

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
Pflugerville Community Development Corporation  
Engineering Services  
For  
Renewable Energy Park**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

This Agreement is entered into by and between the Pflugerville Community Development Corporation, a Texas Economic Development Corporation (“PCDC”) acting by and through its Interim Executive Director Floyd Akers, on the \_\_\_\_ day of \_\_\_\_\_, 2011 and DCS Engineering by and through its President, Darren C. Strozewski (“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:

“PCDC” 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 director or acting director of the Pflugerville Community Development Corporation.

“Satisfactory” shall mean all professional engineering and related services performed or furnished by Engineer under this Agreement meet the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on the date of this agreement signed by PCDC and terminate on March 15, 2012 or upon completion of the scope of services for this Agreement.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, PCDC retains the right to terminate this Agreement at the expiration of each of PCDC'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 entitled Compensation and as further detailed in Attachment No. 1.

All work performed by Consultant hereunder shall be performed to the satisfaction of the Director of PCDC. The determination made by Director shall be final, binding and conclusive on all Parties hereto. PCDC shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. PCDC 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 Director; however, PCDC shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should PCDC 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 Director, of all services and activities set forth in this Agreement, PCDC agrees to pay Consultant a lump sum fee of sixty-six thousand and ninety dollars (\$66,090) as total compensation, to be paid to Consultant as further detailed in Attachment No. 1.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by PCDC. 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 PCDC Director by passage of an ordinance therefore.

4.3 Final acceptance of work products and services require written approval by PCDC. The approval official shall be Director. Final payment will be made to Consultant following written approval of the final work products and services by Director. PCDC 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 in whole by Consultant pursuant to the provisions of this Agreement is the exclusive property of PCDC; 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, PCDC has the right to use all such writings, documents and information as PCDC desires, without restriction.

## 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 PCDC at their respective offices, at all reasonable times and as often as PCDC 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 PCDC 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 PCDC shall have access to any and all such documents at any and all times, as deemed necessary by PCDC, during said retention period. PCDC may, at its election, require Consultant to return said documents to PCDC prior to or at the conclusion of said retention. Consultant will be entitled to retain copies of any and all material produced related to this agreement for record purposes.

6.3 Consultant shall notify PCDC, 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 PCDC 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 30 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, PCDC 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, 7.4.2 or 7.4.3, same shall be considered an event of default. PCDC 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, PCDC shall have the right, without further notice, to terminate this Agreement in whole or in part as PCDC deems appropriate, and to contract with another consultant to complete the work required in this Agreement. PCDC 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 PCDC 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 PCDC or to such person(s) or firm(s) as the PCDC may designate, at no additional cost to PCDC, 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 PCDC, 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 PCDC 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 PCDC its claims, in detail, for the monies owed by PCDC 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 PCDC 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 PCDC's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of PCDC's remedies, nor shall such termination limit, in any way, at law or at equity, PCDC'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 PCDC, to:

PCDC  
Attn: Executive Director  
203 E. Main  
Suite E.  
Pflugerville, Texas 78660

If intended for Consultant, to:

DCS Engineering, LLC  
Attn: Mr. Darren C Strozewski, P.E.  
6000 Shepherd Mountain Cove, #2003  
Austin, Texas 78730

## IX. [Reserved]

## X. INSURANCE

10.1 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 PCDC, which shall be clearly labeled "PCDC Renewable Energy Park" 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 PCDC 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 PCDC. The PCDC shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by PCDC. No officer or employee, other than the PCDC Attorney, shall have authority to waive this requirement.

10.2 The PCDC 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 PCDC Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will PCDC allow modification whereupon PCDC may incur increased risk. Any increase in cost of coverage for modifications required by the City shall be borne by the City. Cost of coverage increases due to the Engineer's claims history or general cost increases for coverage shall be borne by the Engineer.

10.3 A Consultant's financial integrity is of interest to the PCDC; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the PCDC, 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 except for the Professional Liability which is written on a claims made 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:

- A. The limits of liability for the insurance required by the Agreement are as follows:
  - 1. By Engineer:
    - a. Workers' Compensation: Statutory
    - b. Employer's Liability -
      - 1) Each Accident: \$1,000,000
      - 2) Disease, Policy Limit: \$1,000,000
      - 3) Disease, Each Employee: \$1,000,000
    - c. Commercial General Liability --
      - 1) Each Occurrence: \$1,000,000
      - 2) General Aggregate: \$2,000,000
      - 3) Products/Completed Operations Aggregate: \$2,000,000
      - 4) Personal & Advertising Injury: \$1,000,000
    - d. Excess or Umbrella Liability --

- 1) Each Occurrence: \$1,000,000
- 2) General Aggregate: \$1,000,000

e. Automobile Liability -

- 1) Combined Single Limit  
Each Accident \$1,000,000

f. Professional Liability --

- 1) Each Claim: \$1,000,000
- 2) Annual Policy Aggregate: \$1,000,000

B. Additional Insureds

- 1. Engineer and the Consultants identified in this Agreement for the Specific Project shall be listed on City's policies of insurance as additional insured.

10.4 The PCDC 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 PCDC, 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 PCDC at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes requested prior to the effective date of this agreement.

PCDC  
Attn: Executive Director  
203 E. Main, Suite E  
Pflugerville, Texas 78660

10.5 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 PCDC, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the PCDC, with the exception of the workers' compensation and professional liability policies;
- Workers' compensation and employers' liability policies shall be endorsed to provide a waiver of subrogation in favor of the PCDC.

- Provide thirty (30) calendar days advance written notice directly to PCDC of any suspension, cancellation, or non-renewal of coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.6 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 PCDC. PCDC 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.

10.7 In addition to any other remedies the PCDC 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 PCDC 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.

10.8 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.

10.9 It is agreed that Consultant's Commercial General Liability, Auto Liability and Excess or Umbrella Liability shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the PCDC of Pflugerville for liability arising out of operations under this Agreement.

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

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

## **XI. INDEMNIFICATION**

11.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the PCDC and the elected officials, employees, officers, directors, volunteers and representatives of the PCDC, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature including but not limited to, personal or bodily injury, death and property damage, made upon the PCDC directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any 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 PCDC, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND PCDC 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 PCDC UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

11.2 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 PCDC in writing within 24 hours of any claim or demand against the PCDC 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 PCDC 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.

11.3 Defense Counsel - PCDC 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 PCDC, unless (i) such right is expressly waived by PCDC in writing or (ii) the insurance policy which provides coverage to CONSULTANT for such claim reserves the right to select the insurance company. CONSULTANT shall retain PCDC approved defense counsel within seven (7) business days of PCDC's written notice that PCDC is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, PCDC shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by PCDC. PCDC 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.

11.4 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.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 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.

12.2 It is PCDC's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the subcontractors in the performance of this Agreement when specified in Attachment No. 1 or subsequent Amendments to this agreement. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by PCDC Director

12.3 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 PCDC, 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. PCDC 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 PCDC Director.

12.4 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 PCDC Director, 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.

12.5 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, PCDC 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 PCDC 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 PCDC, which PCDC sustains as a result of such violation.

### **XIII. INDEPENDENT CONTRACTOR**

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of PCDC; 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 PCDC 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 PCDC and Consultant. The parties hereto understand and agree that the PCDC 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 PCDC.

#### **XIV. RESERVED**

#### **XV. CONFLICT OF INTEREST**

15.1 Consultant acknowledges that it is informed that the City of Pflugerville prohibits a PCDC 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 PCDC. An officer or employee has a “prohibited financial interest” in a contract with the PCDC or in the sale to the PCDC of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a PCDC 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 PCDC contract, a partner or a parent or subsidiary business entity.

15.2 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 PCDC. Consultant further warrants and certifies that it has tendered to the PCDC a Discretionary Contracts Disclosure Statement in compliance with the City of Pflugerville’s Ethics Code.

#### **XVI. 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 PCDC and Consultant.

#### **XVII. 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 of Pflugerville 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.

#### **XVIII. 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.

#### **XIX. 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.

#### **XX. 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 PCDC, such changes must be approved by the PCDC Director, 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.

#### **XXI. LAW APPLICABLE**

**21.1 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.**

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

#### **XXII. 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.

#### **XXIII. 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.

#### XXIV. 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.

#### XXV. 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:

#### XXVI. 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 XVI. Amendments.

#### XXVII. MISCELLANEOUS PCDC CODE PROVISIONS

**27.1 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.

**27.2 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.

**27.3 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.

**27.4 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.

**27.5 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.

**PCDC**

**CONSULTANT**  
DCS Engineering, LLC

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

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

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Printed Name: **Darren C Strozewski, P.E.**  
Title: **President**  
Date: **5/12/11**

Approved as to Form:

\_\_\_\_\_  
PCDC Attorney

**ATTACHMENT NO. 1**  
**PCDC**  
**Renewable Energy Park Project**

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In accordance with the Professional Services Agreement for Renewable Energy Park between PCDC and Engineer for Professional Services, PCDC and Consultant agree as follows:

**1. Specific Project Data**

- A. Title: Renewable Energy Park – Wastewater Lift Station and Forcemain
- B. Description: Perform Ultimate Lift Station Configuration Analysis, Final Design, Bidding, and Construction Administration services for one wastewater lift station with emergency generator, approximately 3,400 feet of 16-inch diameter forcemain, and installation of overhead power to the lift station designed to serve the 160 acre PCDC tract of land identified as the Renewable Energy Park located at the intersection of Pecan Street and SH 130. Provisions shall be included in the lift station, forcemain, and overhead power designs to accommodate wastewater service to the approximate 150 acre tract of land to the south which abuts SH 130 and Cameron Road.
- C. The Engineer's opinion of most probable construction cost is \$685,000 which includes the emergency generator, 900 ft of overhead power and service drop to the lift station, forcemain, and all facilities for the lift station within a 50 ft by 50 ft lift station site. Other electrical service extensions into the PCDC property are assumed to be installed at one time under a separately tracked overall project cost for cost effectiveness/efficiency. This cost also excludes an all weather access road to the proposed site (route has not been determined).
- D. Ultimate Lift Station Configuration Analysis: Three sets of calculations will be performed for this lift station given its unique circumstances to maintain long term service to its service area for discharging to three different locations during its service life.

**2. Services of Engineer**

The Engineer shall provide the following scope of work:

- A. Ultimate Lift Station Configuration Analysis Phase
  - 1. Reviewing available data and consulting with the owner to clarify and define the owner's requirements for the project.
  - 2. Advising the owner as to the necessity of providing or obtaining from others additional data or services. These additional services may include reconnaissance surveys, topographic surveys, geotechnical investigations and consultations.
  - 3. Identifying and analyzing requirements of governmental authorities including TCEQ having jurisdiction to approve the design of the project.
  - 4. Prepare a preliminary engineering plan on the Project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the Owner, including preliminary layouts and cost estimates, and setting forth clearly the Engineer's recommendations.
  - 5. Phase I Pump Conditions: Perform required calculations and analysis to model the proposed forcemain connection to the existing 24" forcemain from Weiss Lane Lift Station. Select pumps that allow both lift stations to pump their respective required flows into the 24" forcemain at the same time.
  - 6. Phase II Pump Conditions: Perform required calculations and analysis to model the proposed and future forcemain which discharges directly into the Central WWTP headworks after the 24" forcemain from Weiss Lane is converted into a reclaimed waterline, currently estimated to be in

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2019. Select pump, impeller, or motor sizes to accommodate this condition without changing pumps, if possible.
7. Phase III Pump Conditions: Perform required calculations and analysis to model a future forcemain which crosses SH 130 and discharges into a gravity line that flows to the future Wilbarger Creek Regional Wastewater Treatment Facility. This condition will need to be met as the City approaches build out and the resulting design capacity of the Central WWTP of 5.85 mgd. As part of the Wastewater Master Plan, the flow from the PCDC property and 150 acre tract to its south can't obtain ultimate service from the Central WWTP.

**B. Final Design Phase**

1. Project Management: Provide the project management and administrative support services required to efficiently and effectively accomplish the specified scope of services.
2. The proposed scope of work includes the design, plan production, and specification production related to the forcemain required to connect this lift station to the collection system.
3. Attend preliminary meeting with the Owner, City Operators, and other interested parties regarding the Project.
4. Establish the scope of any soil and foundation investigations or any special surveys and tests which, in the opinion of the Engineer, may be required for design; assist the Owner in arranging for such work to be done, for the Owner's account. Existing geotechnical investigation has been reviewed and contains the required information for the design.
5. Furnish to the Owner, where required by the circumstances of the assignment, the engineering data necessary for applications for routine permits by local, state, and federal authorities (as distinguished from detailed applications and supporting documents for government grants-in-aid, or for planning advances).
6. Prepare plans and specifications (contract documents) for construction authorized by the Owner. Half size drawings (i.e. 11" x 17" drawings) and contract document (i.e. specification book with Division 0 through 16) will be produced for this project. Plans and specifications shall be per DCS standard title block and specification page formatting.
7. Prepare detailed engineers opinion of most probably construction cost. The Engineer shall not be required to guarantee the accuracy of these estimates.
8. Furnish the Owner two copies of approved contract documents including notices to bidders and proposal forms.
9. Structural and Electrical engineering design required for the plans and specifications is included in this task.
10. Coordinate with electrical service provider for a new service drop and overhead power installation to the proposed lift station site for three phase 480 volt power. Cost of new service is included in the above noted project cost.
11. Platting of lift station site is specifically excluded from this scope of work and is assumed to be included with the plat for the entire development.

**C. Bidding Phase**

1. Assist the Owner in receiving bids from General Contractors for this project. Work will include conducting a prebid meeting with the Contractors to review the scope of work as presented on the contract documents described above. Addenda to the bid documents shall be generated as required to



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address Contractor comments or questions. Additional costs for advertising are not included in this fee proposal and will be billed separately, if required.

2. Supply up to 20 half size bid sets for distribution to Contractors.
3. DCS will distribute plan sets, maintain the plan holder and distribution lists, and collect plan set deposits (checks will be made payable to PCDC).
4. Assist the Owner in the opening and tabulation of bids for construction of the Project, and consult with the Owner as to the proper action to be taken, based on the engineering considerations involved.
5. Assist in the preparation of formal Contract Documents, perform the bid tabulation, and letter of recommendation of award for Contractor.

**D. Construction Administration Phase**

1. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data which the contractor submits. This review is for the benefit of the Owner and covers only general conformance with the information given by the Contract Documents. The contractor is to review and stamp his approval on submittals prior to submitting to Engineer, and review by the Engineer does not relieve the contractor of any responsibility such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity to construct a complete and workable facility in accordance with Contract Documents.
2. Administer four monthly construction status meetings and conduct site visit on the same day. Review and recommend for approval Contractor pay request applications.
3. Conduct, in company with the Owner, a substantial and final inspection of the Project for compliance with the Contract Documents, and submit recommendations concerning project status, as it may affect Owner's final payment to the contractors.
4. Prepare as-built drawings and provide two copies to Owner.
5. Coordinate with electrical service provider for timely installation of the new service drop and overhead power to the proposed lift station site for three phase 480 volt power.
6. Resident Project Representative services are specifically excluded from this scope of work but can be provided if required. Therefore, daily or weekly inspection of the work will not be conducted by DCS. DCS has assumed that the City of Pflugerville's Resident Project Representatives will be performing these duties on this project.

**3. Owner's Responsibilities**

- A. Owner shall have those responsibilities set forth in the Professional Services Agreement for Renewable Energy Park

**4. Times for Rendering Services**

- A. Consultant shall have those responsibilities set forth in Article II of the Professional Services Agreement.
- B. The above referenced services for final design will be performed over two months with a notice to proceed assumed to be issued by May 15, 2011; two months for bidding and Board award; and six months for construction/construction administration. The total project duration will be 10 months and conclude in March 2012.

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5. **Payments to Engineer**

A. Owner shall pay Engineer for services rendered as follows:

DCS Engineering, LLC will invoice monthly for services rendered the preceding month based on the percentage of services completed. PCDC shall pay DCS Engineering, LLC within 30 days for the services rendered and invoiced.

B. Lump Sum Fee

We propose to provide the services described above on a lump sum fee basis of \$66,090. Our proposed fees for the above scope of work are shown by phase in the below table. The above referenced services will be performed within the duration discussed above.

**Fee Schedule**

<b>Task</b>	<b>Description</b>	<b>Lump Sum</b>
410	Ultimate Lift Station Configuration Analysis	\$6,600
500	Final Design	\$35,413
600	Bidding	\$7,280
700	Construction Administration	\$10,934
800	Electrical Design (Coastal Bend Consultants)	\$3,618
805	Electrical Construction Phase (Coastal Bend Consultants)	\$1,285
810	Electrical Inspection (Charlie's Inspection Services)	\$960
	<b>Total Lump Sum Fee</b>	<b>\$66,090</b>

C. The terms of payment are set forth in Article IV of the Professional Services Agreement and Attachment No. 1.

6. **SubConsultants:**

A. Electrical Engineering – Coastal Bend Consultants

B. Electrical Inspection – Charlie's Inspection Services

7. **Other Modifications to Agreement:**

None