City of College Station
PROFESSIONAL SERVICES CONTRACT

This Contract is between the **City of College Station**, a Texas home-rule municipal corporation, (the "City") and **the Wallace Group Inc.,** a **Texas** corporation (the "Contractor"), whereby the Contractor agrees to provide the City with certain professional services as described herein and the City agrees to pay the Contractor for those services.

ARTICLE I
Scope of Services

1.01 In consideration of the compensation stated in paragraph 2.01 hereinbelow, the Contractor agrees to provide the City with the professional services as described in **Exhibit "A"**, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows: **engineering and consulting services for Highway 30/60 corridor Phase I Master Plan infrastructure, landscape, and streetscape design, and Tax Increment Finance Plan** (the "Project").

ARTICLE II
Payment

2.01 In consideration of the Contractor's provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Contractor according to the terms set forth in **Exhibit "B."** Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed **Two Hundred Eighty Two Thousand, Eight Hundred Thirty Dollars ($282,830.00).**

ARTICLE III
Time of Performance

3.01 The Contractor shall complete the professional services within the times set forth below.

[Conceptual Design: **45 calendar days** after the authorization to commence planning]
[Preliminary Project Design: **45 calendar days** after authorization to commence PPD]
[Final Design: **60 calendar days** after authorization to commence final design]

3.02 All design work and other professional services provided under this Contract must be completed by the following date: **180 days from the date of execution (excluding construction and post-construction activities).**

3.03 **Time is of the essence of this Contract.** The Contractor shall be prepared to provide the professional services in the most expedient and efficient manner possible consistent with

professional skill, care, and the cooperation of the City, in order to complete the work by the times specified.

ARTICLE IV
Conceptual Design

4.01 Upon the Contractor's receipt from the City of a letter of authorization to commence planning, the Contractor shall meet with the City for the purpose of determining the nature of the Project. The Contractor shall inquire in writing as to the information he believes the City may have in its possession that is necessary for the Contractor's performance. The City shall provide the information within its possession that it can make available to the Contractor. The City shall designate a representative to act as the contact person on behalf of the City.

4.02 The Contractor shall determine the City's needs with regard to the Project, including, but not limited to, site evaluation, needs surveys, comparisons with other municipal Projects, review of budgetary constraints and other preliminary investigations necessary for the Project.

4.03 The Contractor shall prepare a conceptual design that shall include schematic layouts, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The conceptual design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations. Upon the City's request, the Contractor shall meet with City staff and the City Council to make a presentation of his report.

ARTICLE V
Preliminary Design

5.01 The City shall direct the Contractor to commence work on the Project design by sending to the Contractor a "letter of authorization" to begin work on the preliminary Project design pursuant to this Contract. Upon receipt of the Letter of Authorization to commence preliminary Project design, the Contractor shall meet with the City for the purpose of determining the extent of any revisions to the Conceptual Design.

5.02 The Contractor shall prepare the preliminary design of the Project, including, but not limited to, the preliminary drawings and specifications. The Contractor shall submit to the City a detailed estimate of the construction costs of the Project, based on current area, volume, or other unit costs. This estimate shall also indicate both the cost of each category of work involved in constructing the Project and the time required for construction of the Project from commencement to final completion.

5.03 Upon completion of the preliminary design of the Project, the Contractor shall so notify the City. Upon request the Contractor shall meet with the City staff and City Council to make a presentation of his preliminary design of the Project. The Contractor shall provide an explanation of the preliminary design and cost estimate.

ARTICLE VI
Final Design

6.01 The City shall direct the Contractor to commence work on the final design of the Project by sending to the Contractor a "letter of authorization" to begin work on the final design phase of the Project. Upon receipt of the Letter of Authorization to proceed with final design of the Project, the Contractor shall immediately prepare the final design, including, but not limited to, the bid documents, contract, drawings, and specifications, to fix and describe the size and character of the Project as to structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The final design of the Project shall comply with all applicable laws, statutes, ordinances, codes, and regulations.

6.02 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by Contractor under this Agreement will be the care and skill ordinarily used by members of Contractor's profession practicing under similar circumstances at the same time and in the same locality.

B. Contractor shall be responsible for the technical accuracy of its services and documents resulting therefrom, and City shall not be responsible for discovering deficiencies therein. Contractor shall correct such deficiencies without additional compensation.

C. Contractor shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. Contractor shall serve as City's prime professional for the Project. Contractor may employ such Contractor's Consultants as Contractor deems necessary to assist in the performance or furnishing of the services at Contractor's sole expense. Contractor shall not be required to employ any Contractor's Consultant unacceptable to the Contractor.

D. Contractor shall comply with applicable Laws or Regulations and City-mandated standards. This Agreement is based on the foreseeable requirements as of its Effective Date. Changes to such requirements after the Effective Date of this Agreement may be the basis for modifications to City's responsibilities or to Contractor's scope of services, times of performance, or compensation.

E. Contractor, based upon a review of the City maps, shall request field locates where deemed necessary by the Contractor. Uncovering in key locations by the City will be requested by the Contractor for topographic survey data collection. Contractor may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

F. City shall make decisions and carry out its responsibilities specified herein in a timely manner and shall bear all costs incident thereto so as not to delay the services of Contractor.

G. Contractor shall not be required to sign any documents other than the plans resulting from the scope of services referenced and outlined herein in Article I.

H. Except as provided herein in Article VIII, during the Construction Phase, Contractor shall not supervise, direct, or have control over Construction Contractor's work, nor shall Contractor have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Construction Contractor, for safety precautions and programs incident to the Construction Contractor's work in progress, nor for any failure of Construction Contractor to comply with Laws and Regulations applicable to Construction Contractor's furnishing and performing the Work.

I. Except as provided herein in Article VIII, Contractor neither guarantees the performance of any Construction Contractor nor assumes responsibility for any Construction Contractor's failure to furnish and perform the Work in accordance with Contract Documents.

J. Except as provided herein in Article VIII, Contractor shall not be responsible for the acts or omissions of any Construction Contractor(s), their subcontractors or suppliers, or of any of the Construction Contractor's agents or employees or any other persons (except Contractor's own employees, agents, or subcontractors) at the Site or otherwise furnishing or performing any of the Construction Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by City without consultation and advice of Contractor.

6.03 **The Contractor shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City's latest, as of the date of the construction contract's execution, pre-approved, "Standard Form of Construction Agreement" for the construction contract between the City and the contractor. The Contractor hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City's standard form without the prior written approval of the City.**

6.04 The Contractor shall provide the City with complete contract documents in a form acceptable to the City and sufficient to be advertised for bids by the City. The contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the final design of the Project, with the submission of the prepared contract documents, and upon request of the City, the Contractor shall meet with City Staff and the City Council to present the final design of the Project. The Contractor shall provide an explanation of the final design and cost estimate. However, since the Contractor has no control over the cost of labor, materials, equipment, or services furnished by others, over Construction Contractor's methods of determining prices, or over competitive bidding or market conditions, the Contractor cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from the Contractor's opinions or estimates of probable construction cost.

ARTICLE VII
Bid Preparations & Evaluation

7.01 The Contractor shall assist the City in advertising for and obtaining bids or negotiating proposals for the construction of the Project. Upon request, the Contractor shall meet with City Staff and the City Council to present, and make recommendations on, the bids submitted for the construction of the Project.

7.02 The Contractor shall review the construction contractors' bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Contractor shall evaluate each bid and provide these evaluations to the City along with a recommendation on each bid. If the lowest bid for the construction of the Project exceeds the final cost estimate set forth in the final design of the Project, then the Contractor, at his sole cost and expense, shall revise the construction documents so that the total construction costs of the Project will not exceed the final cost estimate contained in the final design of the Project.

7.03 Where substitutions are requested by a construction contractor, the Contractor shall review the substitution requested and approve or disapprove such substitutions.

ARTICLE VIII
Construction

8.01 The Contractor shall be a representative of, and shall advise and consult with, the City (1) during construction, and (2) at the City's direction from time to time during the correction, or warranty, period described in the construction contract. The Contractor shall have authority to act on behalf of the City only to the extent provided in this Agreement unless modified by written instrument.

8.02 The Contractor shall make visits to the site to inspect the progress and quality of the executed work of the construction contractor and his subcontractors and to determine if such work is proceeding in accordance with the contract documents, with a frequency appropriate to and in accordance with the scope of services described in **Exhibit "A"**.

8.03 The Contractor shall keep the City informed of the progress and quality of the work. The Contractor shall exercise the utmost care and diligence in discovering and promptly reporting to the City any defects or deficiencies in such work and shall disapprove or reject any work failing to conform with the contract documents.

8.04 The Contractor shall review and approve shop drawings and samples, the results of tests and inspections, and other data that each construction contractor or subcontractor is required to provide. The Contractor's review and approval shall include a determination of whether the work complies with all applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the contract documents.

8.05 The Contractor shall determine the acceptability of substitute materials and equipment that may be proposed by construction contractors or subcontractors. The Contractor shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the construction contractor in accordance with the contract documents.

8.06 The Contractor shall issue all instructions of the City to the construction contractor as well as interpretations and clarifications of the contract documents pertaining to the performance of the work.

8.07 The Contractor shall review the amounts owing to the construction contractor and recommend to the City, in writing, payments to the construction contractor of such amounts. The Contractor's recommendation of payment, being based upon the Contractor's periodic site visits, a review of the City's inspection reports, and his experience and qualifications as a design professional, shall constitute a recommendation by the Contractor to the City that the quality of such work is in accordance with the contract documents.

8.08 Upon notification from the construction contractor that the Project is substantially complete, the Contractor shall conduct an inspection of the site to determine if the Project is substantially complete. The Contractor shall prepare a checklist of items that shall be completed prior to final acceptance. Upon notification by the construction contractor that the checklist items designated by the Contractor for completion have been completed, the Contractor shall inspect the Project to verify final completion.

8.09 The Contractor shall not be responsible for the work of the construction contractor or any of his subcontractors, except that the Contractor shall be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the contract documents if such failures result from the Contractor's negligent acts or omissions. This provision shall not alter the Contractor's duties to the City arising from the performance of the Contractor's obligations under this Contract.

8.10 The Contractor shall conduct at least one on-site inspection during the warranty period and shall report to the City as to the continued acceptability of the work.

8.11 The Contractor shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project without an advance, written authorization from the City.

8.12 The Contractor shall perform all of its duties under this Article VIII so as not to cause any delay in the progress of construction of the Project.

ARTICLE IX
Change Orders & Documents & Materials

9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order from authorized personnel of the City. The Contractor shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project.

9.02 Written change orders may be approved by the City Manager or his delegate provided that the change order does not increase the amount set forth in paragraph 2 of this Contract to more than **$50,000.00**. Changes in excess of this amount must be approved by the City Council prior to commencement of the services or work. **Any request by the Contractor for an increase in the Scope of Services and an increase in the amount listed in paragraph two of this Contract shall be made and approved by the City prior to the Contractor providing such services or the right to payment for such additional services shall be waived.**

9.03 The Contractor shall furnish the City three (3) sets of plans and specifications. It is hereby agreed that additional copies shall be provided to the City at the City's expense. The Contractor shall provide the City one (1) set of reproducible, mylar-record drawings that clearly show all the changes made during the construction process, based upon the marked-up prints, drawings, and other data furnished by the construction contractor to the Contractor. The Contractor shall provide copies of documents, computer files if available, surveys, notes, and tracings used or prepared by the Contractor. The foregoing documentation, the Contractor's work product, and other information in the Contractor's possession concerning the Project shall be the property of the City from the time of preparation, so long as the City is not in default of its payment obligations set forth herein. The Contractor shall also furnish one set of digital files representing the final as-built mylars.

ARTICLE X
Warranty, Indemnification, & Release

10.01 As an experienced and qualified design professional, the Contractor represents and warrants that the standard of care for all professional engineering and related services performed or furnished by Contractor under this Agreement will be the care and skill ordinarily used by members of Contractor's profession practicing under similar circumstances at the same time and in Texas. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Contractor, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their designs, information, plans, specifications or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Contractor, its employees, associates, agents, or subcontractors.

10.02 The Contractor shall promptly correct any defective designs or specifications furnished by the Contractor at no cost to the City. The City's approval, acceptance, use of, or payment for, all

or any part of the Contractor's services hereunder or of the Project itself shall in no way alter the Contractor's obligations or the City's rights hereunder.

10.03 In all activities or services performed hereunder, the Contractor is an independent contractor and not an agent or employee of the City. The Contractor and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Contractor shall be responsible for the professional services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Contractor shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Contractor shall have ultimate control over the execution of the professional services. The Contractor shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Contractor or any of the Contractor's subcontractors.

10.04 The Contractor must at all times exercise reasonable precautions on behalf of, and, as between the Contractor and the City (specifically including the municipality, its officers, employees, and agents), be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Contractor, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

10.05 Indemnity. The Contractor agrees to indemnify, defend, and hold harmless the City, its officers, employees, and agents (separately and collectively referred to in this paragraph as "Indemnitee"), from and against any and all claims, losses, damages, causes of action, suits, judgments, settlements made by Indemnitee, and liability of every kind, including all expenses of litigation, court costs, attorney's fees, and other reasonable costs for damage to or loss of use of any property, for injuries to, or sickness or death of any person, including but not limited to Contractor, any of its subcontractors of any tier, or of any employee or invitee of Contractor or of any such subcontractors, that is caused by, arises out of, related to, or in connection with, the negligence of and/or negligent performance of this Contract by Contractor or by any such subcontractors of any tier, under this Contract.

10.06 Release. The Contractor releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Contractor or its employees and any loss of or damage to any property of the Contractor or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Contractor's work to be performed hereunder. Both the City and the Contractor expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Contractor or its employees, but not otherwise, this release shall apply regardless of whether such loss, damage, injury, or death

was caused in whole or in part by the City, any other party released hereunder, the Contractor, or any third party.

ARTICLE XI
Insurance

11.01 The Contractor agrees to maintain the types and amounts of insurance required in this Contract throughout the term of the Contract. The following insurance policies shall be required:

1. Commercial General Liability
2. Business Automobile Liability
3. Workers' Compensation
4. Professional Liability

11.02 For each of these policies, the Contractor's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers, shall be considered in excess of the Contractor's insurance and shall not contribute to it. Certificates of insurance and endorsements shall be furnished to and approved by the City's Risk Manager ***before*** any letter of authorization to commence planning will issue or any work on the Project commences. No term or provision of the indemnification provided by the Contractor to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. **All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit "C", and approved by the City *before* work commences.**

11.03 The Contractor shall include all subcontractors as additional insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

11.04 General Requirements Applicable to All Policies.

(a) Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
(b) Deductibles shall be listed on the certificate of insurance and are acceptable only on a "per occurrence" basis for property damage only.
(c) "Claims made" policies will not be accepted, except for Professional Liability insurance.
(d) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of College Station by certified mail, return receipt requested.
(e) Upon request, certified copies of all insurance policies shall be furnished to the City.

(f) The certificates of insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties: (a) that the insurance company is licensed and admitted to do business in the State of Texas; (b) that the insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO; (c) all endorsements and coverages according to the requirements of this Contract; (d) the form of notice of cancellation, termination, or change in coverage provisions; and (e) original endorsements affecting coverage required by this Contract.

(g) The City of College Station, its officials, employees, and volunteers are to be added as "Additional Insureds" to the Commercial General Liability and Business Automobile Liability Policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and volunteers.

11.05 **Commercial (General) Liability** requirements:

(a) Coverage shall be written by a carrier with an "A:VIII" or better rating in accordance with the current Best Key Rating Guide.

(b) Minimum Combined Single Limit of $600,000 per occurrence for bodily injury and property damage.

(c) Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.

(d) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

(e) The coverage shall include but not be limited to: premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, "Explosion Collapse and Underground" coverage.

11.06 **Business Automobile Liability** requirements:

(a) Coverage shall be written by a carrier with an "A:VIII" or better rating in accordance with the current Best Key Rating Guide.

(b) Minimum Combined Single Limit of $600,000 per occurrence for bodily injury and property damage.

(c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.

(d) The coverage shall include owned or leased autos, non-owned autos, and hired cars.

11.07 **Workers' Compensation Insurance** requirements:

11.07.01 **Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, *all* employees of the Contractor, the Contractor, *all* employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's, or subcontractor's policy) or through an executed coverage agreement on an approved TWCC form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Contractors and subcontractors *must* use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.**

11.07.02 The worker's compensation insurance shall include the following terms:

(a) Employer's Liability limits of $100,000.00 for each accident is required.
(b) "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
(c) Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

11.07.03 Pursuant to the explicit terms of Title 28, Section 110.110(c)(7) of the Texas Administrative Code, this Agreement, the bid specifications, this Agreement, and all subcontracts on this Project must include the terms and conditions set forth in attached **Exhibit "D"**, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

11.08 **Professional Liability** requirements:

(a) Coverage shall be written by a carrier with a "A(-):XVII" or better rating in accordance with the current Best Key Rating Guide.
(b) Minimum of $1,000,000 project specific policy, with a maximum deductible of $25,000.
(c) Coverage must be maintained for two (2) years after the termination of this Contract.

ARTICLE XII
Termination

12.01 The City may terminate this Contract at any time upon **thirty (30)** calendar days written notice. Upon the Contractor's receipt of such notice, the Contractor shall cease work immediately. The Contractor shall be compensated for the services satisfactorily performed prior to the termination date.

12.02 If, through any cause, the Contractor fails to fulfill its obligations under this Contract, or if the Contractor violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Contractor **five (5)** calendar days written notice to the Contractor. The Contractor will be compensated for the services satisfactorily performed before the termination date.

12.03 No term or provision of this Contract shall be construed to relieve the Contractor of liability to the City for damages sustained by the City because of any breach of contract and/or negligence by the Contractor. The City may withhold payments to the Contractor for the purpose of setoff until the exact amount of damages due the City from the Contractor is determined and paid.

ARTICLE XIII
Miscellaneous Terms

13.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

13.02 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City of College Station
Attn: Kim Foutz
P.O. Box 9960
College Station, Texas 77842

Contractor:
The Wallace Group Inc.
Attn: Bob Wallace
8225 Central Park Drive
P.O. Box 22007
Waco, Texas 76712

13.03 No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

13.04 This Contract represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

13.05 This Contract and all rights and obligations contained herein may not be assigned by the Contractor without the prior written approval of the City.

13.06 If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

13.07 The Contractor, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of College Station, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Contractor must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.

13.08 The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

13.09 This Contract will be effective when signed by the last party whose signing makes the Contract fully executed.

[CONTRACTOR]

By: _____
Printed Name: R. E. WALLACE
Title: PRESIDENT
Date: 10 DEC 01

CITY OF COLLEGE STATION

By: _____
Lynn McIlhaney, Mayor

Date: _____

ATTEST:

_____
Connie Hooks, City Secretary

_____
Date

CRC Approval Date: 11-05-01
Contract No. *01-121*
11-05-01

APPROVED:

Thomas E. Brymer, City Manager	Date
City Attorney	Date
Charles Cryan, Director of Fiscal Services	Date

Exhibit "A"

Scope of Services

In any event of conflict between the Contract and this Scope of Services attached thereto, the Contract shall control.

CONTRACTOR shall provide Basic and Additional Services as set forth below:

BASIC SERVICES

TASK 1: Boundary Survey Phase

Upon written authorization from OWNER, CONTRACTOR shall:

Perform necessary field surveys to prepare a plat for approximately 192 acres between FM 60 and FM 30 for a Tax Increment Financing District and Public Improvement District, as outlined in the 30/60 Corridor Master Plan Report.

CONTRACTOR's services under the Boundary Survey Phase will be considered complete on the date when final copies of the Final Plat have been delivered to OWNER.

TASK 2: Topographic Survey Phase

Upon written authorization from OWNER, CONTRACTOR shall:

Provide necessary field surveys and topographic and utility mapping for design purposes.

CONTRACTOR's services under the Topographic Survey Phase will be considered complete on the date when final copies of the Final Design Phase documents have been delivered to OWNER.

TASK 3: Easements/Right-of-Way Preparation Phase

Upon written authorization from OWNER, CONTRACTOR shall:

Prepare survey documents necessary for obtaining easements or right-of-ways for construction of roads, utilities and other infrastructure as outlined in the 30/60 Corridor Master Plan Report.

TASK 4: Conceptual Design

Article IV of this contract defines the scope of the conceptual design task. This task will include an update of the hydrology model. Existing conditions will be evaluated including utility

constraints. A conceptual design construction cost estimate will be provided. CONTRACTOR will conduct investigations concerning critical habitat, archeological, and endangered species issues.

CONTRACTOR's services under this phase will be considered complete on the date when final copies of the easement plan descriptions including metes and bounds, right-of-way documents, and permit applications have been delivered to OWNER but such completion shall be no later than within 45 days after authorization to proceed with this phase.

TASK 5: Preliminary Design

Article V of this contract defines the scope of the Preliminary Design task. Coordination will be provided with the City Utility and Public Works Departments.

Advise OWNER if additional reports, data, information, or services are necessary and assist OWNER in obtaining such reports, data, information, or services.

Based on the information contained in the Preliminary Design Phase documents, submit a construction cost estimate.

Furnish the Preliminary Design documents to and review them with OWNER.

Submit to OWNER 3 final copies of the Preliminary Design Phase documents and revised construction cost estimate within 45 days after authorization to proceed with this phase.

CONTRACTOR's services under Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to OWNER.

TASK 6: Final Design

Article VI of this contract defines the scope of the final design task. After acceptance by OWNER of the Preliminary Design Phase documents and revised Construction Cost Estimate, and upon written authorization from OWNER, CONTRACTOR shall:

Prepare final drawings indicating the scope, extent, and character of the Work to be performed and furnished by the Construction Contractor. Specifications will be prepared in general conformance with City Specifications.

Provide technical criteria, written descriptions, design data, and completed applications for OWNER's use in filing applications for permits from or approvals of governmental

authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities.

Advise OWNER of any adjustments to the Construction Cost estimate and any adjustments to Total Project Costs.

In the event that the Work designed or specified by CONTRACTOR is to be performed or furnished under more than one price contract, or if CONTRACTOR's services are to be separately sequenced with the work of one or more prime Construction Contractors (such as in the case of fast-tracking), OWNER and CONTRACTOR shall, prior to commencement of the Final Design Phase, develop a schedule for performance of CONTRACTOR's services during the Final design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contractors.

The number of prime contracts for Work designed or specified by CONTRACTOR upon which the CONTRACTOR's compensation has been established under this Agreement is 2.

CONTRACTOR's services under Final Design Phase will be considered complete on the date when final copies of the Final Phase Documents have been delivered to OWNER but such completion shall be no later than within 60 days after authorization to proceed with this phase.

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TASK 7: Bid Preparations

Article VII of this contract defines the scope of the bid preparations task. Contract shall prepare and furnish Bidding Documents for review and approval by OWNER, its legal counsel, and other advisors and assist OWNER in the preparation of other related documents.

Submit 3 final copies of the Bidding Documents and a revised Construction Cost Estimate to OWNER within 15 days after authorization to proceed with this phase.

TASK 8: Bidding or Negotiating Phase

After acceptance by OWNER of the Bidding Documents and the most recent Construction Cost Estimate as determined in the Final Design Phase, and upon written authorization by OWNER to proceed, CONTRACTOR shall:

1. Attend pre-bid conferences.

2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

3. Consult with OWNER as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Construction Contractor for those portions of the Work as to which such acceptability is required or made reasonably necessary by the Bidding Documents.

4. Attend the Bid opening, prepare Bid tabulation sheets, and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Construction Contractors.

TASK 10: Construction Phase

Article VIII of this contract describes the Construction Phase services. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from OWNER, CONTRACTOR shall:

1. General Administration of Construction Contract. Consult with OWNER and act as OWNER's representative as provided in this Agreement.

2. Selecting Independent Testing Laboratory. Assist OWNER in the selection of an independent testing laboratory as needed.

3. Pre-Construction Conference. Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

4. Baselines and Benchmarks. As appropriate, establish baselines and benchmarks for locating the Work which in CONTRACTOR's judgment are necessary to enable Construction Contractor to proceed.

5. Visits to Site and Observation of Construction. Make visits to the Site at intervals appropriate to the various stages of construction, to observe the progress and quality of the Work. Such visits shall not be less than once per month. Based on information obtained during such visits and such observations, CONTRACTOR will determine in general if Construction Contractor's work is proceeding in accordance with the Contract Documents, and CONTRACTOR shall keep OWNER informed of the progress of the Work.

6. Defective Work. Recommend to OWNER that construction contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, CONTRACTOR believes that such work will not produce a completed Project that conforms generally to the Contract documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

7. Clarifications and Interpretations; Field Orders. Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Construction Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. CONTRACTOR may make recommendations and prepare change orders for OWNER to authorize minor variations from the requirements of the Contract Documents.

8. Change Orders and Work Change Directives. Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and prepare Change Orders and Work Change Directives as required.

9. Shop Drawings and Samples. Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Construction Contractor is required to submit, for conformance with the information given in the Contract Documents and compatibility with the design concept. CONTRACTOR has an obligation to meet any Construction Contractor's submittal schedule that has earlier been acceptable to CONTRACTOR.

10. Substitutes and "or-equal." Evaluate and recommend acceptability of substitute "or-equal" materials and equipment proposed by Construction Contractor.

11. Inspections and Tests. Make recommendations regarding such special inspections or tests of Construction Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. CONTRACTOR's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. CONTRACTOR shall be entitled to rely on the results of such tests.

12. Disagreements between OWNER and Construction Contractor. Render formal written opinions to City on all claims of OWNER and Construction Contractor relating to the acceptability of Construction Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Construction Contractor's work.

13. Applications for Payment. Review of Applications for Payment and accompanying supporting documentation to:

a. Determine the amounts that CONTRACTOR recommends Construction Contractor be paid. Such recommendations of payment will be in writing and will constitute CONTRACTOR's representation to OWNER, that, to the best of CONTRACTOR's knowledge, information and belief, Construction Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents, and the conditions precedent to Construction Contractor's being entitled to such payment appear to have been fulfilled in so far as it is CONTRACTOR's responsibility to observe Construction Contractor's work. In the case of unit price work, CONTRACTOR's recommendations of payment will include final determinations of quantities and classifications of Construction Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents).

14. Construction Contractor's Completion Documents.

a. Receive and review maintenance and operating instructions, schedules, and guarantees.

b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved by Construction Contractor in accordance with the Contract Documents to obtain final payment.

c. Transmit these documents to OWNER.

15. Substantial Completion. Promptly after notice from Construction Contractor that Construction Contractor considers the entire Work ready for its intended use, in company with OWNER and Construction Contractor, conduct an inspection to determine if the Work is Substantially Complete.

16. Final Notice of Acceptability of Work. Conduct a final inspection to determine if the completed Work of Construction Contractor is acceptable so that CONTRACTOR may recommend, in writing, final payment to Construction Contractor. Accompanying the recommendation for final payment, CONTRACTOR shall also provide written notice that the Work is acceptable based on the extent of the services provided by CONTRACTOR under this Agreement.

17. As-Builts. Provide record drawings/As-Builts to OWNER.

Duration of Construction Phase. The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by CONTRACTOR for final payment to Construction Contractors. If the Project involves more than one prime contract as indicated herein, Construction Phase services may be rendered at different times in respect to the separate contracts.

TASK 11: Post-Construction Phase

Upon written authorization from OWNER, CONTRACTOR, during the Post-Construction Phase, shall:

1. Together with OWNER, visit the Project to observe any apparent defects in the Work, assist OWNER, consultations and discussions with Construction Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.

2. In company with OWNER or OWNER's representative, provide an inspection of the Project within one month before the end of the Warranty Period to ascertain whether any portion of the Work is subject to correction.

The Post-Construction Phase services may commence during the Construction Phase and will terminate at the end of the Warranty Period.

ADDITIONAL SERVICES

Additional Services Requiring OWNER's Authorization in Advance

If authorized in writing by OWNER, CONTRACTOR shall furnish or obtain from others Additional Services.

Exhibit "B"

Payment Terms

Payment is a fixed fee in the amount listed in paragraph 2.01 of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

Payments to CONTRACTOR for Services and Reimbursable Expenses shall be made as set forth below:

For Basic Services Having a Determined Scope – Lump Sum Method of Payment

OWNER shall pay CONTRACTOR for Basic Services set forth in Exhibit "A" as follows:

1. A Lump Sum amount of $ 282,830.00 based on the following assumed distribution of compensation:

a.	Boundary Survey Phase	$ 8,100.00
b.	Topographic Survey Phase	$ 31,680.00
c.	Easements/Right-of-Way Preparation Phase	$ 18,150.00
d.	Preliminary Design Phase	$ 53,350.00
e.	Final Design Phase	$ 111,700.00
f.	Bidding and Negotiating Phase	$ 10,670.00
g.	Construction Phase	$ 42,680.00
h.	Environmental	$ 6,500.00

2. CONTRACTOR may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the OWNER.

3. The Lump sum includes compensation for CONTRACTOR's services and services of CONTRACTOR's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

4. The portion of the Lump Sum amount billed for CONTRACTOR's services will be based upon CONTRACTOR's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum. CONTRACTOR shall provide a summary of Reimbursables.

5. If more prime contracts are awarded for Work designed or specified by CONTRACTOR for this Project than identified in Exhibit A, the CONTRACTOR shall be compensated an additional amount to be determined for all Basic Services for each prime contract added.

Exhibit "C"

Certificate(s) of Insurance

CNA
For All the Commitments You Make®

PROFESSIONAL LIABILITY
DESIGN PROFESSIONALS

INSURED:
Policy 000-00-000-00-00 Effective 00/00/00 Endorsement Number

SUPPLEMENTAL LIMIT OF LIABILITY ENDORSEMENT

For **your** payment of an additional premium of _____, we agree with **you** that Item 6. of the Declarations, LIMIT OF LIABILITY, is supplemented but only with respect to a **claim** arising out of contract(s) identified below:

Specific Contract(s):

This SUPPLEMENTAL LIMIT OF LIABILITY applies as excess over any deductible amount and applies only to a **claim** first made during the **policy term** arising out of the contract(s) identified above. The original LIMIT OF LIABILITY, if any, as shown in Item 6. of the Declarations, LIMIT OF LIABILITY, shall apply to any **claim** arising out of the contract(s) identified above but only after the SUPPLEMENTAL LIMIT OF LIABILITY has been exhausted. Payments of any amount, including but not limited to **claim expenses**, against this SUPPLEMENTAL LIMIT OF LIABILITY shall not erode the per **claim** and aggregate per **policy year** limit of liability listed on the Declarations.

SUPPLEMENTAL LIMIT OF LIABILITY

$_____ Per **claim** limit of liability (including **claim expenses**)

$_____ Aggregate limit of liability per **policy term** (including **claim expenses**)

All other provisions of this policy remain unchanged.

_____
Countersigned By Authorized Representative

G-136519-A
(Ed. 07/99)

Victor O.
Schinnerer
& Company, Inc.
Two Wisconsin Circle, Chevy Chase, Maryland 20815-7022 • 301/961-9800 • Fax 301/951-5444

November 13, 2001

Ms. Vicki Byrd
Ward Insurance Agency Inc.
P.O.Box 179
Gatesville, TX 76528

RE: The Wallace Group, Inc.
Policy No. PRE006144640
Ref. No. 115328

Dear Ms. Byrd:

The annual additional premium to provide a Specific Additional Limit endorsement for the City of College Station, Texas - Construction of SE Boulevard project is as follows:

Specific Additional Limits of Liability	Additional Premium	
$ 1,000,000 / $ 1,000,000	$1,500	*One Time Charge

The endorsement per claim and aggregate limit of liability will act as primary coverage for this project and the practice policy will be excess.

In order to bind coverage for this endorsement, we will need the following for review: (If you have already submitted these items, thank you):

* Project/Contract name & address
* Detailed description of project or contract and services
* Estimated total construction values for the project or contract
* A copy of professional service contract
* Estimated total project or contract billings
* Evidence of previous project coverage (if applicable)
* A completed, signed and dated Increased Limit Application
* The net premium

The Specific Additional Limit is not available to insureds with practice policy limits less than $250,000. The policy may be endorsed to increase the limits of liability for an additional premium.

Victor O.
Schinnerer
& Company, Inc.
Two Wisconsin Circle, Chevy Chase, Maryland 20815-7022 • 301/961-9800 • Fax 301/951-5444

Please note:

* the maximum number of Specific Additional Limit Endorsements on any given policy is TWO
* the endorsement premium is fully earned
* the endorsement must be purchased prior to the start of construction
* the endorsement will be effective the day after your postmarked request
* these quotations are valid for thirty days.

Please call if you have questions.

Cordially,

Duane S. Repko
Assistant Vice President

DSR:adp

CNA ARCHITECTS/ENGINEERS
PROFESSIONAL LIABILITY INSURANCE
INCREASED LIMIT/DEDUCTIBLE CHANGE APPLICATION

1 Has any claim or suit that would be covered by this insurance been made against any insured under this policy which has not been previously reported to the Company?
Yes ☐ No ☐ If "yes", give details.

2. Do you, any insured or any predecessor firm insured under this policy have knowledge of any negligent act, error, omission, unresolved job dispute or any circumstances(s) that is or could be a basis for a claim under this policy that has not previously been reported to the Company?
Yes ☐ No ☐ If "yes", give details.

3. What Limit of Liability/Deductible do you wish to purchase?

Limit of Liability_____ Deductible Amount_____

Deductible Type _____

I/we hereby declare that the above statements and particulars are true and that I/we have not suppressed or mis-stated any material facts and I/we agree that this application shall be one basis of the contract with the Company.

It is understood and agreed that the completion of this application does not bind the Company to write the insurance nor the applicant to purchase the insurance.

Broker _____ Name of Firm _____

Address_____ Signature (Principal /Partner or Officer_____

_____ Date of Application_____

Policy Number _____

FRAUD PREVENTION - OHIO
WARNING

Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

Exhibit "D"

Workers Compensation Insurance Requirements for On-Site Work
Title 28, Section 110.110 of the Texas Administrative Code

"*A. Definitions:*

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity."