

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
WEISS LANE LIFT STATION AND FORCE MAIN  
ANALYSIS & SYSTEM UPGRADES**

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 DCS Engineering, LLC (“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 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on February 26, 2019 and terminate on December 31, 2019.

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 No. 1 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 one hundred and seven thousand seven hundred and seventy dollars (\$107,770.00) as total compensation, to be paid to Consultant as further detailed in Attachment No. 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 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: Leon Sparks, P.E.  
Senior Utility Engineer  
15500 Sun Light Near Way, #B  
Pflugerville, Texas 78660

If intended for Consultant, to: DCS Engineering, LLC  
Attn: Darren C Strozewski, P.E.  
1101 S. Capital of Texas Hwy, Bldg G-100  
Austin, Texas 78746

## 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 Lift Station and Force Main Analysis & System Upgrades*" 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: Premises/Operations	1,000,000 per occurrence, 2,000,000 general aggregate  Or	City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage
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		
<b>Contractual Liability</b>		
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 doesn't intend to use the following subcontractors in the performance of the phase of work stipulated in Attachment No. 1 of this Agreement but may utilize their services in future assignments related to this project during the design, bidding, and/or construction phases of the project: Inland Geodetics (surveying, potholing, easement exhibits, boundary), Arias (geotechnical engineering and materials testing); Integrated Environmental Solutions (environmental, archeological, Corps of Engineers permitting); and JRSA Engineering, Inc. (electrical and SCADA engineering). 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:

Attachment No. 1 - 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; and (ii) will not boycott Israel during the term of the contract. (Texas Government Code, Chapter 2270.002) by accepting this rider, the Consultant hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended. Further, the Consultant 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 Organization.

**EXECUTED** and **AGREED** to as of the dates indicated below.

**CITY OF  
PFLUGERVILLE**

**CONSULTANT  
DCS ENGINEERING, LLC**

\_\_\_\_\_  
(Signature)

  
(Signature)

Printed Name: Sereniah Breland

Printed Name: Darren Strozewski, P.E.

Title: City Manager

Title: Principal

Date: \_\_\_\_\_

Date: 2/7/19

APPROVED AS TO FORM:

\_\_\_\_\_  
Charles E. Zech  
City Attorney  
DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

**ATTACHMENT No. 1**  
**City of Pflugerville**  
**Weiss Lane Lift Station and Force Main Analysis & System Upgrades**

In accordance with the Professional Services Agreement for the Weiss Lane Lift Station and Force Main Analysis & System Upgrades Project between City and Engineer ("Agreement"), City and Engineer agree as follows:

**1. Specific Project Data**

- A. Weiss Lane Lift Station and Force Main Analysis & System Upgrades
- B. DCS Project No.: 20101389
- C. Background and Description:

The Weiss Lane Lift Station is approaching its capacity to serve its upstream sewershed with the pumps currently installed in the wet well. The recently constructed Carmel Lift Station has capacity in the lift station and/or forcemain which might strategically be utilized to provide relief to the Weiss Lane LS. The City desires to provide additional wastewater collection system capacity to the east side of SH 130 being served by the Weiss Lane LS and Carmel LS to allow continued growth of the area; and concurrently fully utilize the Central WWTP's upcoming capacity expansion to 10.0 mgd before constructing the future permanent Wilbarger Creek/Cottonwood Creek WWTP. The deferral of this future WWTP's project cost is a primary objective.

The City has discerned that this is likely achievable by leveraging existing lift stations and their associated forcemains and/or interceptors via extending future forcemains and interceptors. This additional wastewater flow would be conveyed in whole or in part to the Central WWTP via the West SH 130 Interceptor project's 42" line under Pecan Street via a 70 ft deep tunnel until the Central WWTP reaches its 10.0 mgd capacity. DCS and City Staff met on January 10, 2019 to discuss the scope of the project. DCS has prepared this scope of work for the Phase I – Analysis and Evaluation; and Phase II – Preliminary Engineering per the below definitions.

Three phases of the project have been identified as outlined below. Phase I and Phase II are contained in this scope of work. It must be emphasized here that the solution set is not known at this time. The solution set will be customized based on the City's specific needs and the option which yields the most advantageous cost/benefit to the City.

**1. Phase I - Analysis and Evaluation:**

This phase includes the evaluation, field investigations, and trouble shooting of existing lift stations to optimize flows currently produced, performing flow projections for lift station sewersheds, creating hydraulic models and analyzing three proposed lift station configurations/solutions sets anticipated to achieve the targeted 10 mgd of average daily flow to the Central WWTP, and conducting a workshop to discuss modeling results with subsequent third party QA/QC of DCS's hydraulic modeling results.

**2. Phase II - Preliminary Engineering:**

This phase includes the development of conceptual design(s), capital improvement project cost(s), annual O&M cost(s), and associated work for three options that will fully utilize the five existing lift stations connected to the Weiss Lane Force Main, and the Central WWTP's 10.0 mgd of treatment capacity. Tasks will also include pros/cons, proposed project deadline dates, implementation schedules, and recommendations for long term solution incorporation into the collection and treatment plant system.

**3. Phase III – Final Design, Bidding, and Construction:**

This phase includes the development of plans and specifications for the project(s) of the option selected in Phase II. The City will determine which firm or firm(s) will provide final design services for the project(s) after preliminary engineering is completed. Tasks are anticipated to include final design, bidding, and construction phase services.

**2. Engineering Services**

**A. Task 200: Phase I – Analysis and Evaluation Services**

This phase includes the evaluation, field investigations, and trouble shooting of existing lift stations to optimize flows currently produced, performing flow projections for lift station sewersheds, creating

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hydraulic models, and analyzing three proposed lift station configurations/solutions sets anticipated to achieve the targeted 10 mgd of average daily flow and 35 mgd peak flow to the Central WWTP, and conducting a workshop to discuss modeling results with subsequent third party QA/QC of DCS's hydraulic modeling results.

1. Lift Station Evaluation, Field Investigations, and Troubleshooting:
  - a. Coordinate with the City for site visits to review conditions and troubleshoot Carmel Lift Station and Weiss Lane Lift Station to identify issues and optimize flows using existing equipment.
  - b. Perform site visit and review Renewable Energy Park Lift Station, WTP Waste Pumping Station, and WTP Grinder Lift Station including discussion with operating personnel.
  - c. Perform flow tests at Carmel Lift Station (using on-site flow meter) and Weiss Lane Lift Station (using temporary rented strap on flow meter to be paid for by City directly to supplier). This task includes simultaneously measuring discharge header pressures and flows under approximately 10 existing pumping combinations/scenarios for validation against modeled results. The data collected will be compared against the hydraulic model of each scenario to validate that the forcemain network's capacity is operating as designed.
  - d. Carmel Lift Station: Analyze the SCADA data that is available for pump on/off cycles, pump run time per cycle, force main flows, etc. for the two pumps. It should be noted here that it is understood that SCADA data is not available for the Weiss Lane Lift Station.
2. Flow Projections for Lift Station Sewersheds:
  - a. Utilize the existing LUEs and projected LUE growth from the Wastewater Master Plan currently underway for each ultimate sewershed contributing to the Weiss Lane and Carmel lift stations, and validate that no updates or modifications are needed to the LUE data based on developer anticipated take down schedules by year. Each lift station will have an individual growth projection graph developed so the flows from each sewershed are measured individually against the respective lift station. This effort is based on using information developed in the Wastewater Master Plan (i.e. existing LUEs, sewersheds defined graphically, and ultimate LUEs).
  - b. Calculate increased waste sludge flows from the Water Treatment Plant due to increased average daily water production over the next 10 years (i.e. anticipate time for Central WWTP to reach the proposed 10 mgd plant capacity) and incorporate into the flow projections for the forcemain network and associated pump operations.
  - c. Flow projections will include a graphic to show critical project completion dates to implement capacity increases via projects identified as part of this work to expand lift station(s), install splitter box, and expand collection system capacity.
  - d. Project implementation schedules for the finalized project(s) will be added to this graph prior to completing the work.
  - e. Some or all of the above tasks may have already been completed as part of the current Wastewater Master Plan. DCS shall request the above requisite information/data from the Wastewater Master Plan, review it, and coordinate with the City to determine if any of the above tasks need to be completed by DCS. In order to avoid duplication of effort, the tasks in this Item No. 2 shall be designated as "special services" to be authorized by the City in writing prior to DCS beginning work.
3. Hydraulic Modeling and Analysis of Options: The below options include the following efforts but are not limited to: using three pump selection softwares (one for each different pump manufacturer with a pump currently installed in at least one of the five lift stations); selection of different impellers for existing pumps; selection of new pumps that geometrically fit into the lift stations; selection of pumps that don't exceed the existing MCC horsepower; and evaluating the cost/benefit of electrical MCC upgrades for larger horsepower pumps versus diverting flows to larger forcemains or interceptors.
  - a. **Model No. 1:** Create model of the existing forcemain network to include the five (5) lift stations and five (5) forcemains which contribute flow into the network. This analysis will serve as the "baseline" analysis to determine the capacity of the existing system, as configured today, with all the existing pumps.

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**Weiss Lane Lift Station and Force Main Analysis & System Upgrades**

- b. Evaluate each lift station for its projected remaining capacity by utilizing the existing pumps without any changes to determine when the first capacity expansion is needed at either Weiss Lane Lift Station or Carmel Lift Station.
  - c. **Model No. 2:** Optimize and evaluate each lift station for its projected remaining capacity utilizing the existing pumps and installing the two remaining pumps at the Carmel Lift Station; and/or increasing the firm number of pumps/capacity of Weiss Lift Station and Carmel Lift Station by warehousing the one pump as the standby pump at the City's facilities. Physical modifications of the lift station's wet well and electrical controls; or constructing new structures to accommodate the pump at the site are specifically excluded from this option.
  - d. **Model No. 3:** Identify low cost and short timeframe options to increase capacity via operational adjustments, design oversights, impeller changes, pump changes, or other options to increase capacity via low cost changes. Quantification of electrical modifications and impacts required to accommodate this option are included.
  - e. Addition of splitter box at Weiss Lane Lift Station with Sorento Phase 2 Interceptor: Determine when, and if, a splitter box is needed at Weiss Lane Lift Station to accommodate interim collection system capacity by diverting flows to the Carmel Lift Station via the Sorento Phase 2 Interceptor. This will be evaluated for each of the proposed modeled solutions. Evaluate constructability and operational constraints of splitter box due to the proximity to existing residential lots including odor and noise impacts.
  - f. **Model No. 4:** Evaluate conveying flows from the Weiss Lane LS to the Central WWTP through the Weiss Lane Forcemain; and the Carmel LS flows being conveyed to the Central WWTP via a dedicated force main extension of the Carmel Forcemain to discharge into the 42" Interceptor on the west side of SH 130. Quantification of electrical modifications and impacts required to accommodate this option are included.
  - g. **Model No. 5:** Evaluate conveying flows from the Weiss Lane LS and Carmel LS to the Central WWTP through the existing northern portion of the Weiss Lane Forcemain; the existing Carmel Forcemain; and a proposed force main. The proposed force main will join these two forcemains together on the west side of Weiss Lane via an extension of the Carmel Forcemain to discharge into the 42" Interceptor on the west side of SH 130. The new forcemain will accommodate the total flow from the Weiss Lane LS, Carmel LS, and two lift stations at the Water Treatment Plant per this scenario. Additionally, about 3,000 ft of forcemain will be modeled to convey flows from the Renewable Energy Park LS via its existing 16" forcemain directly to the Central WWTP's new permanent on-site lift station. The southern portion of the 24" Weiss Lane Forcemain from the Central WWTP to Weiss Lane will be abandoned in place for conversion to a reclaimed waterline at a future date. Quantification of electrical modifications and impacts required to accommodate this option are included.
  - h. As part of this analysis, surge pressures will be calculated for starting and stopping pumps including evaluating of installation of surge relief valves at the Weiss Lane LS and Carmel LS to blow-off surge waves into the wet well. Variable frequency drives (VFD) will also be evaluated for installation at Weiss Lane LS and Carmel LS to mitigate surges in the force main; and/or even out flows received by the Central WWTP and its respective biological process.
4. Workshops and Modeling QC Coordination:
- a. Conduct a workshop with the City for the initial findings from the above modeling efforts, narrow the options to perform preliminary engineering and cost estimates down to three options, and incorporate feedback from the City into the three models to be conveyed for QA/QC.
  - b. Conduct a workshop with Wastewater Master Plan modeler to discuss DCS's modeling results for a total of three of the above finalized scenarios (Models No. 1, 4 and 5) prior to modeler performing independent QA/QC with supporting technical memorandum submitted to DCS. This task will include conveying technical data including, but not limited to, pump curves and system configuration (i.e. pipe diameters, fittings, lengths, elevations of critical points, etc). Information will be conveyed via Autocad, GIS, PDF, etc. Work under this task will also include coordination,



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phone calls, emails, and/or gotomeetings to facilitate answering questions to or assumptions between the two firms.

5. Document the above efforts in a section of the below described report and include the technical memorandum provided by the Wastewater Master Plan modeler as an appendix in DCS's preliminary engineering report.

**B. Task 400: Phase II – Preliminary Engineering**

This phase includes the development of conceptual design(s), capital improvement project cost(s), annual O&M cost(s), and associated analysis for the infrastructure required to implement results from Model No.'s 2, 3, 4, and 5. Efforts will include identification of pros/cons, implementation schedules, recommendations for short term design/construction solutions to provide additional immediate capacity (if required by the collection system and if the infrastructure can be easily modified); near term capital improvement project(s) required within the next one to two years for immediate design/construction; and long term capital improvement project(s) for incorporation into the City's Wastewater Master Plan's 5-year and 10-year Capital Improvement Project List for the three scenarios.

1. Lift Station, forcemain, splitter box, and interceptor preliminary design:
  - a. The analysis will include work needed to evaluate the sizing, location, service area stub-outs/flow injection points, and service area including the existing developed area and undeveloped areas that will contribute flow during the lifetime of the project. Land uses and LUEs will be used from the City's current wastewater master planning effort. Flows will be calculated to confirm the capacity for the proposed interceptors or forcemains at critical points along the routes to the Central WWTP to confirm pipe size, depth, and slope are adequate for the service area.
  - b. The City will electronically convey the geographic information system (GIS) shape files containing the above information for use by DCS.
  - c. Research and obtain applicable documents for ownership, utility, or other easements within subject parcels, and public right-of-ways for use in establishing the preliminary routes.
  - d. Prepare a map of the proposed routes utilizing CAPCOG aerial photographs, City Lidar data, City GIS data, FEMA floodplain delineation, parcel maps, preliminary design considerations, and record drawings of previous infrastructure projects in the vicinity.
  - e. Identify the regulatory agencies for which permitting of construction activities will be required. Coordinate with these agencies to brief them on the particulars associated with this Project and gather permitting information which will be useful in ordinance compliance and final design. This effort only includes preliminary coordination and specifically excludes preparation of applications to agencies including, but not limited to, Travis County, TXDOT, SH 130 Toll Road Authority, TCEQ, private utilities (gas, electric, telephone, cable) and Manville WSC for work coordinated with their facilities.
  - f. Utilize the criteria set forth in City Design Standards and compliant with the TCEQ's Chapter 217, "Design Criteria for Domestic Wastewater Systems". Verify pipe diameter(s) required for each segment of the facilities.
2. Preliminary Engineering Report:
  - a. Prepare a Preliminary engineering report summarizing the findings and alternatives proposed for the interceptor, force main, lift stations, and/or splitter box with associated interim and ultimate service areas. Potential challenges and recommendations for the implementation of the Project with respect to the existing wastewater facilities will be identified.
  - b. The preliminary engineering report will include the evaluation of the wastewater interceptor and forcemain sizing with its associated LUE capacity using 245 gpd/LUE or the most up to date assumption to be consistent with the Wastewater Maser Plan. The alignments and associated flows to the Central WWTP will include pipe size, depth, and slopes adequate to serve this service area's sub-basins.
  - c. For each of the facilities to be evaluated under this project, prepare and submit conceptual alignments clearly illustrating the facilities proposed, site locations and layouts contemplated. The preliminary engineering report shall include the selected route, project schedules, recommended

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alternatives, and an Engineer's Opinion of Probable Cost for each facility. Upon inclusion of comments from City staff, DCS shall complete the preliminary engineering report based on the comments, then submit five (5) copies of the final preliminary engineering report.

- d. The preliminary engineering report will include tables, figures for each conceptual design, appendices of reference material, supporting calculations, model link/node schematics, and flash drive with all digital models, results files, and any GIS/CAD files. This Phase I and Phase II effort will provide the ability for the City with DCS to identify the alternative(s) to focus on for final design in Phase III. Upon conclusion of this work, the scope of work will be defined for Phase III and final design can begin, if desired by the City.

3. **Owner's Responsibilities**

- A. Owner shall have those responsibilities set forth in the Professional Services Agreement.

4. **Times for Rendering Services**

- A. Consultant shall have those responsibilities set forth in Article II of the Professional Services Agreement.
- B. Authorization to Proceed: Signing of this Agreement for services shall be authorization by the Owner for DCS to proceed with the work.
- C. The above referenced services will be performed over a total of three months with a notice to proceed assumed to be issued by February 13, 2019 and conclude by May 13, 2019. The theoretical capacity of the existing forcemain and lift station network generated from the model will be completed within two weeks of notice to proceed. The tasks outlined above under the Phase I – Analysis and Evaluation will occur over the first six weeks of the project schedule; and the tasks outlined above under the Phase II – Preliminary Engineering will occur simultaneously over the three month project duration. A total of two workshops are anticipated over the duration of the project to discuss modeling results and formalize decisions inclusive of anticipated construction costs for each option. The final report will be submitted at the conclusion of this work to memorialize the work efforts, meetings, and decisions made during the course of the work.

5. **Compensation for Professional Services**

- A. City shall pay Engineer for services rendered as follows: DCS Engineering, LLC will invoice monthly for services rendered the preceding month based on the percentage of services completed. City shall pay DCS Engineering, LLC within 30 days for the services rendered and invoiced.
- B. Lump Sum Fee: We propose to provide the services described above on a lump sum fee basis unless noted as a time and material fee as detailed in the below Fee Schedule. Our proposed fees for the above scope of work are shown by task in the below table. The above referenced services will be performed within the duration discussed in Attachment No. 1.

**Fee Schedule**

<b>Task</b>	<b>Description</b>	<b>Fee</b>
200	Phase I - Analysis & Evaluation	\$52,080.00
210	Flow Projections for Lift Station Sewersheds (Time &Material)	\$14,730.00
400	Phase II -Preliminary Engineering	\$40,960.00
	<b>Total Fee =</b>	<b>\$107,770.00</b>

6. **SubConsultants:**

None

7. **Other Modifications to Agreement:**

None