

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
PARKING LOT DESIGN – FIELD OPERATIONS FACILITY**

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 CP&Y, Inc. dba The Wallace Group (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

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

**I. DEFINITIONS**

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

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

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

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

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on July 13, 2016 and terminate on July 31, 2017.

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 Exhibit-A (including Attachments to 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 or his designee. The determination made by City Manager and/or his designee shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Manager and/or his designee. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant’s work not be satisfactory to City Manager and/or his designee; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

#### **IV. COMPENSATION TO CONSULTANT**

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager and/or his designee, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed Eighty Thousand, Eight Hundred Twenty Dollars (\$80,820.00) 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 Pflugerville City Council by passage of an ordinance therefore.

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

#### **V. OWNERSHIP OF DOCUMENTS**

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

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

#### **VI. RECORDS RETENTION**

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

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such

documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

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

## **VII. TERMINATION**

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

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

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

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

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

7.4.1 Bankruptcy or selling substantially all of company's assets

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

7.4.3 Performing unsatisfactorily

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by

Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

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

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

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

## VIII. NOTICE

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

If intended for City, to:

City of Pflugerville  
Attn: Tom Word  
Assistant City Manager  
P.O. Box 589  
Pflugerville, Texas 78660

If intended for Consultant, to:

CP&Y, Inc. dba The Wallace Group  
Attn: Scott Wetzel  
One Chisholm Trail, Suite 130  
Round Rock, TX 78681

## **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 “*Parking Lot Design – Field Operations Facility*” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

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

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

City of Pflugerville

### **Insurance Requirements**

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

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

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

<b>Type of Insurance</b>	<b>Amount of Insurance</b>	<b>Provisions</b>
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		
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. We will only accept the ACORD 25 or ISO certificate of insurance forms.

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

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

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

- ) Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement under terms satisfactory to the City, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- J 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;
- J Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City.
- J 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: N/A. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of Pflugerville City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

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

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

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

## **XII. INDEPENDENT CONTRACTOR**

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

### **XIII. CONFLICT OF INTEREST**

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

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

### **XIV. AMENDMENTS**

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

### **XV. SEVERABILITY**

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

### **XVI. LICENSES/CERTIFICATIONS**

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

### **XVII. COMPLIANCE**

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

## **XVIII. NONWAIVER OF PERFORMANCE**

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

## **XIX. LAW APPLICABLE**

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

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

## **XX. LEGAL AUTHORITY**

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

## **XXI. PARTIES BOUND**

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

## **XXII. CAPTIONS**

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

## **XXIII. INCORPORATION OF EXHIBITS**

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

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.

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

**CITY OF  
PFLUGERVILLE**

**CP&Y, INC. dba  
THE WALLACE GROUP**

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

Printed Name: Brandon E. Wade

Title: City Manager

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

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

Printed Name: Scott C. Wetzel

Title: Vice President

Date: June 29, 2016

**EXHIBIT A**

**SCOPE OF SERVICES**

**FOR**

**PARKING LOT DESIGN – FIELD OPERATIONS FACILITY**

**PFLUGERVILLE, TEXAS**

**A. BACKGROUND**

The Wallace Group (TWG), a CP&Y, Inc. company, referred to in this scope as Engineer will provide engineering design services related to the parking lot with serving the Field Operations Facility located at the City of Pflugerville's WWTP. The extents of the new parking lot are approximately 315' by 430'. Services will include providing assistance to the City of Pflugerville during the bidding and construction phases of the project in this scope of work.

Upon receipt of notice to proceed, the Engineer will perform the following tasks:

**B. PRELIMINARY & NON-DESIGN PHASE SERVICES**

1. Conduct field reconnaissance – Provide one site visits to gather information related to the design of the Project.
2. The Wallace Group (TWG) will conduct surveying services necessary to prepare design and construction drawings/plans for the Project, for the approximate limits listed herein. Survey services will include the following:
  - a. The Wallace Group (TWG) will conduct surveying services necessary to prepare design and construction drawings/plans for the Project, for the approximate limits listed herein. The survey will update the topographic survey last completed on the site in 2014. Due to modifications to the existing topography of the proposed Project site, a topographic update is required. Perform a field survey to identify and locate existing topographic elements within the defined limits of the selected route including, but not limited to the following:
    - ) Existing ground surface at Field Operations Facility.
    - ) Topographic survey for storm water detention pond location
    - ) New water main route
    - ) Survey update of new Berm/Levee embankment
    - ) Identified buried utilities at Field Operations Facility
  - b. Where applicable, call Texas 811 for marking of underground utilities and field locate paint marks.
3. Secure the services of a geotechnical engineering firm to conduct up to four (4) soil bores (up to 10' deep) at the Project site in the affected area to determine the general soil types and conditions. The firm will compose an engineering report identifying the soil Atterberg Limits, moisture content, and sieve analysis. They will provide the following, as required for Engineer to provide the design and Plans: (1)

Classify the soil strata; (2) Identify and provide quantitative data for active/expansive soils; (3) Define strength characteristics relating to allowable bearing values; (4) Determine subgrade modulus for pavement designs; and (5) Assess construction workability of the soils, and recommend a conditioning regimen by which to treat the roadway subgrade and/or base.

#### C. DESIGN PHASE SERVICES

Upon completion of Preliminary services, Design Phase Services will be initiated. TWG will perform or furnish the necessary professional engineering and related services to enable the City to receive comparative bids as necessary to award a construction contract for the Project as stipulated herein. TWG agrees to perform the following services:

1. Preliminary Design – Engineer will prepare the following for the preliminary design.
  - a. Parking lot plan and grading with curb and guttering
  - b. Pavement design, markings, delineations and signing
  - c. Parking lot lighting plan/details and electrical leads to irrigation system controller and automatic gate operators
  - d. Storm water drainage plan (to tie into existing site drainage system)
  - e. Storm water detention basin design
  - f. New 6" water main plan from Pigeon Forge Rd. to NW corner of WWTP site (approx. 2370 LF)
  - g. Field Ops building water and wastewater service lines (tie into existing systems)
  - h. Erosion control site plan
  - i. Establish finished floor elevation of the new Field Operations building
  - j. Provide buried conduits for electrical leads to irrigation controls and automatic gates
2. Final Design – Upon completion by the Engineer and acceptance by the City of the preliminary construction documents, Engineer will proceed with completing the final Project design, to include technical specifications. Engineer will incorporate necessary modification to the final design in accordance with the City's review comments.
3. Attend up to two (2) project review meetings with the City to review the documents included at the milestone submittals.
4. Advise City of any adjustments to the latest opinion of probable construction costs (OPCC) with each milestone submittal that could be due to changes in general scope, site conditions, extent or character or design requirements of the Project. Furnish to City a revised OPCC based on the final Contract Documents.
5. Provide an erosion control plan and drawings within the construction documents, suitable for the contractor to prepare the SWPPP and file for any required permits.
6. Furnish two paper copies (11"x17") at each of the two milestone submittals of construction drawings/documents to the City, and present and review these documents with the City.

#### D. BIDDING PHASE SERVICES

Engineer agrees to perform support services to the City during the Bidding Phase of the Project. It is our understanding that the Civil/Site design (as to be provided herein) will be incorporated into the Field Operations building design architect's construction documents and will be bid as one project as conducted by the architect.

1. Provide the City and architect with a written project description for the Civil/Site design to assist them in advertising the Project for bid.
2. Provide PDF electronic copies of Civil/Site construction drawings and technical specifications to the architect and city for them to distribute to prospective bidders.
3. Engineer will provide clarifications and/or address bidder's questions to be included in the architect's addenda during the bid process with respect to the Civil/Site design.
4. Prepare a current OPCC and quantities for the Civil/Site design to the City.
5. Attend one (1) Pre-Bid and meeting and one (1) Bid Opening for the Project.

#### E. CONSTRUCTION ADMINISTRATION PHASE SERVICES

Engineer agrees to perform the following Construction Phase Services listed below.

1. Interpretation. During construction Engineer shall be available for interpretation of the Drawings, Specifications, or Bidding Documents.
2. Project Submittals. Review Contractor submitted Shop Drawings, material samples, equipment drawings, and other data submittals for conformance with the applicable sections of the Documents.
3. Preconstruction Conference. Provide representation for the City at one (1) preconstruction review conference with the selected Contractor.
4. Progress Meetings. Attend up to three (3) construction progress meetings to be conducted at the City's offices located at the project site. Should more than three construction progress meetings be required, those services shall be considered additional and shall be negotiated as an additional fee.
5. Construction Administration. Review and make recommendations on pay requests and change orders as related to the Civil/Site design.
6. Final Review. Assist the City in conducting a final review of the completed construction in an effort to determine if the final construction is in general conformance with the Contract Documents. Complete a punchlist and submit to



the City and make a subsequent recommendation of project acceptance once the punchlist items have been corrected by the Contractor.

7. Record Drawings. Upon completion of the construction work and upon final project approval, Engineer shall revise the original reproducible Drawings to reflect changes made during construction. Mark-ups shall be submitted by the Contractor. Engineer shall then submit one (1) set of hard-copy prints to the architect, and one CD/DVD containing portable digital files (PDF) of the edited plans.

#### F. SERVICES NOT PROVIDED

1. Metes and bounds surveying services.
2. Construction observation, inspection or related field services during construction.
3. Landscaping and/or sprinkler system design.
4. Fencing, gates, operators and controls design.
5. TDLR review (to be provided by architect).
6. Power to/for building (per architect's MEP).
7. Structural design as related to Field Operations building.
8. Environmental Services – Including but not limited to environmental assessments, hazardous materials assessments, historic structures, threatened or endangered species assessments, permitting for storm water or waters of the United States.
9. SWPPP preparation, permit applications, NOIs or other related permits.
10. Bidding Services beyond those identified as being provided herein.
11. All services not specifically scoped herein.

#### G. FEE

Our proposal for the requested services is broken down as follows:

1. Topographic Survey Update & Additional	\$ 9,110.00
2. Geotechnical Soils Report/Borings & Observation	\$ 2,600.00
3. Civil/Site Design and Specifications	\$45,180.00
4. Parking Lot Lighting Design & Specifications	\$11,800.00
5. Bidding Phase Services	\$ 3,360.00
6. Construction Administration & Shop Drawings	\$ 6,800.00
7. <u>Record Drawings</u>	<u>\$ 2,020.00</u>
8. TOTAL	\$80,820.00

#### H. SCHEDULE

The following completion times are following the receipt of a written NTP.

) Preliminary Design Services	45 days
) Final Design Services	45 days
) Construction Related Services	Commensurate w/Project

# **ATTACHMENT – A SURVEY SCOPE OF SERVICES**

## **SCOPE OF SERVICES**

**1. Berm Survey**

We will perform a detailed topographic survey of the newly constructed berm located outside the fence line at the northwest side of the WWTP site.

**2. Topographic Survey – Pflugerville Field Operations Facility**

We will perform a detailed topographic survey of an approx. 400' x 500' area. The survey will be on an approx. 50' grid to identify changes that have occurred since our last topographic survey. We will also locate all visible features, utilities, etc. that were not present previously and note ones that have been removed.

**3. Utility Survey**

We will perform a survey of the visible utilities & obtain measure downs for utilities located in area for item #2 (referenced above).

**4. Topographic Survey – Storm Water Detention Pond**

We will perform a detailed topographic survey of the site south of the perimeter fence. Our survey will pick up the area between the perimeter fence and the tree line. Locating trees is not part of this scope.

**5. Water line Survey**

We will provide shots/topo at the two tie in points at Pigeon Forge and at the WWTP.

## **SUMMARY OF FEES**

<b><u>Item</u></b>	<b><u>Description</u></b>	<b><u>Fee Basis</u></b>	<b><u>Amount</u></b>
1.	Berm Survey	Lump Sum	\$1,390.00
2.	Topographic Survey Field Operations Facility	Lump Sum	\$2,960.00
3.	Utility Survey	Lump Sum	\$1,140.00
4.	Topographic Survey Storm Water Detention Pond	Lump Sum	\$2,070.00
5.	Water line Survey	Lump Sum	<u>\$1,550.00</u>
<b>Total</b>			<b>\$9,110.00</b>

TWG made the following assumptions in preparing this proposal:

- All horizontal and vertical information will be tied to the WW Treatment Plant datum (which is based on Texas State Plane Coordinate System, Central Zone, NAD83 & NAVD88).
- TWG will utilize both GPS and traditional methods to survey, whichever is deemed best for that particular situation.
- Our field crew will consist of 2 or 3 men wearing easily identifiable uniforms with lime green safety vests and their crew truck will have the company name on the side.
- All survey data will be reviewed by a Registered Professional Land Surveyor.
- TWG will provide an electronic file of the survey in AutoCAD Civil 3D Format.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/27/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> McLaughlin Brunson Insurance Agency, LLP 12801 North Central Expressway Suite 1710 Dallas TX 75243	<b>CONTACT NAME:</b> Joe A Bryant	<b>FAX (A/C, No):</b> (214) 503-8899	
	<b>PHONE (A/C, No, Ext):</b> (214) 503-1212	<b>E-MAIL ADDRESS:</b>	
<b>INSURED</b> CP&Y, Inc. d/b/a The Wallace Group  200 West Highway 6 Ste 620 Waco TX 76712	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	INSURER A: Hartford Underwriters Ins. Co.		30104
	INSURER B: Travelers Indemnity Co of Am		25666
	INSURER C: Travelers Indemnity Company		25658
	INSURER D: Charter Oak Fire Insurance Co.		25615
	INSURER E: XL Specialty Insurance Company		37885
INSURER F:			

**COVERAGES****CERTIFICATE NUMBER:** Cert ID 32015**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	<b>GENERAL LIABILITY</b>	Y	Y	PACP1951L895 Valuable Papers \$2,245,000	01/01/2016	01/01/2017	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$ 10,000
	<input checked="" type="checkbox"/> Contractual Liab						PERSONAL & ADV INJURY	\$ 1,000,000
	<input checked="" type="checkbox"/> Severability of Int.						GENERAL AGGREGATE	\$ 2,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:							PRODUCTS - COMP/OP AGG	\$ 2,000,000
<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC								\$
D	<b>AUTOMOBILE LIABILITY</b>	Y	Y	BA3865M855	01/01/2016	01/01/2017	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	\$
								\$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB	Y	Y	CUP2D349003	01/01/2016	01/01/2017	EACH OCCURRENCE	\$ 10,000,000
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE						AGGREGATE	\$ 10,000,000
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$							\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	Y/N	Y	46WEAL0593	01/01/2016	01/01/2017	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
E	<b>Professional Liability</b>	Y		DPR9803144	04/01/2016	04/01/2017	Per Claim	\$ 5,000,000
							Annual Aggregate	\$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The claims made professional liability coverage is the total aggregate limit for all claims presented within the annual policy period and is subject to a deductible. Thirty (30) day notice of cancellation in favor of the certificate holder on all policies. City of Pflugerville, its officers, officials, employees, volunteers, and elected representatives are named as an additional insured on the general, auto and umbrella liability coverages as required by written contract. A waiver of subrogation is shown in favor of the additional insured on all policies as required by written contract. The general, auto and umbrella liability coverages are on a primary and non-contributory basis. RE: Street Reconstruction at Pigeon Forge Drive & Lynn Cove

**CERTIFICATE HOLDER****CANCELLATION**

City of Pflugerville  P.O. Box 589  Pflugerville TX 78691-0589	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  

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ACORD 25 (2010/05)

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