

**PROFESSIONAL SERVICES AGREEMENT
FOR
North Travis County MUD #5 Water Distribution Projects**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Agreement is entered into by and between the City of Pflugerville, a Texas Municipal Corporation (“City”) acting by and through its City Manager, pursuant to and Lockwood, Andrews & Newnam, Inc. (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Consultant” is defined in the preamble of this Agreement and includes its successors.

“Director” shall mean the City Manager and/or his designee.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on February 28, 2014 and terminate on February 28, 2016.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in Attachment A which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of the City Manager or his designee. The determination made by City Manager and/or his designee shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Manager and/or his designee. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant’s work not be satisfactory to City Manager

and/or his designee; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager and/or his designee, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed three hundred eleven thousand nine hundred eighty dollars (\$311,980.00) as total compensation, to be paid to Consultant as further detailed in Exhibit 1.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the Pflugerville City Council by passage of an ordinance therefore.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Any use of such writings, documents and information on extensions of this project or on any other project without specific adaptation by CONSULTANT shall be at the City's sole risk and without liability to the CONSULTANT.

VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period")

from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 15 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is

interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of Pflugerville
Attn: Thomas E. Word, Jr., P.E.
Assistant City Manager for Community Services
15500 Sun Light Near Way #B/P.O. Box 589
Pflugerville, Texas 78660

If intended for Consultant, to: Lockwood, Andrews & Newnam, Inc.
Attn: Drew Hardin, P.E.
Regional Director, Vice President
10801-1 N. Mopac Expressway, Suite 120
Austin, TX 78759

IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled "*North Travis County MUD #5 Water Distribution Project*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

9.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

City of Pflugerville

Insurance Requirements

Bidder/Proposer performing work on City property or public right-of-way for the City of Pflugerville shall provide the City a certificate of insurance evidencing the coverage provisions identified herein. Bidder/Proposer shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the contractor's policy. The City, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Pflugerville.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

Type of Insurance	Amount of Insurance	Provisions
Commercial General (Public) Liability to include coverage for: Premises/Operations Or Products/ Completed Operations Independent Contractors Personal Injury Contractual Liability	1,000,000 per occurrence, 2,000,000 general aggregate 2,000,000 combined single coverage limit	City to be listed as additional insured and provide 30 days notice of cancellation or material change in coverage City to be provided a waiver of subrogation City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation
Professional Liability	1,000,000	

Questions regarding this insurance should be directed to the City of Pflugerville (512) 990-6100
A contract will not be issued without evidence of Insurance. We will only accept the ACORD 25
or ISO certificate of insurance forms.

9.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of Pflugerville
Capital Improvement Program
P.O. Box 589
Pflugerville, Texas 78691-0589

9.5 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement under terms satisfactory to the City, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Pflugerville where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

9.9 It is agreed that, excepting Professional Liability, Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Pflugerville for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

9.11 Consultant and any of its Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNIFICATION

10.1 **CONSULTANT** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability resulting from the negligent or intentional acts or omissions, intellectual property infringement, or failure to pay a subcontractor or supplier of the **Consultant**, its employees, agents and/or assigns. The acts may include personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **CONSULTANT'S** activities under this Agreement, including any negligent or intentional acts or omissions of **CONSULTANT**, any agent, officer, director, representative, employee, consultant or subcontractor of **CONSULTANT**, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

10.1 The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **CONSULTANT** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **CONSULTANT** known to **CONSULTANT** related to or arising out of **CONSULTANT's** activities under this **AGREEMENT** and shall see to the investigation and defense of such claim or demand at **CONSULTANT's** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **CONSULTANT** of any of its obligations under this paragraph.

10.2 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by **CONSULTANT** in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. **CONSULTANT** shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If **CONSULTANT** fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and **CONSULTANT** shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

10.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of **CONSULTANT**, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or

type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

10.4 Force Majure - City agrees that the CONSULTANT is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: Cobb Fendley & Associates, Inc. and Fugro Consultants. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of Pflugerville City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 Consultant acknowledges that it is informed that the Charter of the City of Pflugerville and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of Pflugerville, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is

invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVIII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIX. LAW APPLICABLE

19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN TRAVIS COUNTY, TEXAS.

19.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of Pflugerville, Travis County, Texas.

XX. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Attachment "A" Scope of Services including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule

XXIV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIV. Amendments.

XXV. MISCELLANEOUS CITY CODE PROVISIONS

25.1 Representations and Warranties by Consultant. If Consultant is a corporation, partnership or a limited liability company, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

25.2 Franchise Tax Certification. A corporate or limited liability company Consultant certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

25.3 Eligibility Certification. Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that

any payments owing to Consultant under the Agreement may be applied directly toward any debt or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.


25.5 Texas Family Code Child Support Certification. Consultant certifies that they are not delinquent in child support obligations and therefore is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

EXECUTED and AGREED to as of the dates indicated below.

**CITY OF
PFLUGERVILLE**

CONSULTANT
Lockwood, Andrews & Newnam, Inc.

(Signature)



(Signature)

Printed Name: Brandon E. Wade

Printed Name: Drew P. Hardin

Title: City Manager

Title: Vice President

Date: _____

Date: 2-4-14

Attachment A

Basic Scope of Services for:

North Travis County MUD #5 Water Distribution Projects

The Scope of Services set forth herein defines the work to be performed by the ENGINEER in completing the Project. Both the CITY and ENGINEER have attempted to clearly define the work to be performed and address the needs of the Project. Services include design, bidding, and construction phase services for approximately 7,460 linear feet of water lines from 8- to 24-inches as shown on Exhibit A and further described below:

- CIP NTC MUD #5 WSS #1 - 400 LF of 16-inch and 100 LF of 24-inch and 150 LF 8-inch bore in Pflugerville Parkway
- CIP NTC MUD #5 WSS #5 – 230 LF of 24-inch and 130 LF of 24-inch bore to connect 8-inch in Heatherwilde to 24-inch in Wilke Lane (CIP # ES-2)
- CIP NTC MUD #5 WSS #6 - 330 LF of 8-inch and 100 LF of 8-inch bore to connect New Meister to Timothy John cul-de-sac
- CIP NTC MUD #5 WSS #7 - 310 LF of 24-inch along Wilke Lane
- CIP NTC MUD #5 ES-2 – 5,700 LF of 24-inch pipe and approximately 700 LF of 24-inch bore along Heatherwilde and Wilke Lane

The scope of services has been divided into the ten tasks noted below.

- Task 1. Project Management
- Task 2. Conceptual Design
- Task 3. Preliminary Design
- Task 4. Final Design
- Task 5. Bid Phase Services
- Task 6. Construction Phase Services
- Task 7. ROW/Easement Support
- Task 8. Surveying Services
- Task 9. Geotechnical Services
- Task 10. Easement Acquisition (Optional Services)
- Task 11. Subsurface Utility Engineering (Optional Services)

Detailed tasks included in this scope of services are further described herein.

A. BASIC SERVICES

TASK 1. PROJECT MANAGEMENT

- 1.1. Managing the Team

- 1.1.1 Project Planning Defining Scope & Expectations. Lead, manage and direct design team activities. Communicate internally among team members and sub consultants. Task, schedule and allocate team resources.
- 1.1.2 Ensure quality control is practiced in performance of the work
- 1.2. Communications and Reporting
 - 1.2.1 Attend a pre-design project kickoff meeting with CITY staff to confirm and clarify scope, understand CITY objectives and requirements.
 - 1.2.2 Conduct review meetings with the CITY at the end of each design phase (2 meetings).
 - 1.2.3 Conduct coordination meetings with Manville WSC to identify potential utility conflicts and discuss construction phasing (2 meetings).
 - 1.2.4 Prepare invoices and submit monthly in the format requested by the CITY.
 - 1.2.5 Prepare and submit monthly up to six (6) progress reports during the design phase in the format requested by the City.
 - 1.2.6 Prepare and submit baseline Project Schedule initially, and Project Schedule updates with a schedule narrative monthly.

Deliverables:

- Meeting summaries with action items
- Monthly invoices
- Monthly progress reports
- Baseline design schedule & updates

TASK 2. CONCEPTUAL DESIGN (30 PERCENT).

The Conceptual Design shall be submitted to CITY per the approved Project Schedule.

The purpose of the conceptual design is for the ENGINEER to:

- Study the project,
- Identify and develop alternatives
- Present (through the defined deliverables) these alternatives to the CITY
- Recommend the alternatives that successfully addresses the design problem, and
- Obtain the CITY's endorsement of this concept.

ENGINEER will develop the conceptual design based on detailed tasks described herein.

2.1. Data Collection

- In addition to data obtained from the CITY, ENGINEER will research proposed improvements in conjunction with any other planned future improvements that may influence the project.
 - The ENGINEER will also identify and seek to obtain data for existing conditions that may impact the project including but not limited to; utilities, agencies, and City Master Plans.
- 2.2. Conceptual Design Package. Prepare and submit four (4) copies of the Conceptual Design Package which includes the following:
- 2.2.1 Cover Sheet.
 - 2.2.2 Conceptual Plan & Profile Drawings showing recommended alignment, connection points and preliminary profile based on available topographic data.
 - 2.2.3 Construction Phasing.
 - 2.2.4 Opinion of probable construction cost.
 - 2.2.5 Design Memorandum documenting summary of proposed project, construction methods, number of water service lines, existing meter connections/disconnections, water shut-outs, hot taps, and proposed valve locations, and materials of construction.
- 2.3 Constructability and QA/QC review.

Deliverables:

- Conceptual Plan & Profile Drawings
- Design Memorandum
- Opinion of Probable Construction Cost

TASK 3. PRELIMINARY DESIGN (60 PERCENT).

Preliminary Design Documents shall be submitted to CITY per the approved Project Schedule.

ENGINEER will develop the Preliminary Design Documents as follows.

- 3.1. Preliminary Design Drawings. Prepare and deliver four (4) copies of 22" x 34" drawings including:
- 3.1.1 Cover Sheet.
 - 3.1.2 Overall Layout Sheet. Overall project easement layout sheet(s) will include property owner information (information provided by the City for easements along Heatherwilde). Additionally, layout sheet shall identify the proposed water main improvement/ existing water mains in the vicinity and all water appurtenances along with pressure plane boundaries, water tanks, pump stations, valves, and fire hydrants.
 - 3.1.3 General Notes Sheet.

3.1.4 Plan and profile sheets. P&P shall show the following: proposed water plan/profile and recommended pipe size, fire hydrants, water service lines and meter boxes, gate valves, isolation valves, existing meter numbers and sizes that are to be replaced, existing sample locations, existing fire line locations, existing utilities and utility easements, and all pertinent information needed to construct the project. Legal description (Lot Nos., Block Nos., and Addition Names) along with property ownership shall be provided on the plan view. Make provisions for reconnecting all identifiable water service lines which connect directly to any main being replaced, including replacement of existing service lines within City right-of-way or utility easement. When the existing alignment of a water main or lateral is changed, provisions will be made in the final plans and/or specifications by the ENGINEER to relocate all service lines which are connected to the existing main and connect said service lines to the relocated main. Below is an approximate estimate of the sheets expected for this project:

3.1.4.a CIP NTC MUD #5 WSS #1 - (2 Sheets)

3.1.4.b CIP NTC MUD #5 WSS #5 – (1 sheet)

3.1.4.c CIP NTC MUD #5 WSS #6 - (2 Sheets)

3.1.4.d CIP NTC MUD #5 WSS #7 - (1 Sheet)

3.1.4.e CIP NTC MUD #5 ES-2 – (13 sheets)

3.1.5 Prepare special detail sheets for water line installation. These may include special connection details between various parts of the project, tunneling details, boring and jacking details, waterline relocations, details unique to the construction of the project, trenchless details, and special service lateral reconnections. (1 Sheet)

3.1.6 Prepare standard detail sheets for water line installation. These may include connection details between various parts of the project, general restraints/blocking, bedding and backfill, waterline relocations, pavement replacement, and valve installations. (2 Sheets)

3.1.7 Prepare erosion control plans. (6 Sheets)

3.1.8 Prepare standard erosion details. (2 Sheets)

3.1.9 Prepare traffic control plan and standard details. (6 Sheets)

As part of the Preliminary Design Drawings, Engineer shall perform:

3.1.10 Constructability Review – Prior to the 60 percent review meeting with the CITY, the ENGINEER shall schedule and attend a project site visit with the CITY Project Manager and Construction personnel to walk the project. The ENGINEER shall summarize the CITY’s comments from the field visit and submit this information to the CITY in writing.

3.1.11 Utility Clearance Review - Consult with the CITY’s Transportation and Public Works Department, Water Department, and other CITY departments, public utilities, private utilities, private utilities and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. ENGINEER will design CITY facilities to avoid or minimize conflicts with existing utilities, and where known and possible consider potential future utilities in designs.

- 3.2. Specifications - Prepare and submit four (4) copies of the table of contents for the anticipated project manual along with draft version(s) of any anticipated special specifications for review by the CITY. The CITY's front end and technical specifications will be used. The ENGINEER shall supplement the technical specifications, if needed.
- 3.3 Opinion of Probable Construction Cost - Prepare an Opinion of Probable Construction Cost and submit with Preliminary Design Documents.
- 3.4. QA/QC 60 Percent - Perform QA/QC on 60 percent design.

Deliverables:

- Preliminary Design drawings and specifications table of contents and draft special specifications
- Estimate of probable construction cost

TASK 4. FINAL DESIGN (90 PERCENT) AND FINAL CONSTRUCTION DOCUMENTS (100 PERCENT).

Upon approval of the Preliminary Design Documents, ENGINEER will prepare construction plans as follows:

- 4.1 Prepare and submit four (4) copies of 22" x 34" Draft Final plans (90%) and specifications for CITY review.
- 4.2 Following a 90% construction plan review meeting with the CITY, prepare and submit four (4) copies of Construction Documents (100%) to the CITY per the approved Project Schedule. Submittal shall include two (2) 22" x 34" plan sets, two (2) 11" x 17" plan sets and an electronic pdf set, including specifications. Each plan sheet shall be stamped, dated, and signed by the ENGINEER registered in State of Texas.
- 4.3 Prepare and submit a final design Opinion of Probable Construction Cost with both the 90% and 100% design packages. This estimate shall use ONLY standard CITY bid items.
- 4.4 Perform QA/QC on the 90 and 100 percent plans and specifications.
- 4.5 Permitting. LAN will obtain the necessary permits from the CITY for construction in the public right-of-way. No other permits are anticipated to be required for the project.

Deliverables:

- 90% construction plans and specifications.
- 100% construction plans and specifications.
- Detailed estimates of probable construction costs including summaries of bid items and quantities using the CITY's standard bid items and format.

TASK 5. BID PHASE SERVICES.

ENGINEER will support the bid phase of the project as follows.

5.1. Bid Support

- 5.1.1 The ENGINEER shall receive and answer bidders' questions and requests for additional information. The ENGINEER will provide technical interpretation of the contract bid documents and will prepare proposed responses to all bidders' questions and requests, in the form of an addendum. The ENGINEER shall create and issue one addendum to all plan holders.
- 5.1.2 Attend Pre-Bid meeting.
- 5.1.3 Attend the bid opening in support of the CITY.
- 5.1.4 Tabulate and review all bids received for the construction project, assist the CITY in evaluating bids, and recommend award of the contract. Assist the CITY in determining the qualifications and acceptability of prospective contractors, subcontractors, and suppliers. When substitution prior to award of contracts is allowed in the contract documents, the ENGINEER will advise the CITY as to the acceptability of alternate materials and equipment proposed by bidders.

- 5.2 Conformed Documents - Incorporate all addenda into the contract documents and issue four (4) copies of the plans and specs to the City. Submittal shall include two (2) 22" x 34" plan sets, two (2) 11" x 17" plan sets and an electronic pdf set, including specifications.

Deliverables:

- Addenda
- Bid tabulations
- Recommendation of award
- Conformed Set of Construction documents

TASK 6. CONSTRUCTION PHASE SERVICES.

ENGINEER will support the construction phase of the project as follows.

6.1 Construction Support

- 6.1.1 The ENGINEER shall attend the pre-construction conference.
- 6.1.2 The ENGINEER shall visit the project site at requested intervals as construction proceeds to observe and report on progress. Two (2) visits are included in the basic scope of services.
- 6.1.3 The ENGINEER shall attend regularly scheduled project meetings (assumed to be monthly) to get an update on progress to date and to discuss any outstanding issues. Up to ten (10) meetings are included in the basic scope of services.

- 6.1.4 The ENGINEER shall review and comment on Contractor generated submittals and shop drawings for conformance to the project specifications. Review will be limited to up to twenty (20) submittals, including up to one re-review of each.
 - 6.1.5 The ENGINEER shall review and respond to up to ten (10) Contractor generated requests for information (RFIs).
 - 6.1.6 The ENGINEER shall review Contractor generated Change Proposal Requests and make recommendations to the CITY as to their acceptability. Up to six (6) change proposal requests will be reviewed under the basic scope of services.
 - 6.1.7 The ENGINEER shall review the Contractor monthly Pay Applications for accuracy. The CITY Inspector shall verify actual quantities installed and/or materials on hand.
 - 6.1.8 The ENGINEER shall attend the “Final” project walk-through and assist with preparation of the punch list.
- 6.2 Record Drawings
- The ENGINEER shall prepare Record Drawings from information provided by the CITY depicting any changes made to the Final Drawings during construction. The following information shall be provided by the CITY:
 - As-Built Survey
 - Red-Line Markups from Contractor
 - Red-Line Markups from City Inspector
 - Copies of Approved Change Orders
 - Approved Substitutions
 - The ENGINEER shall modify the Final Drawings electronically and shall place a stamp on the plans indicating that they represent Record Drawings of the project as constructed.
 - The following disclaimer shall be included with the Record Drawing stamp:
 - These Record Drawings were prepared using information provided by others and represent the as constructed conditions to the extent that documented changes were provided for recording. The ENGINEER assumes no liability for undocumented changes and certifies only that the documented changes are accurately depicted on these drawings.
 - The ENGINEER shall submit a set of Final Drawings, modified and stamped as Record Drawings, on mylar for record storage. The ENGINEER may keep copies of the information provided by the CITY for their files, but all original red-lined drawings shall be returned to the CITY with the mylars.
 - Record Drawings shall also be submitted in Adobe Acrobat PDF format (version 6.0 or higher) format.

Deliverables:

- Response to Contractor’s Submittals and Shop Drawings

- Response to Contractor's Request for Information
- Review of Change Proposal Requests and related Change Orders
- Review of Contractor monthly Pay Estimates
- Substantial Completion and Final Punch List items
- Record Drawings on mylar and electronically as PDFs

TASK 7. ROW/EASEMENT SUPPORT

ENGINEER will support the CITY's acquisition of right-of-way and/or easements for the project. The support shall include:

7.1. Temporary Rights of Entry Preparation

At project commencement, the ENGINEER shall prepare and submit Temporary Rights of Entry letters to the CITY Project Manager for their use in obtaining landowner approval for the ENGINEER and its subconsultants to enter the subject properties to conduct the necessary field investigations in support of the project. Thirty-two (32) right-of-entry letters will be prepared by the ENGINEER and submitted to the CITY. The ENGINEER will rely on publicly available records to determine property ownership.

ASSUMPTIONS

- Right-of-Way research and mapping includes review of property/right-of-way records based on current internet based information available at the start of the project and available on-ground property information (i.e. iron rods, fences, stakes, etc.). It does not include effort for chain of title research, parent track research, additional research for easements not included in the right-of-way takings, easement vacations and abandonments, right-of-way vacations, and street closures.
- Negotiations with landowners and appraisal services are not included in the basic scope of services.

Deliverables:

- Right of Entry Letters

TASK 8. SURVEYING SERVICES (WORK PREFORMED BY COBB FENDLEY AND ASSOCIATES)

8.1. Design Survey

ENGINEER will contract with a registered professional surveyor to provide the following services in support of the project: The topographic survey will locate data including spot elevations at pertinent grade brakes, top of curb, gutter, street center line, based on 100 foot cross sections from apparent right-of-way to right-of-way plus 10 feet. In addition, the survey will include the location and

elevation of utility surface features (fire hydrants, manholes, utility poles, down guys, drainage inlets, culverts and other drainage structures, ditches and detention ponds within the cross-sections). This will also include the box culvert bridging structure crossing New Meister Lane at WSS-6. Easement exhibit and legal description will be estimated separately at each location. Deliverables will be in AutoCAD 2011 digital format. Each easement will consist of printed, signed and sealed drawings with accompanying legal description in metes and bounds delineation.

The CITY will provide survey from the Heatherwilde Roadway Expansion project (work performed by Halff and Associates) and will be used for segments located in the area. Additional survey will be required for areas not covered by the Heatherwilde Expansion. Those segments are listed below.

- CIP NTC MUD #5 WSS #1 – approximately 650 LF
- CIP NTC MUD #5 WSS #5 – approximately 430 LF
- CIP NTC MUD #5 WSS #6 – approximately 550 LF
- CIP NTC MUD #5 WSS #7 / CIP NTC MUD #5 ES-2 - approximately 2,800 LF

8.2. Metes and Bounds Preparation

ENGINEER'S consultant shall prepare metes and bounds descriptions for right-of-way or permanent easements needed in support of the project. The descriptions shall be sealed by a registered professional land surveyor. The basis scope of services assumes eight (8) permanent easements will be required and no temporary easements.

Deliverables:

- Copies of field survey data and notes signed and sealed by a licensed surveyor.
- Drawing of the project layout with dimensions and coordinate list.
- Metes and bounds descriptions of permanent right-of-way/easements.

TASK 9. GEOTECHNICAL SERVICES (WORK PERFORMED BY FUGRO CONSULTANTS)

ENGINEER will contract with a licensed engineer to provide the following geotechnical services:

9.1 Geotechnical Investigation/Report:

- Soil investigations, including field and laboratory tests, borings, related engineering analysis and recommendations for determining soil conditions will be made. In addition to the above investigations, borings and appropriate field and laboratory analysis will be made at reasonable intervals along the project alignment for the Contractor's use in determining soil conditions for preparing bids and a Trench Safety Plan.
- Geotechnical information gathered from the Heatherwilde Roadway Expansion (work performed by Halff and Associates) project will be used for segments located in the area. Four (4) additional soil

borings at an average depth of 15 feet each will be performed for areas not covered by the Heatherwilde Expansion Project. Those segments include:

- CIP NTC MUD #5 WSS #1 – 2 bores
- CIP NTC MUD #5 WSS #6 – 1 bore
- CIP NTC MUD #5 WSS #7 / CIP NTC MUD #5 ES-2 - 1 bore along Wilke Lane

9.2 Geotechnical Materials Testing:

- Geotechnical firm shall provide testing of backfill material. In accordance with the City requirements, the proposal assumes one test for every 6-inch lift every 250 linear feet. The proposal assumes an average of 4-feet of compacted backfill over the water lines. The proposal also assumes six (6) bore pits that will require compaction testing. No concrete or pavement testing has been included in this proposal.

Deliverables:

- Geotechnical Investigation Report
- Materials testing reports

B. OPTIONAL SERVICES

Optional Services shall only be performed if authorized in writing by the CITY. These services include:

TASK 10. EASEMENT ACQUISITION

Acquisition of permanent utility easements and temporary easements required for construction. For fee estimating purposes support on the acquisition of three (3) easements has been assumed – even though eight (8) easements have been included in the surveyor’s scope for preparation of metes and bounds descriptions. The scope of services includes:

- Documentation and Coordination
 - Prepare introduction letters for each affected property owner.
 - Maintain records of all payments to land owners.
 - Provide copies of all correspondence.
 - Coordination with project team or authorized representatives as needed.
 - Draft standard offer letters, final offer letters, etc. for use. Final approval of format will be provided by the City.
 - Draft standard instruments of conveyance, releases, affidavits, etc. for use. Final approval of format will be provided by the City.

- Preliminary Title
 - Obtain preliminary commitments for title insurance to identify ownership, easements, restrictions and other encumbrances from Title Company. (*Fees charged by Title Company are not included in the fee schedule and are to be paid directly to the Title Company by the City.*)
 - Research tax appraisal district data.

- Negotiation Services
 - Pre-Offer preparation
 - Site inspection.
 - Review project map and plans.
 - Review field notes.
 - Review title report.
 - Review appraisal.
 - Call owner to set up meeting.
 - Prepare offer letter and offer package, including Landowner’s Bill of Rights.
 - Initial Offer – Meet with owner to present in person and mail offer package (certified mail return receipt requested per state law).
 - Post Offer Response.
 - Negotiations (not to exceed 3 site visits).
 - Administrative Settlement Procedures (counteroffer consideration).
 - Prepare and send Final Offer letter if owner rejects initial offer (per state law).
 - Preparation of conveyance instruments.
 - Preparation of request for funding from City.
 - Delivery of funds to Title Company.

- Title Curative Services
 - Obtain services of Title Company to provide title commitments and title policies.
 - Review Title Commitments
 - Review of restrictive covenants and other land restrictions.
 - Removal of non-pertinent abstracts of judgments and M&M liens.
 - Bankruptcy or intestacy research as needed.
 - Curative of other complex title encumbrances.
 - Meet with title examiners as needed.
 - Quality control / Quality assurance on all curative matters
 - Review corporate resolutions, affidavits, lien releases, etc.
 - Negotiate with property owner and attorney as needed.
 - Prepare title curative documents.

- Closing Services
 - Order updated commitment.
 - Schedule closing
 - Attend closing.
 - Closing documentation and wrap-up.

TASK 11. SUBSURFACE UTILITY ENGINEERING

As authorized by the City, ENGINEER's consultant shall perform subsurface utility Engineering (SUE) for up to two (2) locations to identify critical utilities in the area of the proposed facilities. For fee estimating purposes, SUE at two (2) locations has been assumed. Specific scope of work included is provided on Exhibit B - Scope of Work from Cobb Fendley.

C. SERVICES EXCLUDED FROM THE BASIC SCOPE OF SERVICES

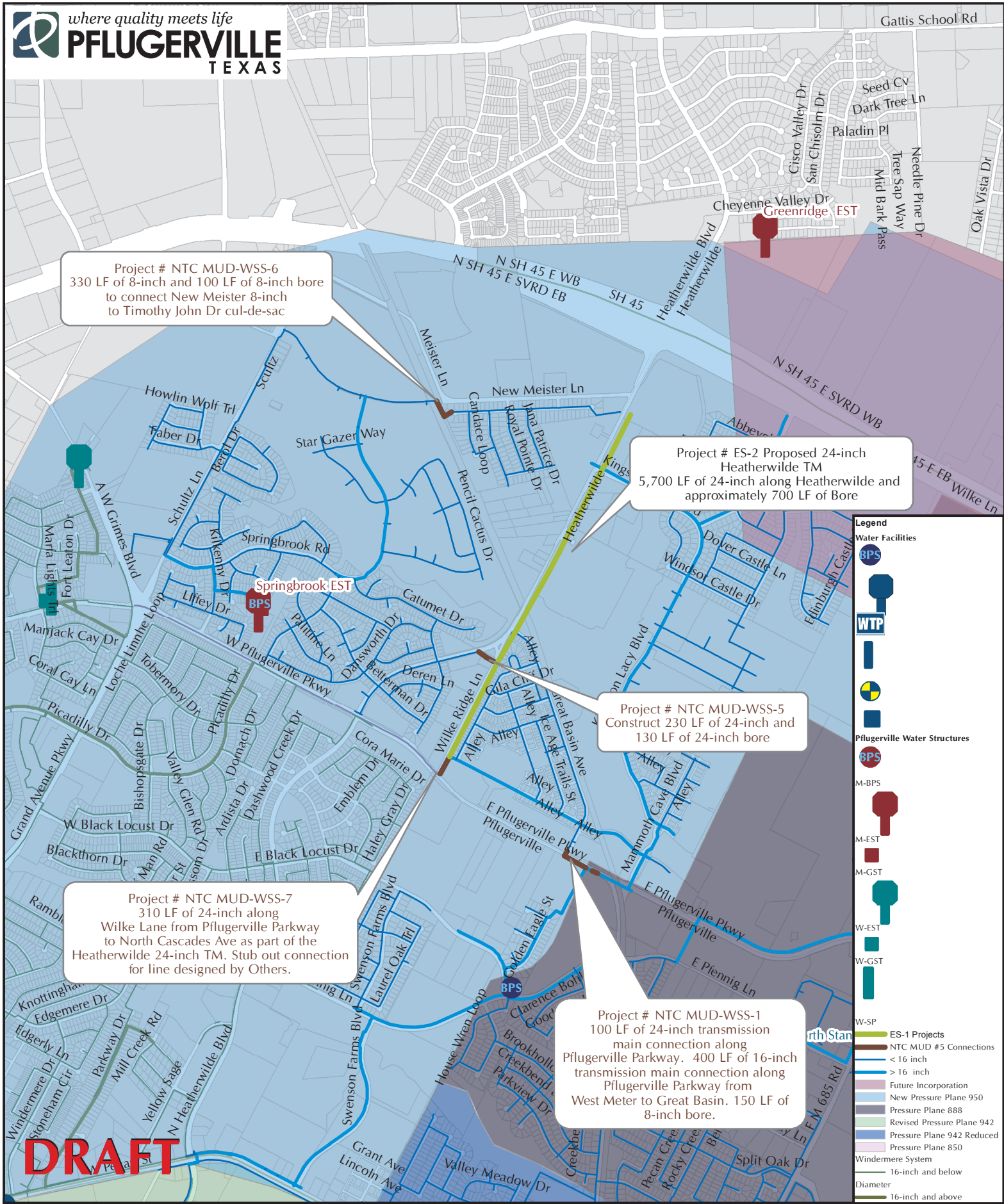
CITY and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, ENGINEER can provide these services, if needed, upon the CITY's written request. Any additional amounts paid to the ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include the following:

- Negotiation of easements or property acquisition including temporary right-of-entries (Task 10.0 in Optional Services).
- Appraisal reports or valuation estimates (Task 10.0 in Optional Services).
- Services related to Subsurface Utility Engineering Levels A, B, C or D (Task 11.0 in Optional Services)
- Additional services due to project delays beyond Schedule shown in Section D not caused by ENGINEER.
- Services related to disputes over pre-qualification, bid protests, bid rejection and re-bidding of the contract for construction.
- Construction management and inspection services
- Design phase public meetings
- Performance of materials testing or specialty testing services, except for backfill compaction testing that is delineated in the Basic Services.
- Services necessary due to the default of the Contractor.
- Services related to damages caused by fire, flood, earthquake or other acts of God.
- Services related to warranty claims, enforcement and inspection after final completion.
- Services related to environmental permitting (i.e. US Army Corps of Engineers, endangered species, cultural resources, etc.)
- Services related to submitting for permits (ie.TxDOT, railroad, etc...)
- Services related to Survey Construction Staking

D. SCHEDULE

ENGINEER shall conduct design phase of Project based on the following schedule:

Task / Deliverable	Start	Finish	Comment
NTP	2/28/14		
Subcontracts/Project Setup	2/28/14	3/9/14	
Kickoff Meeting	3/10/14		
Surveying	3/11/14	4/21/14	Based on confirmation of alignment at kickoff
Geotechnical Investigation	3/11/14	5/5/14	Based on confirmation of alignment at kickoff
Conceptual Design (30%)	2/28/14	4/3/14	
Preliminary Design (60%)	4/4/14	6/5/14	2-week City review
Final Design (90% & 100%)	6/6/14	8/7/14	2-week City review
Bid Documents Complete	8/18/14		



Project # NTC MUD-WSS-6
 330 LF of 8-inch and 100 LF of 8-inch bore
 to connect New Meister 8-inch
 to Timothy John Dr cul-de-sac

Project # ES-2 Proposed 24-inch
 Heatherwilde TM
 5,700 LF of 24-inch along Heatherwilde and
 approximately 700 LF of Bore

Project # NTC MUD-WSS-5
 Construct 230 LF of 24-inch and
 130 LF of 24-inch bore

Project # NTC MUD-WSS-7
 310 LF of 24-inch along
 Wilke Lane from Pflugerville Parkway
 to North Cascades Ave as part of the
 Heatherwilde 24-inch TM. Stub out connection
 for line designed by Others.

Project # NTC MUD-WSS-1
 100 LF of 24-inch transmission
 main connection along
 Pflugerville Parkway. 400 LF of 16-inch
 transmission main connection along
 Pflugerville Parkway from
 West Meter to Great Basin. 150 LF of
 8-inch bore.

Legend

Water Facilities

- BPS
- WTP

Pflugerville Water Structures

- BPS
- M-BPS
- M-EST
- M-GST
- W-EST
- W-GST
- W-SP

ES-1 Projects

- NTC MUD #5 Connections
- < 16 inch
- > 16 inch
- Future Incorporation
- New Pressure Plane 950
- Pressure Plane 888
- Revised Pressure Plane 942
- Pressure Plane 942 Reduced
- Pressure Plane 850
- Windermere System
- 16-inch and below
- Diameter
- 16-inch and above

DRAFT

September 2013

Exhibit A
NTC MUD #5 Connection

N

 1 inch = 2,000 feet

Lockwood, Andrews & Newnam Inc. makes no representations or warranties regarding accuracy or completeness of the information depicted on this map or the data from which it was produced. This map is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes.

September 6, 2013

Meredith McCullough PE
Lockwood Andrews and Newman Inc
8350 North Central Expressway, Suite 1400
Dallas, Texas 75206

VIA E-MAIL

Re: SUE Services
Pflugerville water line improvements.

Dear Ms McCullough:

Cobb, Fendley & Associates, Inc. (CobbFendley) is pleased to provide this proposal for the Subsurface Utility Engineering (SUE) services associated with the project referenced above. The proposed Scope of Services and Basis of Compensation are outlined below. This proposal is based on our phone conversation and information obtained via email on 6th Sept 2013

SCOPE OF SERVICES

Project Limits: see attached site map. This scope is for SUE in locations WSS-1 (East Pflugerville Pkwy) and WSS -4 (Heatherwilde Blvd and Meister Lane). The scope is to provide utility designating (Level B) services in the areas outlined on the site plan, plus utility locating (Level A) services where requested

SERVICES TO BE PROVIDED BY COBB FENDLEY

CobbFendley will provide Subsurface Utility Engineering (SUE) Quality Level B & A services.

Subsurface Utility Engineering includes utility investigations prepared in accordance with ASCE 38-02 and the Utility Quality Levels defined as follows:

Utility Quality Levels are defined in cumulative order (least to greatest) as follows:

Quality Level D - Existing Records: Utilities are plotted from review of available existing records

Quality Level C - Surface Visible Feature Survey: Quality Level "D" information from existing records is correlated with surveyed surface-visible features.

Quality Level B - Designate: Two-dimensional horizontal mapping. This information is obtained through the application and interpretation of appropriate non-destructive surface geophysical methods. Utility indications are referenced to established survey control.

Quality Level A - Locate (Test Hole): Three-dimensional mapping and other characterization data. This information is obtained through exposing utility facilities through test holes and measuring and recording (to appropriate survey control) utility/environment data.

Designate (Quality Level B)

1. Research existing utilities on the project sites. Obtain record or as-built drawings when possible. Interview utility representatives and/or landowners to obtain other existing utility information.
2. Record and mark the horizontal location of the existing toneable utility facilities and their service laterals using non-destructive surface geophysical techniques. A non-water base paint, utilizing the APWA color code scheme, will be used on all surface markings of underground utilities. All designated utilities will be surveyed and referenced to project control datum.
3. Correlate utility owner records with designating data and resolve discrepancies using professional judgment. A color-coded composite utility facility plan with utility owner names, quality levels, line sizes and subsurface utility locate (test hole) locations if applicable, will be prepared and delivered to LAN. It is understood by both CobbFendley and LAN that the line sizes of designated utility facilities detailed on the deliverable are from the best available records and that an actual line size is normally determined from a test hole vacuum excavation. A note will be placed on the designate deliverable only that states "lines sizes are from best available records". This information will be provided in AutoCAD or Microstation format.
4. Clearly identify all utilities that were discovered from record information, but cannot be depicted in quality level B standards. These utilities will have a unique line style and symbology in the designate (Quality Level B) deliverable.
5. Comply with all applicable County/City/State policy and procedural manuals. If Right of Entry or Right of Way permits are required these can be obtained at extra cost not included in this scope.

CobbFendley personnel are certified in work zone safety and confined space entry. Standard traffic control is performed by CobbFendley and is included in our standard rates. Standard traffic control can be described as short term lane closure necessary for manhole entry or access to utility features located in the roadway. Should 'non-standard' traffic control be required (lane closures, police officer present, arrow board, etc...) these services will be considered extra.

Locate (Quality Level A Test Holes)

CobbFendley can complete utility test holes as needed to determine the precise vertical and horizontal locations of existing utilities. Based on the information received, a total of 12 test holes (6 per site) are included in this proposal. Utility test holes will be completed as follows:

CobbFendley will utilize air vacuum excavation equipment to safely expose utilities at critical locations and provide the following as part of SUE Level A services:

1. Comply with City, State and Federal laws, regulations, and/or policies for the prevention of underground utility damage (i.e., one-call system).
2. Coordinate with utility company inspectors as required by the contract and by law.
3. Obtain traffic control plan and barricading approval
4. If test hole is in pavement, neatly cut and remove existing paving. The pavement area removed shall not exceed 1.085 square feet unless unusual circumstances exist and approval is obtained.
5. Expose utilities using non-destructive air vacuum excavation. Measure and record the depth of the utility (elevation of the top and bottom) at critical locations; record utility size, utility material, utility condition and type of soil around the utility as well as pavement type and thickness. Show conduit cross section configuration of multi conduit systems. Tie utility to project survey control datum. Backfill the hole and compact in lifts in accordance with city specifications and repair pavement to specification.
6. Compile information on a test hole data sheet. The elevation of the natural ground, elevation of the top and bottom of the utility, depth of the utility, line size, line material, condition of the line, type of soil around the line, paving type and paving thickness are shown. Horizontal coordinates of the utility are also provided. Two benchmarks are provided.

Basis of Compensation

The above scope of SUE designating services associated with this project can be provided for the following Lump Sum fee: Eleven Thousand, Three Hundred and twenty dollars (**\$11,320.00**).

	Rate	Unit	Quantity	Cost
Project Manager	\$155.00	Hour	6	\$930.00
Project Engineer/Utility Specilaist	\$110.00	Hour	12	\$1,320.00
EIT I	\$80.00	Hour	8	\$640.00
CADD I	\$70.00	Hour	16	\$1,120.00
Clerical	\$60.00	Hour	2	\$120.00
SUE Technician II*	\$95.00	Hour	28	\$2,660.00
SUE Technician I*	\$75.00	Hour	28	\$2,100.00
2 Man Survey Crew	\$135.00	Hour	12	\$1,620.00
RPLS	\$140.00	Hour	4	\$560.00
Survey Technician	\$70.00	Hour		\$0.00
Mileage/Expenses	\$250.00	LS	1	\$250.00
			SUE Total	\$11,320.00

*Rates Include all necessary vehicles & equipment

SUE Level A Test Holes can be completed using the following unit rates based on depth of utility. Test hole rates include all equipment and personnel necessary to complete the excavation, survey, CAD, permit fees, standard traffic control and management. A total of 12 test holes are anticipated (6 per site) It is likely they will all be in the 0-6ft depth range. The fee for Test Holes is estimated at Fifteen Thousand dollars (**\$15,000.00**) plus the cost of permits and traffic control if required (invoiced at cost, no markup).

0 Ft.	–	6 Ft.	\$1,250/Hole
6 Ft.	–	10 Ft.	\$1,510/Hole
Every 1Ft.deeper than 10FT	–		\$150/ft additional
Holes > 20FT	–		to be negotiated

(There is no charge for “dry” holes i.e. locations where no utility is found)

The total value of this proposal, both SUE Level B and A services, is \$26,320.00.

If this summary is acceptable, please forward an authorization to proceed. If you have any questions or comments, please do not hesitate to contact us.

Thank you for this opportunity

Sincerely,

COBB, FENDLEY & ASSOCIATES, INC.



Richard Clarke
Project Manager

Exhibit 1

This Exhibit 1 is part of the Agreement, between Lockwood, Andrews & Newnam, Inc. (LAN) (the “Consultant”) and the City of Lubbock (the “City”) for the Project generally described as:

North Travis County MUD #5 – Water Distribution Projects

Consultant shall be paid a lump sum fee not to exceed three hundred eleven thousand nine hundred eighty dollars (\$311,980) for all services of Consultant including services of Consultant’s Subcontractors. Invoices for Basic and Optional Services will be prepared in accordance with Consultant’s standard invoicing practices and will be submitted to OWNER by Consultant monthly. Invoices are due and payable on receipt. The portion of compensation amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of each phase actually completed during the billing period.

BUDGET		
Task No.	Task Name	Budget Amount
Basic Services		
1	Project Management	\$22,801
2	Conceptual Design	\$26,267
3	Preliminary Design (60%)	\$82,148
4	Final Design	\$28,136
5	Bid Phase	\$8,133
6	Construction Phase Services	\$25,778
7	ROW/Easement Services	\$4,522
8	Survey	\$28,490
9	Geotechnical	\$34,523
TOTAL BASIC SERVICES		\$260,528
Optional Services		
10	Acquisition of Permanent Easements	\$22,500
11	Subsurface Utility Engineering	\$28,952
TOTAL SERVICES (BASIC + OPTIONAL)		\$311,980