

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
E. Pflugerville Parkway Reconstruction – Colorado Sand to Becker Farms  
E. Pflugerville Parkway / SH130 Intersection Improvements**

STATE OF TEXAS           §  
   §  
COUNTY OF TRAVIS       §

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

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

**I. DEFINITIONS**

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

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

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

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

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on July 29, 2015 and terminate on July 29, 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 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 or his designee. The determination made by City Manager and/or his designee shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Manager and/or his designee.

City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to City Manager and/or his designee; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

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

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager and/or his designee, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed Three hundred eighty five thousand eight hundred ninety dollars and thirteen cents (\$385,890.13) as total compensation, to be paid to Consultant as further detailed in Exhibit 1.

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

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

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

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

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

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

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

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

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

## **VII. TERMINATION**

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

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

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

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

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

7.4.1 Bankruptcy or selling substantially all of company's assets

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

7.4.3 Performing unsatisfactorily

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

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

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

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

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

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

## VIII. NOTICE

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

If intended for City, to:

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

If intended for Consultant, to: Cobb, Fendley & Associates, Inc.  
Attn: Julie D. Hastings, PE  
Department Manager  
505 E. Huntland Drive  
Austin, Texas 78752

## **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 "E. Pflugerville Parkway Reconstruction (Colorado Sand to Becker Farm) and SH130 Intersection Improvements" 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  Products/ Completed Operations  Independent Contractors  Personal Injury  Contractual Liability	1,000,000 per occurrence, 2,000,000 general aggregate  Or  2,000,000 combined single coverage limit	City to be listed as additional insured and provide 30 days notice of cancellation or material change in coverage  City to be provided a waiver of subrogation  City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation
Professional Liability	1,000,000	

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

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

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

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

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

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

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

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

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

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

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

## **X. INDEMNIFICATION**

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

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

10.2 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing. This provision is not applicable to and does not extend Professional Liability Insurance coverage held by the contractor to cover professional engineering services, if any, rendered by City employees.

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



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

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

## **XI. ASSIGNMENT AND SUBCONTRACTING**

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

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: Cox|McLain Environmental Consulting; RPS Klotz Associates; HVJ Associates. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of Pflugerville City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

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

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

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

## **XII. INDEPENDENT CONTRACTOR**

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

## **XIII. CONFLICT OF INTEREST**

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

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

## **XIV. AMENDMENTS**

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

## **XV. SEVERABILITY**

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

terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XVI. LICENSES/CERTIFICATIONS**

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

## **XVII. COMPLIANCE**

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

## **XVIII. NONWAIVER OF PERFORMANCE**

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

## **XIX. LAW APPLICABLE**

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

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

## **XX. LEGAL AUTHORITY**

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

## XXI. PARTIES BOUND

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

## XXII. CAPTIONS

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

## XXIII. INCORPORATION OF EXHIBITS

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

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

## XXIV. ENTIRE AGREEMENT

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

## XXV. MISCELLANEOUS CITY CODE PROVISIONS

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

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

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

**25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State.** Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political

subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

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

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

**CITY OF  
PFLUGERVILLE**

**CONSULTANT**  
Cobb, Fendley & Associates, Inc.

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

Printed Name: Brandon E. Wade

Title: City Manager

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

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

Printed Name: Julie Hastings

Title: Department Manager

Date: July 17, 2015

***Exhibit 1***  
**East Pflugerville Parkway Reconstruction**  
**Design, Bid, and Construction Phase Scope of Services**  
**July 14, 2015**

Cobb, Fendley & Associates (CF) is pleased to present this scope of services for design, bid, and construction phase services for the E. Pflugerville Parkway Street Widening and Reconstruction project. The project will reconstruct approximately 4,800 linear feet of E Pflugerville Parkway from Colorado Sand Drive to Becker Farm Road from the existing 2-lane section to a new 2-lane section with a shared use path. The preliminary engineering phase will evaluate the ultimate 4-lane section with a median. It is our understanding that the City prefers to construct the preliminary 2 lanes within the current existing ROW if feasible. Extension of the culvert at Becker Farm Road may require ROW. This phase will only relocate utilities as required for the first phase of construction, assuming that no ROW will be purchased, unless required for the culvert extension.

The project will also reconstruct approximately 1500 linear feet of Pflugerville Parkway under SH130 to a 6-lane section and design and construct traffic signals at the SB130 and NB130 Frontage Road intersections with SH130.

Below is a detailed description of the scope of services.

**I. Preliminary Engineering**

**A. Schematic Design**

1. Prepare schematic for ultimate 4-lane configuration. CF will prepare a preliminary schematic layout for the ultimate 4-lane configuration with median, including ultimate intersection configurations.
2. Prepare schematic layout for Phase I 2-lane configuration. CF will prepare a preliminary schematic layout for the Phase I 2-lane configuration including one lane in each direction and a shared use path. This proposal assumes that Phase I will be constructed on the south side of the existing ROW and that new ROW acquisition will be deferred to future phases, unless required for the culvert extension near Becker Farm Road.
3. Prepare schematic layout for the widening of Pflugerville Parkway under SH130.
4. Preliminary cross sections. Preliminary cross sections will be prepared to the extent necessary to determine ROW, drainage and slope easement requirements.

**B. Prepare ROW Map (if required).** CF will determine limits of ROW acquisition required for Phase 1 temporary construction, drainage and slope easements. CF will prepare a final overall ROW map depicting the parcel, numbered, with areas of acquisition and remainder area.

**C. Preliminary Drainage Assessment.**

1. Coordinate with Klotz on drainage assessment.
2. Klotz to provide preliminary drainage assessment in accordance with attached scope.

**D. Preliminary Cost Estimate.**

Preliminary Cost Estimate for Phase I. CF will prepare a preliminary cost estimate for the Phase I 2-lane configuration and intersection. This will be at a +/- 15% contingency.

**E. Prepare draft preliminary engineering and final technical memorandums.**

1. Preliminary engineering technical memo will include a brief description of the Phase I and ultimate section, preliminary drainage design, ROW requirements, identification of utilities, and preliminary cost estimate. Preliminary tech memo will not include traffic control schematic or evaluation of rehabilitation section. These will be included in the 60% design phase.
2. Finalize Preliminary Technical Memo. The final deliverable for the preliminary engineering phase will be 3 copies of the preliminary tech memo and exhibits as well as an electronic copy in PDF format.

**F. Geotechnical Study**

HVJ to perform Geotechnical Study and Recommendations in accordance with attached scope.

**G. Review Meetings**

Coordinate and attend project progress and review meetings with City of Pflugerville staff and assume one (1) coordination meeting with TxDOT.

**II. Design Phase**

**A. Plan Production.** CF will submit plans for review at the 60%, 90%, and 100% completion stages. The plans will include the following plan sheets:

1. Cover Sheet (1 sheet).
2. General Notes (1 sheet).
3. Typical Sections (1 sheet).
4. Traffic Control Plans (14 sheets). Traffic control schematic to be provided at 60% submittals. Full traffic control plans will be provided at 90% and 100% submittals.
5. Roadway P&Ps (to include E&S controls). SWPPP not included.
  - a. Reconstruction sheets (14 sheets @ 1" = 20' on 22"x34"). E&S Controls will be called out on the P&P sheets. SW3P will be included as a bid item for Contractor to prepare.
6. Drainage Plans.
  - a. Coordinate with Klotz on Drainage plan sheets.
  - b. Refer to attached scope of services from Klotz for drainage design scope.
7. Boring Logs.
  - a. Coordinate with HVJ on Geotechnical Design recommendations.
  - b. Include boring logs from geotechnical investigation. (1 sheet).
8. Illumination / Signal Design. This scope includes preliminary illumination design.
  - a. CF will provide a plan that shows proposed locations for street lights based on City criteria and provide Oncor standard details for lighting. Oncor will complete the final design.
  - b. CF will coordinate with Oncor on conduit locations and show locations in the construction documents.
  - c. CF will prepare a preliminary traffic signal design layout for 60% plans (2 sheets).

- d. CF will prepare traffic signal design plans for 90% and 100% submittals (2 sheets).
- 9. Intersection Design (1 sheet). Prepare a schematic for the future layout of traffic signals at up to 3 locations along Pflugerville Parkway from Colorado Sand to Becker Farm Road. Include conduit layout for Phase I construction. Drawing sheet shall provide detail for construction of intersection.
- 10. Signage and Striping (7 sheets). To be provided at 90% and 100% submittals.
- 11. Standard Details (2 sheets). To be provided at 90% and 100% submittals.
- 12. Cross Sections (6 sheets). To be provided at 90% and 100% submittals.
- B. Project Manual.** CF will prepare the project manual and contract documents. Front end documents will be provided by the City of Pflugerville. CF will use City of Pflugerville standard specifications where applicable and supplement with City of Austin Standard Specifications and Special Specifications where required. A list of relevant specifications will be included with the 60% submittal. A full project manual will be included with 90% and 100% submittals.
- C. Quantity Take Off / Cost Estimate.** CF will provide a quantity take off and cost estimate at each design submittal with decreasing levels of contingency as design progresses.
- D. QA/QC.** CF will engage senior design personnel to perform outside quality control reviews at each submittal. A Quality Assurance Manager will oversee the QA/QC program for the project.
- E. Coordination / Review Meetings.**
  - 1. This scope assumes that a coordination/review meeting will be attended at the conclusion of each design submittal to review progress and comments. (3 meetings).
  - 2. Coordinate with TxDOT (2 meetings).
  - 3. Prepare driveway permit for TxDOT approval for intersection improvements.
- F. Environmental Permitting.**
  - 1. Coordinate with CMEC on environmental documentation.
  - 2. Refer to the attached scope of services from CMEC for scope required for environmental permitting.
- G. Prepare submittals.** CF will deliver 3 sets of 11"x17" plans and 3 project manuals for each submittal as well as an electronic copy in PDF format.

### III. Survey

The area will encompass topographic route survey from ROW to ROW (plus envelope data of the proposed ROW acquisition area, approx. 150 foot corridor) and including approximately 300 feet east and west at each end of the project to include topographic, drainage, and utility features that will impact the roadway design from Colorado Sand to Becker Farm Road (approx. 4,700 linear foot corridor); and 300 feet east of the SH 130 north bound access road to 650 feet west of the SH 130 south bound access road (approx. 1,700 linear foot corridor).

The Engineer may prepare ROW acquisition metes and bounds for Phase 1. This proposal assumes up to four (4) parcels.

#### A. Topographic Survey.

- 1. Pflugerville's property acquisition consultant will prepare a letter requesting Right-of-Entry (ROE) onto private properties for all field investigations for the



affected properties. An Excel spreadsheet of the names, addresses and response will be logged and updated as needed. This file will become one of the project deliverables. This scope assumes that others will coordinate with property owners to obtain ROE. CF will provide scope of services and date of field activities to the property acquisition consultant.

2. CF will recover, verify, and utilize established control from work performed previously in the immediate area for Pflugerville Parkway west of Colorado Sand. CF will set primary control monuments at strategic locations at the east and west limits of the project as inter-visible pairs with no greater than 1500 feet between each monument. The values will be relative to NAD 83 Texas State Plane Coordinates, Central Zone, 4203 (scaled to surface values). A “combined scale factor” will be derived for coordinate conversion purposes based on an average CSF of all primary point coordinates. Vertical Datum will be GPS derived orthometric heights.
  3. CF will establish a vertical control system for the project. A benchmark system will be established at approximately 1000’ intervals along the project route. Differential level lines will be conducted for establishing the elevation at each benchmark. A list of benchmarks with coordinates (to be used for locating purposes only), descriptions, and reported elevations will be included in the project deliverables.
  4. CF will place a utility location request with “One Call” system and the City of Pflugerville Public Works, 512-990-6400, for designating of the underground utilities within the project limits.
  5. CF will collect spot elevations and grade breaks along the project route at intervals conducive to precise DTM generation. The data will include curbs, gutters, culverts, driveways, portions of parking areas, visible utilities and/or “one call” markings, drainage features, trees (ornamentals and/or hardwood trees 8” and up dbh) and any improvements within the defined area. CF will generate a 1 foot contour interval DTM file of the project area. NOTE: reasonable attempts for measurements at silted drainage structures will be performed. Significant excavation of silt could result in seeking of additional fees for data acquisition.
- B. Permanent Metes & Bounds Descriptions (assumes 4)
1. CF will perform sufficient research of property records from various sources to develop a “working sketch” exhibit of the record ROW and/or property configurations (deed plots) for adjoining tracts to the project that are required for Phase 1 construction.
  2. CF will perform sufficient field work to reasonably attempt recovery of property corners, highway monuments, or other evidence along the project route to aid in the analysis and reconstruction of the tracts for preparation of up to four (4) individual ROW acquisition package consisting of a metes and bounds description and survey plat. Utilizing title abstracts as provided by the City of

Pflugerville or their agent, CF will address any easements that may affect the acquisition parcel.

3. CF will monument the individual parcels with iron rods and aluminum. The City will provide the aluminum caps stamped "Pflugerville ROW"

#### **Survey Deliverables**

1. ASCII point file
2. AutoCAD file with contours in DWG format
3. Digital Terrain Model with associated TIN file
4. Preliminary "working sketch" ROW exhibit
5. One (1) final ROW Plan Map
6. Two (2) sets of stamped parcel plats, metes and bounds descriptions, and QC closure sheets.
7. Horizontal and vertical control layout exhibit
8. ROE Spreadsheet

#### **IV. Utility Coordination**

Utility adjustment coordination includes utility coordination meetings with individual utility companies, communication and coordination with utilities, conflict assessment and analysis, and preparation of utility agreements, including reimbursable and non-reimbursable. All utility coordination activities will be in accordance with the City of Pflugerville Guidelines and TxDOT UAR, where applicable.

Utilities anticipated on the project include City of Pflugerville, AT&T Texas, Suddenlink Communications, Manville WSC, Atmos Gas, Time Warner Cable, MCI/Verizon Business, and Oncor (electric distribution and transmission).

*For purposes of this scope preparation, it is assumed that there will be no right-of-way acquisition, unless required for culvert extension, and only utilities in conflict with the interim design section will be relocated.*

Utility coordination services include the following:

- A. **Develop Utility Contact List.** CF will establish contact with existing Utility Companies (as identified above) within and adjacent to the Project and create a utility contact list. This list will be maintained throughout the project.
- B. **Written Notification Letters.** CF will prepare and mail written notification letters to known Utility Owners (as identified above) within and adjacent to the project site at each of the design milestones (initial, preliminary, 60%, 90%). A CD will be included with the letter containing milestone design plan sheets (\*.pdf and \*.dwg format). The initial notification will be sent via certified mail.
- C. **Utility Coordination Meetings (2 total).** CF will establish contact with existing Utility Companies (as identified above) within and adjacent to the Project and set up a group utility coordination kick-off meeting to discuss design concepts and options for construction. This meeting will be held between preliminary design

and 60% design submittal and will include meeting preparation, travel time, meeting and follow-up meeting minutes. CF will set the agenda for the coordination meeting as directed by the City.

CF will host a second group utility coordination meeting between 60% and 90% design submittal and will include meeting preparation, travel time, meeting and follow-up meeting minutes. CF will set the agenda for the coordination meeting as directed by the City.

- D. Utility Follow-up Correspondence.** CF will continue coordination with each identified Utility Owner (8 estimated) post coordination meetings via phone calls and emails. This communication will allow for follow-ups on any action items discussed at the meeting, status of relocation design, assisting with questions on proposed design features, coordination of Utility Owner needs to complete utility relocation design, and items needed to keep project on schedule. Copies of all correspondence and documentation will be maintained and provided to the City.
- E. Existing Utility Layout.** CF will maintain a utility layout in the latest version of AutoCAD. This layout shall include existing utilities which are to remain in place or be abandoned. This layout will be utilized to assist in conflict assessment, monitor necessity of relocations and evaluate alternatives.
- F. Utility Conflict Assessment.** CF will determine which utilities will conflict with roadway construction, City guidelines, or the TxDOT “Utility Accommodation Rules” (UAR), as applicable, and make the utility company aware of these conflicts. We will be reviewing for direct conflicts with proposed roadway improvements, constructability conflicts, and conflicts with current rules/guidelines. A detailed list will be prepared at each of the design milestones and will be communicated with the Utility Owners and design team.
- G. Evaluate Relocation Alternatives.** CF will evaluate alternatives in the adjustment of utilities, balancing the needs of both the City and the Utility, and coordinating relocation with roadway improvements and other utilities.
- H. Review Utility Relocation Plans.** CobbFendley shall review utility relocation plans to ensure compliance with City design criteria, UAR (where applicable), and to ensure that the proposed relocation will not conflict with proposed roadway improvements. Relocation plan reviews are for compliance with proposed location data. The responsibility for quality and accuracy of utility adjustment plans will remain with the Utility Company. There are 2 utility relocation plans reviews estimated for this project.
- I. Utility Schedule and Sequencing.** CF will review the utility adjustment schedule in relation to construction sequencing and schedule for timely relocation of the utility.
- J. Utility Certifications.** CobbFendley will provide a list of any outstanding utility issues prior to project construction.

Utility adjustment monitoring and verification and utility payment processing are not included in this scope of services.

Utility coordination services will be provided through final design for each utility. Construction phase coordination is not included in this proposal. If these services are requested they can be performed as an additional services on a time and material basis.

**V. Bid Phase**

- A. Advertisement.** This scope assumes that the City will prepare the advertisement, coordinate with the newspaper(s) and pay any applicable fees.
- B. Conduct Pre-Bid Meeting.** CF will prepare agenda and conduct a pre-bid meeting. This scope includes preparation of agenda and minutes for this meeting.
- C. Respond to Contractor Questions.** CF will respond to Contractor questions regarding clarifications to the plans.
- D. Addenda.** CF will prepare addenda resulting in clarification questions from Contractors. This scope assumes up to two (2) addenda. These will be distributed by the bidding assistance center.
- E. Bid Opening.** CF will conduct the bid opening. This includes opening, reading and verification of compliance of bids and compilation of the Pencil Bid Tabs.
- F. Bid Tab.** CF will take compliant bids and extend the bid tabs to verify accuracy and determine the apparent low bidder.
- G. Letter of Recommendation.** CF will check references and verify qualifications of the apparent low bidder and issue a letter for Recommendation of Award to the City. This scope does not include assistance with execution of the bid documents.

This scope assumes that a bidding assistance center will be used for bid phase and the City will be responsible for uploading plans, project manual, and addenda onto the bidding assistance center and will retain a hard copy at City offices. CF will not be responsible for plan distribution.

**VI. Construction Phase.**

- A. Pre-Construction Meeting.** CF will prepare agenda and conduct the pre-construction meeting. This scope includes preparation of agenda and minutes for this meeting.
- B. Review Shop Drawings.** CF will review Contractor submittals. This scope assumes that the Contractor's submittals will be in accordance with the contract documents, and that the contract documents will include the provision that submittals will only be reviewed twice. Subsequent reviews will be conducted at the expense of the Contractor. Scope assumes thirty (30) submittals. CF will maintain the submittal log.
- C. Requests for Information.** CF will respond to Contractor requests for information. This scope assumes seven (7) requests for information. CF will issue drawing revisions as required. Drawing revisions resulting from change of scope of project will be prepared as an additional service.
- D. Site Visits.** CF will attend monthly site visits / construction meetings. This scope assumes twelve (12) months for construction. CF is not performing

- construction inspection and will be visiting the site to observe general conformance with contract documents and evaluate issues should they arise.
- E. **Change Orders.** CF will assist the City in evaluating and preparing change order documentation to address construction / quantity changes. Scope assumes two (2) change orders.
  - F. **Pay Applications.** CF will review pay applications. City inspector will verify quantities. CF will approve pay applications based on quantities reported by the Inspector. Assumes twelve (12) pay applications.
  - G. **Final Walkthrough.** CF will attend the final walkthrough and review the final punch list prepared by the City Inspector.
  - H. **Record Drawings.** CF will prepare record drawings based on Contractor redlines as verified by the City Inspector.
  - I. **Construction Material Testing.** Refer to attached proposal from HVJ & Associates for material testing scope of services.

These design, bid, and construction phase services can be performed at the lump sum fee as described below.

<b>East Pflugerville Parkway Widening and Reconstruction Design, Bid, and Construction Phase Services</b>	
Cobb Fendley	\$263,643.00
Design and Bid	\$164,488.00
Survey	\$44,023.00
Utility Coordination	\$18,708.00
Construction	\$36,424.00
Cox/McLain (Environmental)	\$19,411.13
Klotz (Hydraulics & Hydrology)	\$67,836.00
HVJ (Geotechnical)	
Geotechnical Investigation / Design	\$27,085.00
Construction Testing	\$35,000.00
<b>Total Design, Bid and Construction Phase</b>	<b>\$385,890.13</b>

## VII.

### **Subsurface Utility Engineering (Optional)**

- A. **Level B (Designating).** This scope assumes that up to 5,500 linear feet of Level B Designating. Designate means to indicate the horizontal location of underground utilities by the application and interpretation of appropriate non-destructive surface geophysical techniques and reference to established survey control. Designate (Quality Level B) Services are inclusive of Quality levels C and D. Designation services include the following:
  1. Compile "As Built" information from plans, plats and other location data as provided by the utility owners.
  2. Designate, record, and mark the horizontal location of the existing utility

facilities and their service laterals to existing buildings using non-destructive surface geophysical techniques. No storm sewer facilities are to be designated. A non-water base paint, utilizing the APWA color code scheme, will be used on all surface markings of underground utilities.

3. Correlate utility owner records with designating data and resolve discrepancies using professional judgment. A color-coded composite utility facility plan with utility owner names, quality levels, line sizes and subsurface utility locate (test hole) locations, if applicable, will be prepared and delivered to the City. It is understood by both the Engineer and the City that the line sizes of designated utility facilities detailed on the deliverable are from the best available records and that an actual line size is normally determined from a test hole vacuum excavation. A note must be placed on the designate deliverable only that states "lines sizes are from best available records". All above ground appurtenance locations must be included in the deliverable to the City. This information will be provided as a hard copy.
  4. Clearly identify all utilities that were discovered from quality levels C and D investigation, but cannot be depicted in quality level B standards. These utilities must have a unique line style and symbology in the designate (Quality Level B) deliverable.
- B. Level A (Test Holes).** This scope assumes up to three (3) test holes at 0' to 5' depth and up to two (2) test holes at 5' to 8' depth. Locations of test holes will be determined during preliminary design phases. Level A services include the following:
1. Coordinate with utility owner inspectors as may be required by law or utility owner policy.
  2. Neatly cut and remove existing pavement material, such that the cut not to exceed 0.10 square meters (1.076 square feet) unless unusual circumstances exist.
  3. Measure and record the following data on an appropriately formatted test hole data sheet that has been sealed and dated by the Engineer:
    - a. Elevation of top and bottom of utility tied to the datum of the furnished plan.
    - b. Identify a minimum of two benchmarks utilized. Elevations shall be within an accuracy of 15mm (.591 inches) of utilized benchmarks.
    - c. Elevation of existing grade over utility at test hole location.
    - d. Horizontal location referenced to project coordinate datum.
    - e. Outside diameter of pipe or width of duct banks and configuration of non-encased multi-conduit systems.
    - f. Utility facility material(s).
    - g. Utility facility condition.
    - h. Pavement thickness and type.
    - i. Coating/Wrapping information and condition.
    - j. Unusual circumstances or field conditions.
  4. Excavate test holes in such a manner as to prevent any damage to wrappings, coatings, cathodic protection or other protective coverings and features.
  5. Be responsible for any damage to the utility during the locating process. In the event of damage, the Engineer shall stop work, notify the appropriate utility facility owner, the City and appropriate regulatory agencies. The regulatory agencies include, but are not limited to the Railroad Commission of Texas and

the Texas Commission on Environmental Quality. The Engineer will not resume work until the utility facility owner has determined the corrective action to be taken. The Engineer shall be liable for all costs involved in the repair or replacement of the utility facility.

6. Back fill all excavations with appropriate material, compact backfill by mechanical means, and restore pavement and surface material. The Engineer shall be responsible for the integrity of the backfill and surface restoration for a period of three years. Install a marker ribbon throughout the backfill.
7. Furnish and install a permanent above ground marker directly above center line of the utility facility.
8. Provide complete restoration of work site and landscape to equal or better condition than before excavation. If a work site and landscape is not appropriately restored, the Engineer shall return to correct the condition at no extra charge to the City.
9. Plot utility location position information to scale and provide a comprehensive utility plan signed and sealed by the responsible Engineer.
10. Return plans, profiles, and test hole data sheets to the City.

These service can be performed at a unit fee as described below:

E. Pflugerville Parkway	
Subsurface Utility Engineering Services	
Task	Unit Cost
Level B Designation	\$1.48 / linear foot
Test Hole (0' – 5')	\$1,125 / hole
Test Hole (5' – 10')	\$1,580 / hole
Expenses (estimate)	\$204
Total estimated SUE	\$12,659