compensation for OWNER’S REPRESENTATIVE’S services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or OWNER’S REPRESENTATIVE’S Consultants’ charges.

B. OWNER’S REPRESENTATIVE’S Standard Hourly Rates are attached to this Exhibit D as Appendix 2.

C. The total compensation for services under Paragraph 2.0 is estimated to be $430,600. based on the following distribution of compensation:

1. Task 1.0 – Design Phase Services $37,400
2. Task 2.0 – Bid Phase Services $11,000
3. Task 3.0 – Construction Phase Services $382,200

D. OWNER’S REPRESENTATIVE shall not exceed the total estimated compensation amount unless approved in writing by OWNER.

E. The total estimated compensation for ENGINEER’S services included in the breakdown by phases as noted in Paragraph 1.0.D incorporates all labor, overhead, profit, Reimbursable Expenses, and OWNER’S REPRESENTATIVE’S Consultant’s charges.
F. If it becomes apparent to OWNER’S REPRESENTATIVE that the compensation amount for Engineer’s services will be exceeded, OWNER’S REPRESENTATIVE shall give OWNER written notice thereof for review of the matter.

G. The amounts billed for OWNER’S REPRESENTATIVE’S services under Paragraph 1.0 will be based on the cumulative hours charged to the Project during the billing period by each class of OWNER’S REPRESENTATIVE’S employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and ENGINEER’S Consultants’ charges.

H. Any necessary and requested inspection and construction observation services provided on nights, Saturdays, Sundays, legal holidays and beyond 40 hours per work-week will be billed at an overtime rate of 1.5 times the appropriate inspector hourly rate in Appendix 2 to Exhibit B.

I. The amounts payable to OWNER’S REPRESENTATIVE for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by OWNER’S REPRESENTATIVE multiplied by a factor of 5%.
## CITY OF BUDA
### WWTP EXPANSION OWNER’S REPRESENTATIVE

**Appendix 1 to Exhibit B**

<table>
<thead>
<tr>
<th>Disciplines</th>
<th>Walker Partners Labor Classifications and Hours</th>
<th>Subconsultant Hours</th>
<th>Subconsultant Cost</th>
<th>Total %</th>
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<tbody>
<tr>
<td><strong>Managing Principal</strong></td>
<td><strong>Project Manager III</strong></td>
<td><strong>Senior Engineer III</strong></td>
<td><strong>Project Engineer III</strong></td>
<td><strong>Support Staff III</strong></td>
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<td><strong>Role</strong></td>
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### TASK DESCRIPTION

#### 1.0 Design Phase Services

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<tr>
<th>Task Description</th>
<th>Hours</th>
<th>Walker Partners</th>
<th>Walker Partners Expenses</th>
<th>Walker Partners Total Cost</th>
<th>Subconsultant Hours</th>
<th>Subconsultant Cost</th>
<th>Total %</th>
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<tr>
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<tr>
<td>1.1.1 Constructability Review</td>
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<td>$50</td>
<td>$16,560</td>
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<td>1.1.3 Technical Memorandum</td>
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<td>12</td>
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<td>$175</td>
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#### 2.0 Bid Phase Services

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<th>Task Description</th>
<th>Hours</th>
<th>Walker Partners</th>
<th>Walker Partners Expenses</th>
<th>Walker Partners Total Cost</th>
<th>Subconsultant Hours</th>
<th>Subconsultant Cost</th>
<th>Total %</th>
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<tr>
<td>2.1 Bidder Outreach</td>
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<td>8</td>
<td>$25</td>
<td>$2,720</td>
<td>10</td>
<td>$1,000</td>
<td>$3,720</td>
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<td>2.2 Competitive Sealed Proposal Workshop</td>
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<td>8</td>
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<td><strong>SUBTOTAL</strong></td>
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#### 3.0 Construction Phase Services (Task 3.1 through 3.12)

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<th>Disciplines</th>
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<th>Walker Partners Expenses</th>
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<th>Subconsultant Hours</th>
<th>Subconsultant Cost</th>
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<td>Process Mechanical Discipline</td>
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<tr>
<td>Administration, Stakeholder and Testing Coordination &amp; Meetings</td>
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<td>24</td>
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### Construction Observation Representation Level of Effort Summary

<table>
<thead>
<tr>
<th>Classification</th>
<th>Approx. Hours/Week</th>
<th>David Dial Level of Effort</th>
<th>Total Hours</th>
<th>Total Cost</th>
</tr>
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<tbody>
<tr>
<td>Part Time, 2 Year Duration</td>
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<td>2,060</td>
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<tr>
<td>Part Time to Full Time, 2 Year Duration</td>
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<td>3,090</td>
<td>$309,000</td>
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<tr>
<td>Full Time, 2.5 Year Duration</td>
<td>40</td>
<td>5,200</td>
<td>$520,000</td>
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</table>

**Construction Observation Representation Level of Effort Summary**

- **Total Estimated Construction Cost:** $19,846,000 per AECOM estimate
- **WWTP Expansion Owner’s Representative Percent of Construction Cost:** 2.27%

- **Selected for City of Buda WWTP Expansion**
**Appendix 2 to Exhibit B**  
**Standard Hourly Rates Schedule**

Standard Hourly Rates are subject to annual review and adjustment. Hourly rates for services in effect on the date of the Agreement are:

<table>
<thead>
<tr>
<th>Position</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managing Principal</td>
<td>$275/hour</td>
</tr>
<tr>
<td>Manager III</td>
<td>$260/hour</td>
</tr>
<tr>
<td>Manager II</td>
<td>$225/hour</td>
</tr>
<tr>
<td>Manager I</td>
<td>$195/hour</td>
</tr>
<tr>
<td>Senior Engineer III</td>
<td>$275/hour</td>
</tr>
<tr>
<td>Senior Engineer II</td>
<td>$225/hour</td>
</tr>
<tr>
<td>Senior Engineer I</td>
<td>$200/hour</td>
</tr>
<tr>
<td>Survey Manager</td>
<td>$200/hour</td>
</tr>
<tr>
<td>Senior Project Manager</td>
<td>$165/hour</td>
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<tr>
<td>Project Manager</td>
<td>$150/hour</td>
</tr>
<tr>
<td>Senior Design Engineer</td>
<td>$150/hour</td>
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<tr>
<td>Project Engineer III</td>
<td>$130/hour</td>
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<tr>
<td>Project Engineer II</td>
<td>$120/hour</td>
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<tr>
<td>Project Engineer I</td>
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<tr>
<td>Senior Project Surveyor</td>
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<td>Project Surveyor III</td>
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<td>Project Surveyor I</td>
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<tr>
<td>Professional IV</td>
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<tr>
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<td>Professional II</td>
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<td>Professional I</td>
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<tr>
<td>Technician XI</td>
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<tr>
<td>Technician X</td>
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<tr>
<td>Technician VII</td>
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<tr>
<td>Support Staff III</td>
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<tr>
<td>4-Man Crew</td>
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<tr>
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<tr>
<td>2-Man Crew</td>
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<tr>
<td>1-Man Crew</td>
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<tr>
<td>Principal Inspector</td>
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<tr>
<td>Lead Inspector/Manager</td>
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</tr>
<tr>
<td>Staff Inspector</td>
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