

STATE OF TEXAS §  
COUNTY OF FORT BEND §

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Kelly R. Kaluza & Associates, Inc. (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide certain professional engineering services for construction of 4,575 feet of four-lane, divided, concrete roadway with curb and gutter under the Williams Way (Phase 2) Boulevard Improvement Project from Wheaton Street to Pilgrim – Project No. 747 (hereinafter "Services") pursuant to SOQ 07-080; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

**Section I. Scope of Services**

Contractor shall render Services to County as defined in the Scope of Services (attached hereto as Exhibit A).

**Section II. Personnel**

2.1 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

### **Section III. Compensation and Payment**

3.1 Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is twenty-six thousand nine hundred fifteen dollars and 00/100 (\$26,915.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.

3.2 All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County staff person designated by the County Engineer, one (1) electronic (pdf) copy and two (2) original hard copies of invoices showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

### **Section IV. Limit of Appropriation**

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of twenty-six thousand nine hundred fifteen dollars and 00/100 (\$26,915.00), specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed twenty-six thousand nine hundred fifteen dollars and 00/100 (\$26,915.00).

### **Section V. Time of Performance**

Time for performance of the Scope of Services under this Agreement shall begin with receipt of the Notice to Proceed and end no later than twelve (12) months thereafter. Contractor shall complete the tasks described in the Scope of Services, within this time or within such additional time as may be extended by the County.

## **Section VI. Modifications and Waivers**

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

## **Section VII. Termination**

### **7.1 Termination for Convenience**

7.1.1 County may terminate this Agreement at any time upon forty-eight (48) hours written notice.

### **7.2 Termination for Default**

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County.

Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

### **Section VIII. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

### **Section IX. Inspection of Books and Records**

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

### **Section X. Insurance**

10.1 Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.2 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.3 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.4 Professional Liability insurance with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

#### **Section XI. Indemnity**

**CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**

#### **Section XII. Confidential and Proprietary Information**

12.1 Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

12.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

12.3 Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

**Section XIII. Independent Contractor**

13.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

13.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

**Section XIV. Notices**

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County Engineering Department  
Attn: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

With a copy to: Fort Bend County  
Attn: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

Contractor: Kelly R. Kaluza & Associates, Inc.  
Attn: Llarance L. Turner, R.P.L.S.  
3014 Avenue I  
Rosenberg, Texas 77471

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

#### **Section XV. Compliance with Laws**

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

#### **Section XVI. Performance Warranty**

16.1 Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

16.2 Contractor warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

#### **Section XVII. Assignment**

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

**Section XVIII. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

**Section XIX. Successors and Assigns**

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Section XX. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

**Section XXI. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section XXII. Publicity**

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

**Section XXIII. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

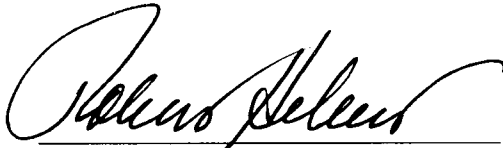
**Section XXIV. Conflict**

In the event there is a conflict between this Agreement and the attached exhibits, this Agreement controls.

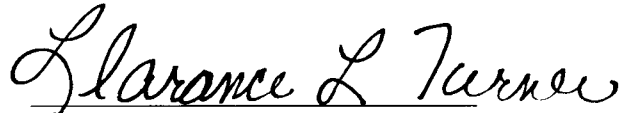
IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 24<sup>th</sup> day of March, 2015.

FORT BEND COUNTY

KELLY R. KALUZA & ASSOCIATES, INC.



Robert E. Hebert, County Judge



Clarence L. Turner, R.P.L.S., President

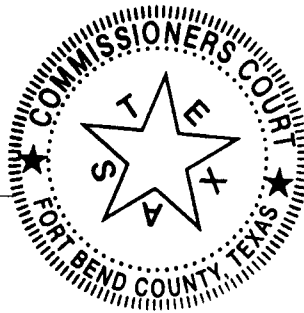
3-24-15  
Date

March 17, 2015  
Date

ATTEST:



Laura Richard, County Clerk



APPROVED:



Richard W. Stolleis, P.E., County Engineer

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$26,915.<sup>00</sup> to accomplish and pay the obligation of Fort Bend County under this contract.



Robert Edward Sturdivant, County Auditor

MDS

# EXHIBIT A

**ATTACHMENT "A"**

**FORT BEND COUNTY  
CONSTRUCTION PHASE SERVICES ON WILLIAMS WAY -  
PAVING, DRAINAGE AND UTILITY IMPROVEMENTS  
FORT BEND COUNTY, TEXAS**

**SCOPE OF WORK FOR PROFESSIONAL ENGINEERING AND SURVEYING SERVICES  
FOR FORT BEND COUNTY, TEXAS**

The following scope of work consists of the Professional Engineering and Surveying Services to be provided to Fort Bend County, hereinafter called "COUNTY", and by Kelly R. Kaluza & Associates, Inc., hereinafter called "ENGINEER".

**Scope of Work**

Base engineering and surveying services and related additional project services for the project are summarized as follows:

**I. Construction Phase Services for Williams Way**

**A. Construction Phase Services – Water Line**

- Project Meetings
- Coordination with City of Richmond and Administration
- Review and Approve Pay Request
- Review Submittals
- Verify Trench Backfilled in Accordance with Specification
- Verify Fittings, Valves and Appurtenances Installed Properly
- Observe All Testing of Water Line Facilities
- Final Inspection

**A. Fee for Construction Phase Services - Water Line = \$ 9,725.00**

**B. Construction Phase Services – Paving and Drainage**

- Project Meetings
- Coordination with City of Richmond and Administration
- Review and Approve Pay Request
- Review Submittals
- Verify Storm Sewer Backfill Operation
- Verify Drainage Structures Backfilled Properly
- Observe Subgrade Preparation Operation
- Inspect Forms and Steel Prior to Concrete Pour
- Observe Concrete Pavement Installation
- Inspect Forms and Steel for Concrete Curb Installation
- Final Inspection

**B. Fee for Construction Phase Services –  
Paving and Drainage = \$17,190.00**

**TOTAL ENGINEERING FEES = \$26,915.00**

**Additional Services**

If authorized by COUNTY, ENGINEER will furnish the following Additional Services that are not considered a normal or customary part of the Scope of Work. Additional Services shall be paid for on an hourly basis at the rate shown in the Schedule of Hourly Rates by Personnel Classification (Attachment "B"). Separate budgets will be established for any Additional Services authorized by the COUNTY.

NO ADDITIONAL SERVICES ARE ANTICIPATED FOR THIS PROJECT AT THIS TIME.

**Schedule**

Schedule for Construction Phase activities will be determined by the COUNTY.

**Compensation**

Engineering and surveying services to be provided under this contract shall be compensated as outlined below.

**I. Construction Phase Services on Williams Way - Paving, Drainage and Utility Improvements, Fort Bend County, Texas**

A.	Construction Phase Services – Water Line	\$ 9,725.00
B.	Construction Phase Services – Paving and Drainage -	<u>\$ 17,190.00</u>

**Total Engineering and Surveying Fees = \$ 26,915.00**

ENGINEER will invoice COUNTY on a monthly basis for services rendered during the preceding month. Invoices will be based on the ENGINEER's estimate of percentage completion to date of invoice.

COUNTY agrees to remit ENGINEER's invoices in full within thirty (30) days of receipt.

**ATTACHMENT "B"**

**SCHEDULE OF HOURLY CHARGES BY PERSONNEL CLASSIFICATION**

**Effective June, 2013**

**KELLY R. KALUZA & ASSOCIATES, INC.  
CONSULTING ENGINEERS, SURVEYORS, AND PLANNERS**

**The charges for professional Engineering, Surveying, and Drafting services are based on the following daily or hourly rates:**

**ENGINEERING, SURVEYING, AND DRAFTING**

Principal.....	\$ 175.00/Hour
Sr. Project Manager.....	\$ 150.00/Hour
Project Manager.....	\$ 145.00/Hour
Survey Manager.....	\$ 140.00/Hour
Project Engineer.....	\$ 110.00/Hour
Project Surveyor.....	\$ 90.00/Hour
Sr. Designer.....	\$ 90.00/Hour
Designer.....	\$ 80.00/Hour
CAD Technician.....	\$ 70.00/Hour
Contract Coordinator.....	\$ 65.00/Hour
Secretarial.....	\$ 60.00/Hour
Field Party (2 Men).....	\$ 120.00/Hour
Field Party (3 Men).....	\$ 140.00/Hour
Field Party (4 Men).....	\$ 150.00/Hour
Construction Observation.....	\$ 750.00/Day

**ADDITIONAL EXPENSES**

1. Reproduction Work - At prevailing commercial rate.
2. Field Note Descriptions - \$70.00/Set.
3. ATV Rental - \$115.00/Day.
4. Other Consultants at actual cost.
5. All Other Expenses at actual cost.
6. Global Positioning System (GPS) Surveying an additional charge of \$25.00 per hour will be charged for equipment.

**Charges are due and payable within thirty (30) days after receipt of invoice.  
Interest will be charged at the rate of 1.5% per month for late payments.**

**KELLY R. KALUZA & ASSOCIATES, INC.**  
*Consulting Engineers & Surveyors*  
Engineering Firm No. F-1339 Surveying Firm No. 10010000  
3014 Avenue I, Rosenberg, Texas 77471  
Phone: (281) 341-0808  
Fax: (281) 341-6333

*Rates Subject to Change*

06/13

Description	Budget	Principal \$175	Sr. Project Manager \$150	Project Manager \$145	Project Engineer \$110	Construction Inspector \$94	Designer \$80	CAD Technician \$70	Survey Crew (3) \$140	Contract Coordinator \$65
<b>A. Construction Phase Services - Water Line</b>										
1 Project meetings	\$1,232	2				8				2
2 Coordination with City of Richmond & administration	\$1,478	2				12				
3 Review and approve pay request	\$282					3				
4 Review submittals	\$986	2				4				4
5 Verify trench backfilled in accordance with specification	\$2,820					30				
6 Verify fittings, valves and appurtenances installed properly	\$1,410					15				
7 Observe all testing of water line facilities	\$927	1				8				2
8 Final Inspection	\$587	1				3				
9	\$0									
	\$9,722	8	0	0	0	83	0	0	0	8
<b>Construction Phase Services - Paving and Drainage</b>										
1 Project meetings	\$1,796	2				14				2
2 Coordination with City of Richmond & administration	\$3,488	2				32				2
3 Review submittals	\$752					8				
4 Review and approve pay request	\$694					6				2
5 Verify storm sewer backfill operation	\$1,128					12				
6 Verify drainage structures backfilled properly	\$564					6				
7 Observe subgrade preparation operation	\$2,256					24				
8 Inspect forms and steel prior to concrete pour	\$1,504					16				
9 Observe concrete pavement installation	\$3,760					40				
10 Inspect forms and steel for concrete curb installation	\$752					8				
11 Final Inspection	\$493	1				2				2
12	\$0									
	\$17,187	5	0	0	0	168	0	0	0	8
<b>Total Engineering Fees</b>										
	\$26,909	13	0	0	0	251	0	0	0	16





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