

**PROFESSIONAL SERVICES AGREEMENT
FOR
WEISS LANE / PECAN STREET WATER LINE PROJECT**

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, and Carollo Engineers, Inc. (“Consultant”), both of which may be referred to herein singularly as “Party” or 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.

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

II. TERM

2.1 This agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

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 AND PROJECT SCHEDULE

Consultant agrees to provide the services described in this Article III entitled Scope of Services and Project Schedule in exchange for the compensation described in Article IV. Compensation. Scope of Services and Project Schedule are detailed in *Exhibit 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. The determination made by City Manager 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. 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; 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, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed Five-Hundred, Fifty-Eight Thousand, Seven Hundred and Eighty Dollars and No Cents (\$558,780.00) as total compensation, to be paid to Consultant as further detailed in Exhibit A.

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 City.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be the City Manager. Payment will be made to Consultant following written approval of the final work products and services by the City Manager. 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: Jeff Dunsworth, P.E City Engineer P.O Box 589 Pflugerville, Texas 78660
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If intended for Consultant, to:	Carollo Engineers, Inc. Attn: Rene Aguilar, P.E. 10900 Stonelake Blvd. Building 2, Ste. 126 Austin, Texas 78759
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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 "*Weiss Lane / Pecan Street Water Line*" 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

Consultant 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. Consultant 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:	1,000,000 per occurrence, 2,000,000 general aggregate	City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage
Premises/Operations	Or	
Products/ Completed Operations	2,000,000 combined single coverage limit	City to be provided a waiver of subrogation
Independent Contractors		City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Personal Injury		
Contractual Liability		
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. City 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 INDEMNIFY 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 for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the CONSULTANT or the CONSULTANT’s agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such 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 elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.

10.2 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.

10.3 Duty to Defend – Consultant covenants and agrees to hold a DUTY TO DEFEND the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly or partly on the negligence of, fault of, or breach of contract by the CITY, the CITY’S agent, the CITY’S employee or other entity, excluding the CONSULTANT or the CONSULTANT’S agent, employee or sub-consultant, over which the CITY exercises control. CONSULTANT is required under this provision and fully satisfies this provision by naming the CITY and those representatives listed above as additional insured under the CONSULTANT’S general liability insurance policy and providing any defense provided by the policy upon demand by CITY.

10.4 CONSULTANT is required to perform services to the City under the standard of care provided for in Texas Local Government Code § 271.904 (d)(1-2).

10.5 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.

10.6 Force Majeure - 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: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City 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.

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 will comply with the City’s Ethics Code.

13.3 Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, or any subsequent changes thereto requiring City Council approval, the City may not accept or enter into a contract until it has received from the Consultant a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission (“TEC”), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Consultant understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC’s website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 must be provided to the City prior to the award of the contract. The City does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Consultant with respect to the proper completion of the TEC Form 1295.

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, if applicable, subject to formal approval by the City Council.

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 Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction in 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 incorporated herein for all purposes:

Exhibit "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.

25.6 Texas Government Code Mandatory Provision. The City of Pflugerville may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; (ii) will not boycott Israel during the term of the contract; (iii) does not boycott energy companies; (iv) will not boycott energy companies during the term of the contract; (v) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and (vi) will not discriminate during the term of the contract against a firearm entity or firearm trade association (Texas Government Code, Chapter 2271.002; 2274.002).

Company hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as this term is defined in the Texas Government Code, Section 808.001, as amended. Company hereby verifies that it does not boycott energy companies, and agrees that, during the term of this agreement, will not boycott energy companies as this term is defined in Texas Government Code, Section 809.001, as amended. Company hereby verifies that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and agrees that, during the term of this agreement, will not discriminate against a firearm entity or firearm trade association as those terms are defined in Texas Government Code, Section 2274.001, as amended.

Further, Company hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organizations.

EXECUTED and AGREED to as of the dates indicated below.

**CITY OF
PFLUGERVILLE**

**CONSULTANT
CAROLLO ENGINEERS, INC.**

(Signature)

Printed Name: Sereniah Breland

Title: City Manager

Date: _____

Hani E. Michel
(Signature)

Printed Name: Hani Michel, P.E.

Title: Senior Vice President

Date: August 12, 2025

Rene Aguilar
(Signature)

Printed Name: Rene Aguilar, P.E.

Title: Vice President

Date: August 12, 2025

APPROVED AS TO FORM:

Charles E. Zech

Charles E. Zech
City Attorney

DENTON NAVARRO RODRIGUEZ BERNAL SANTEE & ZECH, P.C.

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT #1 FOR WEISS LANE/PECAN STREET WATER LINE PFLUGERVILLE, TEXAS

BACKGROUND

The City of Pflugerville's (Owner) has retained Carollo Engineers, Inc. (Consultant) to provide Consulting Services for the Weiss Lane/Pecan Street Water Line (Project).

This Supplemental Agreement includes providing Construction Management and Inspection Services, and providing construction materials testing services during construction of the above-referenced project. Services are based on the attached schedule, which assumes contract times of 186 days to Substantial Completion followed by 30 additional days to Final Completion with an additional 30 days for Project Closeout.

I. BASIC SERVICES

A. Construction Management

Consultant will act as the City's on-site representative administering the contract for construction and providing overall project documentation and maintaining record of decisions and changes made. Duration of services is as described above and as shown in the attached schedule.

1. Task 1 - Pre-Construction Support

- a. Pre-Construction Meeting: Schedule and conduct the pre-construction meeting(s); record and disseminate minutes from pre-construction meeting(s). Provide agenda for meeting(s): Key milestone dates, pay application procedures, schedule, public notification issues and procedures, utility coordination issues, traffic control, permitting, property owner notification and coordination, temporary facilities, contractors' use of selected Project Management program, safety program expectations, risk, and other items as coordinated with the City prior to the meeting.

2. Task 2 - Construction Administration and Management Services

- a. Construction Progress Meetings: Schedule and conduct monthly construction progress meetings to review the following: work progress and schedule, outstanding issues, status of submittals and responses shop drawings, unforeseen issues, and changes to the work. Record minutes from construction progress meetings and distribute via the selected Project Management program to: City Project Manager, Design Consultant and Contractor(s) throughout the duration of the project.

- (i) One Progress Meeting per month between CM and contractor(s), City and Design consultant.
- (ii) Coordinate up to 1 additional Quality Assurance (QA) Meeting per month with the contractor to discuss and resolve problems and provide guidance in a timely manner.

EXHIBIT A

- (iii) Coordinate up to 1 additional Internal Progress Meeting per month with the City to discuss construction concerns/issues ahead of the monthly construction progress meeting.
 - (iv) Coordinate/monitor installations requiring permits: confirm compliance of construction activities in the vicinity of county roads and existing utility easements with the requirements of the utility permits. Includes record management and as-built drawing verification as needed.
 - (v) Attend up to 10 utility coordination, construction, and stakeholder meetings and record actions/decisions made.
- 3. Task 3 - Document Management and Control
 - a. Utilize the selected Project Management software to receive, route, track and log Contractor communications, Submittals, Change Orders, RFIs, Pay Applications and Citizen Complaint/Resolution Log, and permits; communicate with Contractor the status of submittal reviews; review submittal and RFI log in the selected Project Management program to support timely responses; notify City Project Manager, Contractor, and Design Consultant of time critical issues.
 - b. Maintain records of decisions, actions, and activities with regards to construction operations using the selected project management software and appropriate tracking logs.
 - c. Assemble and maintain notes, comments, sketches, and supportive data relative to the Project to facilitate the review of drawings and their conformance to the final as-built conditions. Review Contractor's record keeping monthly to verify completeness, timeliness, and progress.
- 4. Task 4 - Manage Construction
 - a. Provide periodic, onsite construction management team to represent the City and provide oversight of the project contractor(s) activities.
 - (i) Serve as liaison between Owner's project team, design consultant, and construction contractor(s) throughout the construction phase of the Project.
 - (ii) Manage on-site inspections staff to verify production work activities are observed and documented.
 - b. As field problems arise, notify/consult with the Design Engineer and City Project Manager of proposed solutions to resolve problems.
 - c. Notify the City Project Manager and Design Consultant of any failure of the Contractor to take measures to repair and bring work into compliance.
 - d. Immediately notify the City Project Manager and Design Consultant in the event of an on-site accident. Confirm Contractor follows emergency response protocols and provides documentation and required by the contract documents.
 - e. Review as-built documents monthly, as part of the pay application review with the contractor(s).

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- f. Consult with City Project Manager and Design Engineer in advance of scheduled major work operations, tests, inspections or start of important phases of project. Schedule Pre-Activity meetings with appropriate City Staff to document and verify plan of action identified is maintained and serves to reduce the impact of construction to City operations and is planned and executed accordingly.
- g. Prepare monthly summary report of construction activities (Construction Activity Reports) with outstanding issues outlined for review. Monthly progress information associated with the project will be submitted to the Project Manager for review, approval, and incorporation into the monthly project status report.
- h. Advise Owner, Design Consultant, and the Construction Contractor(s) immediately of the commencement of any work requiring a shop drawing or sample submission if the submission has not been accepted by the Engineer.
- i. Conduct quarterly wage-rate verification interviews to support compliance with federal funding requirements.
- j. Coordinate Work of Contractor with External Agencies:
 - (i) Coordinate contractor's operations with regards to other City contracts and adjacent construction projects as well as with adjacent occupants and uses, and city functions, property owners for planned service outages, deliveries, parking, street closures, and access control issues to properties including notifications.
 - (ii) Verify construction conformance with permitted activities such as: City of Pflugerville permits, U.S. Army Corps of Engineers permits, Travis County roadway permits, driveway permits, utility encroachment agreements.
 - (iii) Support for TWDB and/or EPA funding reporting requirements.
- k. Project Schedule:
 - (i) Monitor and confirm adherence to approved project baseline schedule. Review contractors' schedule(s) monthly, confirm compliance with City's intended schedule and provide recommendations as needed to retain and regain schedule if needed.
 - (ii) Review contractor's baseline schedule for logic, sequencing, and adherence to project milestones.
 - (iii) Conduct monthly review of schedule updates as part of the pay application review.
 - (iv) Coordinate with Contractor to review proposed recovery schedules in the event of project delays.
 - (v) Recommend alternate project sequencing/scheduling to keep project on schedule.
- l. Pay Applications
 - (i) Review and verify quantities provided by contractor for all work in compliance with contract documents.

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- (ii) Review work conducted daily on daily inspection reports and material installed measurements submitted by contractor; verify work conducted and bid item quantities via the selected Project Management software; meet monthly to review pay estimate and quantities with contractor.
 - (iii) Review progress pay application with Design Consultant for approval or revision prior to submittal to City.
 - (iv) Finalize monthly pay application with signatures from Contractor, Design Consultant and City's Construction Manager certifying quantities and amounts via the City's standard documents and Project Management software.
 - (v) Notify City Project Manager when all electronic signatures are completed in the selected Project Management software for invoice processing.
 - m. Track and record requests for rain or other delays with potential to add to Contract Time in Daily Reports in the selected Project Management software.
 - n. Change Orders (up to 3 Change Orders):
 - (i) Coordinate with Design Consultant to issue requests for proposals in a timely manner via the selected Project Management program. Review RFP and contractor proposal for changes in work with City Project Manager and Design Consultant for approval. Verify the status of RFP and Responses from Contractor, City and Design Consultant are logged and tracked in the selected Project Management program software.
 - (ii) Review Design Consultant recommendations on technical matters as an advocate for the City.
 - (iii) Evaluate Contractor's response/proposal for merit, cost, time, accuracy, and price practicality. Negotiate with Contractor on City's behalf, if requested.
 - (iv) Prepare Change Order and documentation including signatures of Contractor, Engineer, and Construction Manager for delivery to City.
- 5. Task 5 – Onsite Technical Construction Observation: Consultant will provide Construction Observation services as described below for an estimated 50 hours per week in accordance with the attached schedule.
 - a. On-site Construction Observations
 - (i) Notify the Construction Manager if Contractor's work is not in compliance with the Contract Documents or Specifications.
 - (ii) Issue Advisory Notices to Contractor for work that is not in compliance with approved construction documents.
 - (iii) Issue Non-Compliance Reports to Contractor if non-conforming work is not brought into compliance or if plan of action to bring work into compliance is not conducted in a timely manner.

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- (iv) Inspect and observe the materials and equipment being incorporated into the work to assure that they are handled, stored, and installed in accordance with the Contract Documents and specifications. Report to the Construction Manager regarding these activities.
 - (v) Identify, record, and notify Construction Manager of any problems or failures to meet performance requirements in a timely manner to minimize delay in the progress of the project.
 - (vi) Prepare and maintain daily progress log or daily construction reports, photographs, records, and track quantities installed daily utilizing the City's Project Management software.
 - (vii) Review and confirm Contractor's quantities included in the monthly pay applications.
 - (viii) Verify Contractor has obtained necessary permits and is maintaining Traffic Control, public notification and Storm Water Pollution Prevention Plans, facilities, equipment, or arrangements in accordance with the Contract Documents.
 - (ix) Attend and participate in progress meetings.
 - (x) Immediately notify the Construction Manager in the event of an on-site accident. Record and note conditions, activities, and witness to the event.
 - (xi) Consult with the Construction Manager in advance of scheduled major work operations, tests, inspections or start of important phases of project.
 - (xii) Attend Pre-Activity meetings, document and verify plan of action identified is maintained and serves to reduce the impact of construction to City operations and is planned and executed accordingly.
 - (xiii) Population, review, and maintenance of CMT logs.
 - (xiv) Provide onsite observation and documentation of final restoration, SWWWP compliance, punch list closeout, demobilization between substantial and final completion.
- b. Construction Materials Testing:
- (i) UES Professional Solutions (UES) will be the materials testing firm that is contracted directly with the City for this Project in accordance with the Project specifications.
 - (ii) Consultant will provide general oversight, billings, and management for the activities performed by UES
 - (iii) Consultant will coordinate with UES for project setup, monthly progress and reporting updates, and conflict/issue resolution.
 - (iv) UES shall utilize selected construction management software to upload test reports.

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- (v) Consultant will monitor the upload of UES logs to support accurate flow and distribution of test reports to the applicable Contractor and Design Consultant.
 - (vi) Consultant will compile UES test reports in an organized file for delivery to the City in electronic format as part of project closeout.
6. Task 6 - Project Completion, Closeout and Warranty:
- a. Project Completion and Closeout:
 - (i) Provide list of deliverables for substantial completion walk-through/inspection. Schedule and conduct project walk-through upon receipt of Contractor's notification of substantial completion. Include City Project Manager, Design Consultant and others as directed. Coordinate with Design Consultant on preparation of a list of non-conforming work based on visual inspections and track via the selected Project Management program. Record and monitor contractors' corrective efforts and schedule. Schedule final completion inspection for any remaining corrections.
 - (ii) Coordinate and obtain Engineer of Record's signature and seal on Substantial Completion certificate and Final Completion and Acceptance certificate via the selected Project Management program. Verify all documents required for the City's acceptance of the project are obtained and submitted in a timely fashion for the prompt completion of the project.
 - (iii) Review and forward any Operation and Maintenance documents required from the Contractor to the Engineer of Record and S&C consultant for review. Verify Contractors' closeout documents are uploaded to the selected Project Management program. Coordinate with the contractor(s) to confirm training required for City staff to operate equipment is scheduled and completed. Review for completeness and accuracy, including affidavits of final payment, final pay estimates, as built records, redlines and drawings. Once received, notify the Design Engineer and City Project Manager when completed.
 - (iv) Conduct Project Close-Out Meeting.
 - (v) Upon completion of the work, prepare a final progress payment including a balancing change order zeroing out all unused quantities utilizing the selected Project Management program. Identify and reconcile SOV quantities and make approved changes to the Contract Time.
 - (vi) Review and coordinate with Design Consultant to provide Engineer of Record recommendation for Substantial Completion and Final Acceptance. (See Close- out Section)
 - (vii) Compile contractor(s) redlines, daily logs, RFIs, final approved submittals in an organized file for delivery to City in electronic format.
 - b. Warranty Period Support

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- (i) Schedule, arrange and coordinate a One-Year walk-through of the project to review status of the work 30 days prior to expiration of the One-Year Warranty period.
- (ii) Provide staff to conduct and participate in the warranty inspections.
- (iii) Coordinate with Design Consultant to prepare list of non-conforming work for presentation to the City Project Manager, Design Consultant and Contractor via the selected Project Management software program.
- (iv) Coordinate repairs of non-conforming work with Contractor.
- (v) Submit final report on completed warranty repairs via the selected Project Management software program.

B. Assumptions:

- 1. Assumes a 7-month construction duration with 1 additional month for the close-out phase, for a total of 8-months.
- 2. Assumes a single pipeline installation heading.
- 3. Construction observations will be performed on a full-time basis not to exceed an average of 50 hours per week, 6 days per week for 8 months of the project.
- 4. Construction Contractor(s) responsible for coordinating with the City's 3rd party Construction Materials Testing lab and notifying the CMCI team when the testing activities will take place.
- 5. City shall compensate Consultant for all testing incurred, and any repayment to the City required by the Contract documents for retesting or other tests deemed unsatisfactory shall be separately coordinated between the Contractor and City.
- 6. Any additional assistance associated with litigation, mediation, arbitration, dispute review boards, or other legal and/or administration proceedings between the Owner and other entities associated with the project are not included in this contract but can be provided as an Additional Service at the Owner's request.
- 7. The Construction Manager and Engineer of Record will be responsible for reviewing materials test reports and determining acceptance based on the test results.
- 8. Consultant shall perform the services required hereunder in accordance with the prevailing engineering standard of care by exercising the skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of Texas.
- 9. In providing opinions of cost, financial analyses, economic feasibility projections, schedules, and quantity and/or quality estimates for potential projects, CONSULTANT has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; the incoming water quality and/or quantity; the way the CITY's plant(s) and/or associated

EXHIBIT A

processes are operated and/or maintained; and other economic and operational factors that may materially affect the ultimate project elements, including, but not limited to, cost or schedule. Therefore, CONSULTANT makes no warranty that the CITY's actual project costs, financial aspects, economic feasibility, schedules, and/or quantities or quality realized will not vary from CONSULTANT's opinions, analyses, projections, or estimates.

10. The services to be performed by CONSULTANT are intended solely for the benefit of the CITY. No person or entity not a signatory to this Agreement shall be entitled to rely on CONSULTANT's performance of its services hereunder, and no right to assert a claim against CONSULTANT by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Agreement or the performance of CONSULTANT's services hereunder.

II. OWNER'S RESPONSIBILITIES

- A. The following items are not included in the Consultant's scope. The Owner will do the following in a timely manner so as not to delay the services of the Consultant and will bear all costs incident thereto.

1. Owner will provide the Consultant with all criteria and full information as to the Owner's requirements for the Project, including study objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which the Owner will require to be included in the Drawings and Specifications; and furnish copies of the Owner's standard forms, conditions, and related documents, when applicable.
2. Owner will give prompt written notice to Consultant whenever the Owner observes or otherwise becomes aware of any development that affects the scope or time of performance of Consultant's services, or any defect or nonconformance in Consultant's services or in the work of any Contractor.
3. Owner will arrange for legal access for Consultant to enter upon public and private property as required for Consultant to perform services under the Agreement.
4. Owner will examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Consultant (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto. Written review comments are to be delivered to the Consultant within fourteen (14) calendar days after receipt of each submittal, or as otherwise stated in the documents.
5. Owner will advise Consultant of the general description of services of any independent consultants employed by Owner to perform or furnish services related to the Project.

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6. Owner will pay any permit application fees associated with the project. Owner will sign permits, and all permits will be under the Owner's name.
7. The City shall furnish Consultant available studies, reports and other data pertinent to Consultant's services; obtain or authorize Consultant to obtain or provide additional reports and data as required; furnish to Consultant services of others required for the performance of Consultant's services hereunder, and Consultant shall be entitled to use and reasonably rely upon all such information and services provided by the City or others in performing Consultant's services under this Agreement.

III. SCHEDULE

- A. See attached (SCHEDULE)

The duration and activities in this PSSA will follow the Construction Phase as outlined in the attached schedule.















IV. FEE SCHEDULE

- A. See attached. (FEE SCHEDULE)

For the work described in Task 1 through Task 6 contained herein, the City agrees to provide a lump sum payment basis in the amount of **\$ 558,780** per this Task Order and accompanying Fee Estimate. Carollo will submit a monthly invoice and detailed progress report for each billing period based on a percent complete basis described above for the agreed upon lump sum fee.

8/12/2025 V2



















EXHIBIT A

ID		Task Mode	Task Name	Start	Finish	Q2	Q3	Q4	2026 Q1	Q2	Q3	Q4	2027 Q1	Q2	Q3
1			Weiss Lane-Pecan Street Water Line Project	Wed 10/1/25	Wed 5/5/27										
2			Contractor Notice To Proceed (NTP)	Wed 10/1/25	Wed 10/1/25										
3			Substantial Completion (SC)	Wed 10/1/25	Sun 4/5/26										
4			Final Completion (FC)	Sun 4/5/26	Tue 5/5/26										
5			Closeout Project	Sat 10/31/26	Wed 5/5/27										
6															
7			Construction Management, Inspections, Commissioning & Startup	Wed 9/24/25	Wed 5/5/27										
8			Task 1.0 Preconstruction Support	Wed 9/24/25	Wed 10/1/25										
9			Task 2.0 Constrction Administration and Management Services	Wed 9/24/25	Tue 5/5/26										
10			Task 3.0 Document Management and Control	Wed 9/24/25	Tue 5/5/26										
11			Task 4.0 Manage Construction	Wed 9/24/25	Tue 5/5/26										
12			Task 5.0 Onsite Technical Construction Observations	Mon 10/20/25	Tue 5/5/26										
13			Task 6.0 Project Completion and Closeout	Tue 5/5/26	Wed 5/5/27										

WEISS LANE / PECAN STREET WATER LINE PROJECT

CAROLLO ENGINEERS, INC
CITY OF PFLUGERVILLE

DATE: Tue 8/12/25

Task		Manual Summary Rollup	
Split		Manual Summary	
Milestone		Start-only	
Summary		Finish-only	
Project Summary		External Tasks	
Inactive Task		External Milestone	
Inactive Milestone		Deadline	
Inactive Summary		Progress	
Manual Task		Manual Progress	
Duration-only	