

**RESOLUTION NO. R2022-76**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURNET TEXAS, APPROVING A COST SHARING AGREEMENT WITH THE BURNET ECONOMIC DEVELOPMENT CORPORATION AND ACCEPTING A PROPOSAL FROM THE ENGINEERING FIRM 4 CUATRO CONSULTANTS, LTD, TO DESIGN THE REALIGNMENT OF A SEGMENT OF THE PUBLIC ROAD KNOWN AS COKE STREET; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Burnet Economic Development Corporation (“*BEDC*”) recently acquired 1.67 acres of land for the expressed purpose of realigning Coke Street to intersect with Texas Highway 29 and Richard Sanders Parkway (the “*Project*”); and

**WHEREAS**, the Texas Department of Transportation has expressed support for the signalization of the intersection that would be created by the Project; and

**WHEREAS**, City Council finds that the Project is budgeted as part of the Eastside Commercial Park Development Budget and would benefit said Development; and

**WHEREAS**, City Council further finds that the Project will promote traffic safety by the creation of a signalized intersection for vehicles making left hand turns from Coke Street to Texas Highway 29 and from Texas Highway 29 to Coke Street; and

**WHEREAS**, the BEDC board of directors, at their October 19, 2022, meeting, directed city staff to finalize a cost sharing agreement for presentation to City Council splitting the Project Design Costs; and

**WHEREAS**, in providing such direction to staff, the BEDC board of directors, express their desire to defer a decision on splitting Project Construction Costs until such time as the project engineer provides a construction cost estimate; and

**WHEREAS**, 4 Cuatro Consultants, LTD, has presented a proposal to design the Project for an estimated fee of \$58,140.00; and

**WHEREAS**, City Council has reviewed the actions of the BEDC related to the Project, has considered, and evaluated that Project, and has found it meritorious of the City Council’s authorization and approval; and

**WHEREAS**, City Council finds that the initiation of the Project may best be facilitated by entering into an agreement to share design costs as proposed by the BEDC board of directors; and

**WHEREAS**, City Council agrees with the BEDC board of directors, that any decision on sharing construction costs, should be deferred until such time as the project engineer presents an estimate of the Project’s construction costs estimate; and

**WHEREAS**, City Council finds that 4 Cuatro Consultants, LTD, proposal, to be the project engineer, acceptable; and

**WHEREAS**, City Council finds that the meeting where this Resolution was considered was in full compliance with the notice and other requirements of the Texas Open Meetings Act and the Development Corporation Act of 1979, as codified in the Texas Local Government Code.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS:**

**Section one. Findings.** The recitals stated above are found to be true and correct and are made part of this Resolution for all purposes.

**Section two. Approval.** The Cost Sharing Agreement with the BEDC, as attached hereto as **Exhibit "A"**, is hereby approved.

**Section three. Approval.** The Revised Proposal for Engineering Services, as submitted on behalf of 4 Cuatro Consultants, LTD, and as attached hereto as **Exhibit "B"**, is hereby approved.

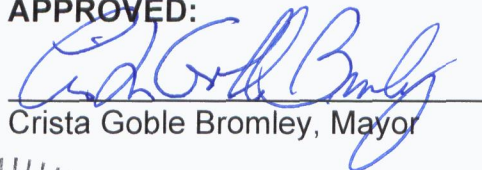
**Section four. Authorization.** The City Manager is hereby authorized to execute agreements in substantial form as **Exhibits "A"** and **"B"** on behalf of the City and execute such ancillary documents and take such additional actions as reasonably necessary to facilitate the purpose of this Resolution.

**Section five. Effective Date.** This Resolution shall be effective immediately upon approval and adoption.


Approved and adopted this 25<sup>th</sup> day of October 2022.

**CITY OF BURNET, TEXAS**

**APPROVED:**

  
Crista Goble Bromley, Mayor

**ATTEST:**

  
Kelly Dix, City Secretary



**COST-SHARING AGREEMENT  
(COKE STREET REALIGNMENT)**

This COST-SHARING AGREEMENT (this "Agreement") is entered into effective on the date of execution as indicated below, between, the City of Burnet, Texas a home rule municipality ("City") and the Burnet Economic Development Corporation, a 4B Economic Development Corporation formed un the Texas Development Corporation Act of 1979, ("BEDC"). City and BEDC are sometimes referred to in this Agreement individually as a "Participant" and collectively as the "Participants".

**RECITALS:**

**WHEREAS**, the BEDC is the developer of that certain subdivision known as "*A Replat of Lot No. 7-C Eastside Commercial Park*", consisting of approximately 21.374 acres and as recorded as Document No. 20192804 in the Public Records of Burnet County, Texas, ("*Eastside Commercial Park*")

**WHEREAS**, the BEDC developed the Eastside Commercial Park to stimulate commercial and or industrial development in the City and has allocated funds for the Eastside Commercial Park Project; and

**WHEREAS**, the BEDC utilized some of the Eastside Commercial Park Project funds to purchase 1.67 acres of land as described in that Special Warranty Deed recorded as Document No. 202213312 in the Public Records of Burnet County (the "BEDC Land"); and

**WHEREAS**, the purchase of the BEDC Land was for the purpose of assisting in the development of the Eastside Commercial Park Project by the construction of the realignment of Coke Street at its intersection with Texas State Highway 29, and the installation of a traffic signal at the new intersection (the "the Coke Street Realignment Project"); and

**WHEREAS**, the BEDC's Board of Directors, have found the Coke Street Realignment Project, to be a component of the Eastside Commercial Park Project and to be a Texas Local Government Code Chapter 501, Subchapter C project; and  
**WHEREAS**, City Council has found the Coke Street Realignment Project to provide a public benefit; and

**WHEREAS**, the Participants expenditures for the design of the Coke Street Realignment Project shall be from funds currently available from this fiscal year; and

**WHEREAS**, the Participants desire to enter into this Agreement to memorialize the sharing of costs for the design of the Coke Street Realignment Project.

## **AGREEMENT:**

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants set forth in this Agreement, for the benefits to be received by the Participants, the mutual promises herein expressed, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Participants agree as follows: The Participants rights and obligations under this Agreement are as follows:

### **ARTICLE ONE. THE PROJECT.**

- (A) *The Project.* The Project that is the subject of this Agreement is the Coke Street Realignment Project, which is a component of BEDC Eastside Commercial Park Project.
- (B) As described in The Participants' monetary obligations under this Agreement is limited to the design costs. The Project Design shall include the following:
  - (1) *The Realignment.* The Project shall be designed to cause the realignment of Coke Street at its intersection with Texas Highway 29 to the north and League Street to the South. The realigned Coke Street shall align with Richard Sanders Parkway and be designed to the standards for a public collector street as stated in the City Code.
  - (2) *Signalized Intersection.* The Project shall be designed to include the installation of a traffic signal at the new intersection of Coke Street and Richard Sanders Parkway with Texas Highway 29.
  - (3) *Vacation.* Upon completion of the Project, the old Coke Street segment, from League Street to Texas Highway 29, shall be vacated by the City and release in accordance with the requirements of state law.
- (D) *Connectivity.* The City shall have exclusive authority to enter into agreements with affected Property Owners regarding connection to the new Coke Street alignment.

### **ARTICLE TWO. PARTICIPANTS PAYMENT OBLIGATIONS.**

- (A) *Design Costs.* The Project shall be designed by the engineering firm, 4 Cuatro Consultants, LTD. The Participants shall share Design Costs equally. A copy of the engineering firm's proposal is attached hereto as **Exhibit "A"**.
- (B) *Construction Costs.* This Agreement does not create an obligation for the Participants to contribute payment to the Project's construction costs. Rather, after the Project Engineer prepares a construction cost estimate, the Participants may, but shall not be required to, enter into a separate agreement, or an amendment to this Agreement, addressing construction costs sharing.
- (C) *Coke Street Realignment Project Funds.* The BEDC has allocated sufficient funds for the Design Phase of this Project. The City's Finance Director shall be

authorized to release draws to the City upon the City Manager's presentation of a Civil Engineer Invoice for Payment, subject to the following:

- (1) Draws shall equal one/half of the Civil Engineer's Invoice amount; and
- (2) The City Manager shall make Project progress reports at the BEDC Board of Directors monthly meetings that shall include copies of paid invoices.

### **ARTICLE THREE. PROJECT MANAGEMENT.**

The Project shall be managed by the City.

### **ARTICLE FOUR. THE BEDC LAND.**

- (A) *Special Warranty Deed.* The BEDC Land is described in the Special Warranty Deed recorded as Document No. 202213312 in the Public Records of Burnet County, Texas.
- (B) *Right of Entry.* The BEDC conveys to the City Right of Entry over, under and upon the Land for itself and its officials, officers, employees, consultants, contractors, and subcontractors for any activity reasonably related to the completion of the design of the Project.
- (C) *Transfer of Interest.* Upon request by the City, the BEDC shall dedicate to the City all Rights-of-Way and Drainage Easements, or fee interest of same, as determined to be required by the Project Engineer. Additionally, upon request by the City, the BEDC shall cause title, possession, and/or use, of BEDC Land to be transferred to adjoining property owners, including the County, to the extent the City determines to be reasonably necessary to facilitate completion of the construction of the Project.
- (D) *Fiscal Responsibility.* The City shall assure that adequate insurance and bonds are procured by itself, and its consultants, contractors, and subcontractors, as the case may be, to protect the BEDC from exposure to liability for claims, of any nature, relating to the Project.

### **ARTICLE FIVE. DISPUTE RESOLUTION.**

Any disputes arising under this Agreement shall be resolved by the Burnet City Council, whose decision shall be final.

### **ARTICLE SIX. MISCELLANEOUS**

This Agreement shall be subject to the terms and conditions that follow:

- (A) *Additional Instruments.* The Participants agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.
- (B) *Amendments.* This Agreement constitutes the entire understanding and agreement of the Participants as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in

- writing and signed by the Participant or Participants sought to be charged or bound by the alteration or amendment.
- (C) *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to choose-of-law rules of any jurisdiction.
  - (D) *Assignment.* This Agreement is unassignable.
  - (E) *Binding Obligation.* This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The BEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
  - (F) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
  - (G) *Construction.* The Participants acknowledge that the Participants and their counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Participant shall not be employed in the interpretation of the Agreement.
  - (H) *Entire Agreement.* This Agreement constitutes the entire agreement between the Participants with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Participants that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the City Council.
  - (I) *Exhibits Addenda, and Attachments.* All Exhibits, Addenda and Attachments referenced in this Agreement are attached hereto and incorporated herein for all purposes. Exhibits, and Addenda, to this Agreement include the following:  
**Exhibit "A"** Project Engineer's Proposal.
  - (J) *Force Majeure.* It is expressly understood and agreed by the Participants to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, governmental action, delay in issuance of permits or approvals (including, without limitation, fire marshal approvals), enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the obligated Participant and delays caused by the other Participant, the Participant so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such Participant was delayed.
  - (K) *Gender.* The gender of the wording throughout this Agreement shall always be interpreted to mean either sex; and, where the context requires, the plural of any word shall include the singular.
  - (L) *Immunities and defenses.*

- (1) By entering into this Agreement, the Participants do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of Participants, and nothing contained herein shall ever be construed as a waiver of sovereign, statutory or official immunity by the City with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.
- (2) No employee of City, or any councilmember or agent of City, or member of the BEDC board of directors, shall be personally responsible for any liability arising under or growing out of this Agreement.
- (M) *Mutual Assistance.* City and BEDC will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.
- (N) *No Joint Venture.* Nothing contained in this Agreement is intended by the Participants to create a partnership or joint venture between the Participants and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Participant as an agent of the other for any purpose whatsoever. Except, as otherwise specifically provided herein, neither Participant shall in any way assume any of the liability of the other for acts of the other or obligations of the other.
- (O) *Notices.* Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, by messenger, by facsimile, or by reputable overnight carrier, and shall be deemed delivered when received at the addresses of the Participants set forth below, or at such other address furnished in writing to the other Participants thereto.

CITY:

City Manager  
 City of Burnet  
 P.O. Box 1369  
 1001 Buchanan Drive, Suite 4  
 Burnet, Texas 78611

BEDC:

BEDC Board President  
 City of Burnet  
 P.O. Box 1369  
 1001 Buchanan Drive, Suite 4  
 Burnet, Texas 78611

- (P) *Recitals.* The above stated recitals are made part of this Agreement as if transcribed herein verbatim.
- (Q) *Severability.* In the event any provision of this Agreement is illegal, invalid, or unenforceable under the present or future laws, then, and in that event, it is the intention of the Participants hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Participants to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

- (S) *Sole Benefit.* This Agreement has been, and is, made solely for the benefit of the Participants and no other person or entity shall acquire or have any right under or by virtue of this Agreement.
- (T) *Survival of Covenants.* Any of the representations, warranties, covenants, and obligations of the Participants, as well as any rights and benefits of the Participants, pertaining to a period of time following the termination of this Agreement shall survive termination.
- (U) *Waiver.* The failure of any Participant to insist in any one or more instances on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

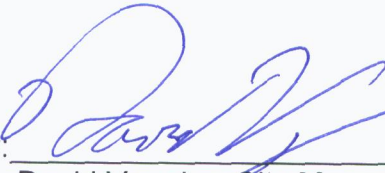
*Remainder of this page intentionally left blank. Signatures follow on the next page.*

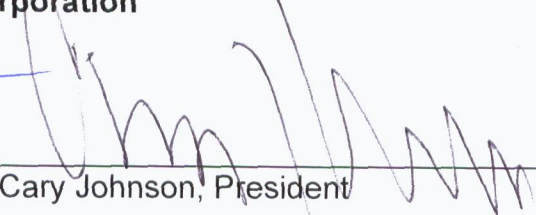


This Cost Sharing Agreement to be effective this 16<sup>th</sup> day of NOVEMBER, 2022.

**City of Burnet**

**Burnet Economic Development Corporation**


By:   
David Vaughn, City Manager

By:   
Cary Johnson, President

**Attest:**

**Attest:**

  
Kelly Dix, City Secretary

  
Kelly Dix, Secretary to the Board of Directors





October 20, 2022

David Vaughn, City Manager  
City of Burnet  
PO Box 1369  
Burnet, TX 78611

**RE: COKE STREET IMPROVEMENTS:  
Final Plat, Construction Drawings, and Signal Drawings  
CITY OF BURNET, TEXAS**

**Subject: Proposal for Engineering Services- Revised**

Dear Mr. Vaughn:

Cuatro Consultants, Ltd. appreciates the opportunity to submit this proposal for providing basic engineering and surveying services to prepare a Final Plat and construction drawings for realigning the north segment of existing Coke Street to match the centerline of existing Richard Sanders Parkway at State Highway 29. The scope of work includes the reconstruction of Coke Street beginning at State Highway 29 and extending south to its present intersection with East League Street. The segment is approximately 350 feet long and includes a new segment of residential collector street at 30-foot face to face of curb tapering to a 36-foot wide section at the intersection. The work also includes closing or abandoning a segment of existing Coke Street between SH 29 and E. League Street.

This proposal includes preparing an application and supporting documents for a TxDOT driveway submittal including signalized intersection drawings and urban taper design or deceleration lane on the south side of SH 29 at the proposed intersection for approval by TXDOT. This will be a separate subset of construction drawings for the TXDOT right of way work. We include a public bid packet for this Project.

We include completing the topographic survey required to confirm the existing conditions and utility locations of the street segment and right of way.

Below is a summary of the various tasks to complete this engineering task.

**A. SCOPE OF SERVICES AND BUDGET**

**1. Topographic Survey (Task 1):**

- Complete a topographic survey of the street segment including developing a 1-foot contour elevation map, existing utilities, and water, wastewater, electrical, and telecommunication improvements. The survey will indicate existing driveways, services, signage, power poles and other existing design considerations and constraints. We will set 2 project benchmarks for vertical control.

**Budget for Task 1:**

**\$ 1,980.00**

2. TxDOT Driveway Application(Task 2):

- Driveway Application and various supporting documents including environmental clearance form, drainage calculations and certification, traffic control plan and schematic depicting proposed improvements with dimensions, construction details and notes.

**Budget for Task 2:**

**\$ 4,500.00**

3. TxDOT Signalized Intersection Drawings(Task 3):

- Prepare signalized intersection construction drawings a signalized intersection at State Highway 29 and Coke Street including various supporting documents including schematic of improvements, striping plan, electrical and control schematic and details, coordination with TxDOT, traffic control plan and related construction details and notes. This scope includes a general Traffic Control Plan for TxDOT approval. Contractor shall use this TCP or prepare specific TCP for approval by TxDOT. Our scope also includes a Demolition Plan and Construction Sequence for the work. Submit for review and approval by TxDOT.

**Budget for Task 3:**

**\$ 17,910.00**

4. Construction Drawings for Coke Street (Task 4):

- Construction drawings showing improvements to the land including the following support sheets:
  - Master Drainage Plan - Including all existing and proposed drainage flows and overall storm water management plan. *Note: This does not include water quality design or calculations.*
  - Utility Layout - Including location and size of water mains and fire hydrants, wastewater, electric, and telecommunication lines. Provide service line replacements for services along this reconstruction segment. Show manhole vertical grade adjustments.

- Erosion and Sedimentation Control Plan - Prepare Erosion Control Plan which shows existing and proposed contours, and the location, size, and type of temporary and permanent erosion control detailing onsite erosion control measures to be established and maintained during construction.
- Street Construction Drawings - Prepare plan and profile views of the proposed street segment, confirm final street base and pavement section from Geotechnical Report *provided by others*, proposed grading of right of way and connecting driveways, inlets and storm culverts as needed.
- Coordinate with City staff on the final alignment of the new street right of way of to minimize impact on existing infrastructure.

**Budget for Task 4:** \$31,500.00

5. Final Plat(Task 5):

- Prepare a Final Plat and application and submit supporting documents for Final Plat to the City of Burnet for review and approval. Address review comments and provide signed copies for recording of same. Set or find all property corners depicted on Final Plat.

**Budget for Task 5:** \$ 2,250.00

6. Construction Administrator/Contractor Phase (Task 6):

- Construction administrated including response to RFI during bidding process and a 30 amp percent day contractor. Observation, conduct periodic observations to confirm work progress, conduct final walkthrough City of Burnet and develop punch list for Project, issue letter of concurrence, record drawings from City markup, and submit closeout documents as required by the City.

**Budget for Task 6:** \$2,970.00

Clarifications of Scope:

1. Fees - Our scope **does not** include payment of any and all development or review fees.
2. Copies to City - Multiple plan sets for City submittals. These will be invoiced based on in-house printing.

3. Complete Scope - Our Cost is developed for a complete scope. If certain elements are deleted from our scope, we reserve the right to renegotiate our pricing.
4. Compensation for Additional Services - If the Owner and Cuatro Consultants, Ltd. agree that additional services are required, then the Owner shall compensate Cuatro per the Standard Rate Schedule set forth in Attachment I.

## **B. PERFORMANCE SCHEDULE AND PAYMENT**

We will pursue the work diligently and perform timely upon authorization to proceed. In our opinion, the design work will require approximately 105 calendar days to complete for the first submittal to TxDOT and the City of Burnet. Then approximately 60 days are required for initial review and update filing(s), prior to obtaining approval. We will invoice monthly, by the 25<sup>th</sup>, on a percent complete basis.

## **C. TERMINATION/OWNERSHIP OF DOCUMENTS**

Either party may terminate this Agreement upon giving written notice to the other party at least thirty (30) days prior to the date of termination. In the event of termination, the Engineer shall deliver to the Client one reproducible copy and one electronic data file of all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, etc., prepared by the Engineer under this Agreement. The Engineer shall be entitled to receive just and equitable compensation for any work satisfactorily completed in accordance with the provisions of this Agreement prior to termination.

If the Engineer has completed the Construction Phase prior to termination, Engineer will be entitled to the fee stipulated under the Agreement for such completed phases.

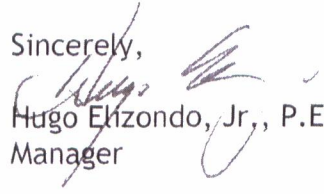
All original documents, including plans, exhibits, and reports, shall remain the property of the Engineer, but copies thereof shall be furnished to Client and may be used by Client in connection with the Project provided that the Engineer has been paid for original documents, plans, specification, exhibits and reports in accordance with the terms of this Agreement.

## **D. LIMITATION OF LIABILITY**

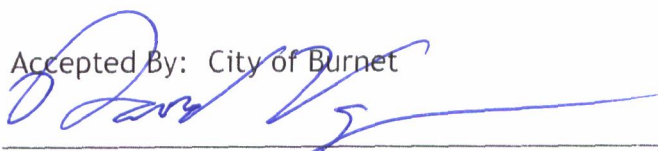
In recognition of the relative risks, rewards, and benefits of the project to both the Client and Cuatro Consultants, Ltd, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, Cuatro Consultants' total liability to the Client for any and all errors, omissions, or other act that causes liability in the performance of professional services arising out of this agreement, shall not exceed \$1,000,000.00.

Please review and advise if you have any questions. We will be glad to meet with you to discuss the matter. If satisfactory, please acknowledge acceptance by signing below.

Sincerely,

  
Hugo Elizondo, Jr., P.E.  
Manager

Accepted By: City of Burnet

  
\_\_\_\_\_  
David Vaughn, City Manager

  
\_\_\_\_\_  
Date

**STANDARD RATE SCHEDULE**

The following are Cuatro Consultants, Ltd. rates for work performed on an hourly-charge basis.

Rates include company overhead and profit for services accomplished during regular working hours.

**1. DIRECT LABOR**

• **OFFICE PERSONNEL SERVICES**

<u>Classification</u>	<u>Rates</u>
Principal.....	\$ 225.00 per hour
Senior Project Manager.....	\$ 198.00 per hour
Project Manager.....	\$ 180.00 per hour
Project Engineer IV.....	\$ 171.00 per hour
Project Engineer III .....	\$ 162.00 per hour
Project Engineer II.....	\$ 153.00 per hour
Project Engineer I.....	\$ 144.00 per hour
Construction Coordinator/Inspector .....	\$ 135.00 per hour
CADD Manager .....	\$ 135.00 per hour
Senior Designer / Lead .....	\$ 126.00 per hour
CADD Technician .....	\$ 117.00 per hour
CADD Designer .....	\$ 108.00 per hour
CADD Draftsman.....	\$ 99.00 per hour
Executive Assistant .....	\$ 99.00 per hour
Administrative Assistant.....	\$ 72.00 per hour

• **FIELD PARTY SERVICES**

Rates

1-Man Field Party .....	\$ 126.00 per hour
2-Man Field Party .....	\$ 153.00 per hour

**2. DIRECT EXPENSES**

Transportation

By Firm's Passenger Vehicles (Note 1) .....	\$ 0.62 per mile
Subsistence of out-of-city work .....	\$ Direct Expenses

**Note:**

A mileage charge will be billed from and to the meeting site from our Kyle office location.