

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
TRAFFIC SIGNAL SYSTEM IMPROVEMENT IMPLEMENTATION**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

This Agreement is entered into by and between the City of Pflugerville, a Texas Municipal Corporation (“City”), acting by and through its City Manager, and **LJA Engineering, Inc.** (“Consultant”), both of which may be referred to herein singularly as “Party” or collectively as the “Parties.”

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

**I. DEFINITIONS**

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

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

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

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

**II. TERM**

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

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation

**III. SCOPE OF SERVICES AND PROJECT SCHEDULE**

Consultant agrees to provide the services described in this Article III entitled Scope of Services and Project Schedule in exchange for the compensation described in Article IV. Compensation. Scope of Services and Project Schedule are detailed in **Attachment 1** which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of the City Manager. The determination made by City Manager shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Manager. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant’s work not be satisfactory to City Manager; however, City shall have no obligation to terminate and

may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

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

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed **Two hundred fifty-eight thousand, four hundred sixty dollars and no cents (\$258,460.00)** as total compensation, to be paid to Consultant as further detailed in **Attachment 1**.

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

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

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

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

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

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

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

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

questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

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

## **VII. TERMINATION**

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

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

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

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

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

7.4.1 Bankruptcy or selling substantially all of company's assets

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

7.4.3 Performing unsatisfactorily

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

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

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

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

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

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

## VIII. NOTICE

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

If intended for City, to: City of Pflugerville  
Attn: Patricia A. Davis, MSCE, P.E.  
City Engineer  
P.O. Box 589  
Pflugerville, Texas 78660

If intended for Consultant, to: LJA Engineering, Inc.  
Attn: Kenneth G. Schrock  
Senior Vice President  
2700 La Frontera Blvd., Suite 150  
Round Rock, Texas 78681

## **IX. INSURANCE**

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled “**Traffic Signal System Improvements Implementation**” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

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

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

City of Pflugerville

### **Insurance Requirements**

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

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

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

Type of Insurance	Amount of Insurance	Provisions
Commercial (Public) Liability to include coverage for: Premises/Operations	General 1,000,000 per occurrence, 2,000,000 general aggregate  Or	City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage
Products/ Completed Operations	2,000,000 combined single coverage limit	City to be provided a waiver of subrogation
Independent Contractors		City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Personal Injury		
<b>Contractual Liability</b>		
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation
Professional Liability	1,000,000	

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

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

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

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

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

- Provide for an endorsement that the “other insurance” clause shall not apply to the City of Pflugerville where the City is an additional insured shown on the policy;
- Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

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

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

## **X. INDEMNIFICATION**

**10.1 CONSULTANT covenants and agrees to INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the CONSULTANT or the CONSULTANT’s agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such acts may include personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT’S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee,**

**consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.**

10.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

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

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

10.5 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker’s compensation or other employee benefit acts.

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

## **XI. ASSIGNMENT AND SUBCONTRACTING**

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



11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: CJ Hensch & Associates Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City prior to the provision of any services by said subcontractor.

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

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

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

## **XII. INDEPENDENT CONTRACTOR**

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

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

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

13.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it will comply with the City’s Ethics Code.

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

### **XIV. AMENDMENTS**

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

### **XV. SEVERABILITY**

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

## **XVI. LICENSES/CERTIFICATIONS**

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

## **XVII. COMPLIANCE**

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

## **XVIII. NONWAIVER OF PERFORMANCE**

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

## **XIX. LAW APPLICABLE**

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

19.2 Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction in Travis County, Texas.

## **XX. LEGAL AUTHORITY**

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

## **XXI. PARTIES BOUND**

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

## **XXII. CAPTIONS**

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

## **XXIII. INCORPORATION OF EXHIBITS**

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be incorporated herein for all purposes:

Attachment 1 - Scope of Services, including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule

## **XXIV. ENTIRE AGREEMENT**

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

## **XXV. MISCELLANEOUS CITY CODE PROVISIONS**

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

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

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

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

or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

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

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

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

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

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

**CITY OF  
PFLUGERVILLE**

**LJA ENGINEERING, INC.**

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

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

Printed Name: Sereniah Breland

Printed Name: Kenneth G. Schrock

Title: City Manager

Title: Senior Vice President

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

Date: 9/14/2022

APPROVED AS TO FORM:

  
\_\_\_\_\_

Charles E. Zech  
City Attorney

DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

**ATTACHMENT 1  
Scope of Services**

**SERVICES TO BE PROVIDED BY THE ENGINEER**

**Projects:** Traffic Signal System Improvements Implementation  
**City:** Pflugerville  
**County:** Travis  
**Location:** Various intersections and corridors (Attachment A)

**General Work Description:** LJA Engineering, Inc. (“LJA”) is pleased to provide the City of Pflugerville with scope of services & fee for Traffic Signal System Improvements Implementation project for the intersections listed in Attachment A.

The work to be performed by the Engineer shall consist of providing engineering services for the following tasks for a total lump sum fee of **\$258,460.00** as described in details for all tasks below :

- Traffic Signal Retiming along 5 corridors for a total of 18 intersections
- Left Turn Signal Indication Modification
- Programming of Traffic Signal Controllers
- Programming of MMUs
- Design and preparation of construction plans for ADA compliant curb ramps
- Intersection pedestrian facility upgrade for ADA compliant Accessible Pedestrian Signals (APS)

**A. Project Management Plan**

LJA will develop a Project Management Plan (PMP) immediately after receiving the Notice to Proceed (NTP). The PMP is a living document that establishes the following:

- Roles and responsibilities of Team members and the City
- Communication procedures between the prime firm, subconsultants, and City’s PM and sponsoring department
- Kick-off meeting between the Project Team and City, and resolution of the design criteria
- Email updates at the necessary interval will be produced after the notice to proceed; the email will be delivered to the Project Team Task Leaders, City Project Manager, and any stakeholders City requests; the email format will be designed to track progress, potential issues, and future discussion points
- Project progress meetings between the LJA Team’s Project Manager and City PM and other City staff at a frequency to be mutually determined
- QA/QC policies and procedures

**B. Traffic Signal Retiming**

**Lump Sum Fee: \$99,500.00**

**Turning Movement Counts**

**Time & Material: \$12,960.00**

Traffic signal retiming of 18 signalized intersections along five (5) different corridors listed in Attachment 1, in Pflugerville, Texas. Our proposed traffic signal timing services will include data collection, signal timing development and implementation, and finally a report consisting of before and after condition. LJA team will develop, implement and fine-tune up to 4 signal timing plans for weekdays AM peak, Noon, PM, and Off-peak hours periods.

**ATTACHMENT 1**

Synchro 11.0 will be used to model existing condition and develop the new proposed signal timing plans. The models will include existing lane configurations, phasing, and timing information.

*Please note: traffic counts will be collected only if there are no available counts that can be used for developing the signal timings.*

Traffic signal retiming task will be provided on a Lump Sum base of \$5,500.00 per intersections for a total amount of \$99,500.00 (18 x \$5,500.00)

Turning Movement Counts will be provided based on T&M (Time & Material). The cost of collecting and processing counts will be at rate of \$720.00 per intersection for a total amount of \$12,960.00.

TMC will be collected if there are no available traffic counts or available counts are outdated or incomplete.

LJA team will collect data only after receiving approval from the City representative.

**SCOPE OF SERVICES INCLUDED IN TRAFFIC SIGNAL RETIMING TASK****1. Data Collection****1a. Existing and Background Information**

- Collect all available basic information for identified intersections
- Conduct a field visit and gather additional information such as adjacent land use, roadway characteristics, intersection controller's traffic signal parameters, access conditions, etc.
- Reach out to the maintaining agency and gather existing signal timings and signal operating plans.
- Existing traffic signal timing sheets

**1b. Existing Traffic Data Collection**

- Turning movement counts at all 18 signalized intersections
- Existing (Before) travel time survey to assess improvements
- Utilize traffic count data to assess existing conditions and key performance indicators by developing an existing traffic analysis base model network using Trafficware's Synchro 11 traffic operational analysis software.

**2. Field Evaluation of signal operation and medication recommendation**

LJA's team will also visit every signalized intersection to assess signal operation to identify needs for modifications that has potential to improve signal operation, or intersection capacity and safety.

**3. Signal Timing Development & Implementation**

LJA will perform the following tasks as part of traffic analysis;



**ATTACHMENT 1**

- Review volume counts and identify peak periods (AM, mid-day, Noon, and PM peaks)
- Evaluate existing operating conditions at intersections and along the corridor and establish base conditions
- Develop Synchro database for all individual intersections and the network
- Develop optimal signal timings (cycle length, splits, offsets, time of day schedule, clearance intervals, pedestrian timings, etc.) for different peaks and weekend
- Develop time space diagrams and establish signal offsets for signal coordination
- Provide in-field fine tuning and implementation support.
- Conduct a post-implementation travel time survey to evaluate benefits/improvements.

**4. Documentation**

LJA will document methodology, analysis and recommendation for the signal timing in a following technical reports;

- Signal Timings Study Technical report

**5. Coordination and Approvals**

LJA will coordinate with City of Pflugerville representative to gather consensus on proposed signal timing improvements, potential improvements to signal infrastructure (if any), methodology and analysis tools that would be utilized for preparing the Reports. LJA will coordinate with City of Pflugerville for approval.

LJA will complete the project within (5) months after the notice to proceed and a signed copy of the proposal is received from the client. Up on receiving any comments from the City, LJA will review, revise and submit final signal timings report within four (4) weeks. LJA will submit a final signed and sealed copy of the plan set to the City of Pflugerville for approval.

**ATTACHMENT 1****C. Left Turn Signal Indication Modification** **Lump Sum Fee: \$7,500.00**

To improve safety and operation, city staff have identified number of intersections where the existing left turn indications need to be upgraded to FYA (Flashing Yellow Arrow). FYA indications are the latest industry standards and are crucial to safety and efficiency of traffic signal systems.

LJA team will assist the City staff with conversion of existing left turn traffic signal indications to FYA indications. Specific work to be performed by LJA includes:

- Intersections base drawing obtained from Google Earth (TNRIS), unless city provides survey files in Microstation or ACAD
- Signal Heads to be replaced with FYA indications
- Cable size and wiring termination at signal indications and inside traffic signal cabinet
- Quantity summary

**D. Programming/Testing of Signal Controllers** **Lump Sum Fee: \$6,000.00**

FYA indications require different configurations and settings in traffic signal controllers.

LJA's Team will assist the City Staff with programming of traffic signal controllers in shop environment to ensure safe operation before field implementation and activation.

Programming and testing traffic signal controller task will be provided on a Lump Sum amount of \$750.00 per controller for a total amount of \$6,000.00 (8x\$750.00).

**E. Programming/Testing of MMUs** **Lump Sum Fee: \$6,000.00**

FYA indications are wired differently from the non-FYA indications and are programmed in a specific way depending on traffic signal controller and cabinet type. LJA's Team will assist the City staff in programming and testing these MMUs in shop environment before field deployment and activation.

Programming and testing MMU task will be provided on a Lump Sum amount of \$750.00 per MMU for a total amount of \$6,000.00 (8x\$750.00).

**F. Design/Plan Preparation of Curb Ramps** **Lump Sum Fee: \$120,500.00**

To make the curb ramps ADA compliant and provide a safe crossing experience for pedestrians, LJA's Team will design and prepare construction plans for all curb ramps shown in Attachment 1. Specific work to be performed by LJA's team includes:

- Intersections base drawing obtained from Google Earth (TNRIS), unless city provides survey files in Microstation or ACAD
- Field visit to verify field condition
- Intersection existing layout and configuration including curb ramps
- Existing crosswalks
- Removal sheet
- Proposed curb ramps and proposed crosswalks

- **ATTACHMENT 1**

- Construction plan set
- Quantity summary and cost estimate

Note: Plans will be prepared without surveying, using reference point and dimensions for optimal location of curb ramps, utilizing TNRIS.

Design and preparation of construction plans for ADA compliant curb ramps, including relevant APS:

Total LUMP SUM Amount: \$120,500.00

**G. Intersection pedestrian facility upgrade for ADA compliant Accessible Pedestrian Signals (APS)**

Pedestrian push buttons must be in compliance with ADA requirements and accessible to all pedestrians. LJA Team will design and prepare construction plans to ensure pedestrian pushbuttons are in compliance with ADA requirements. Plans will include:

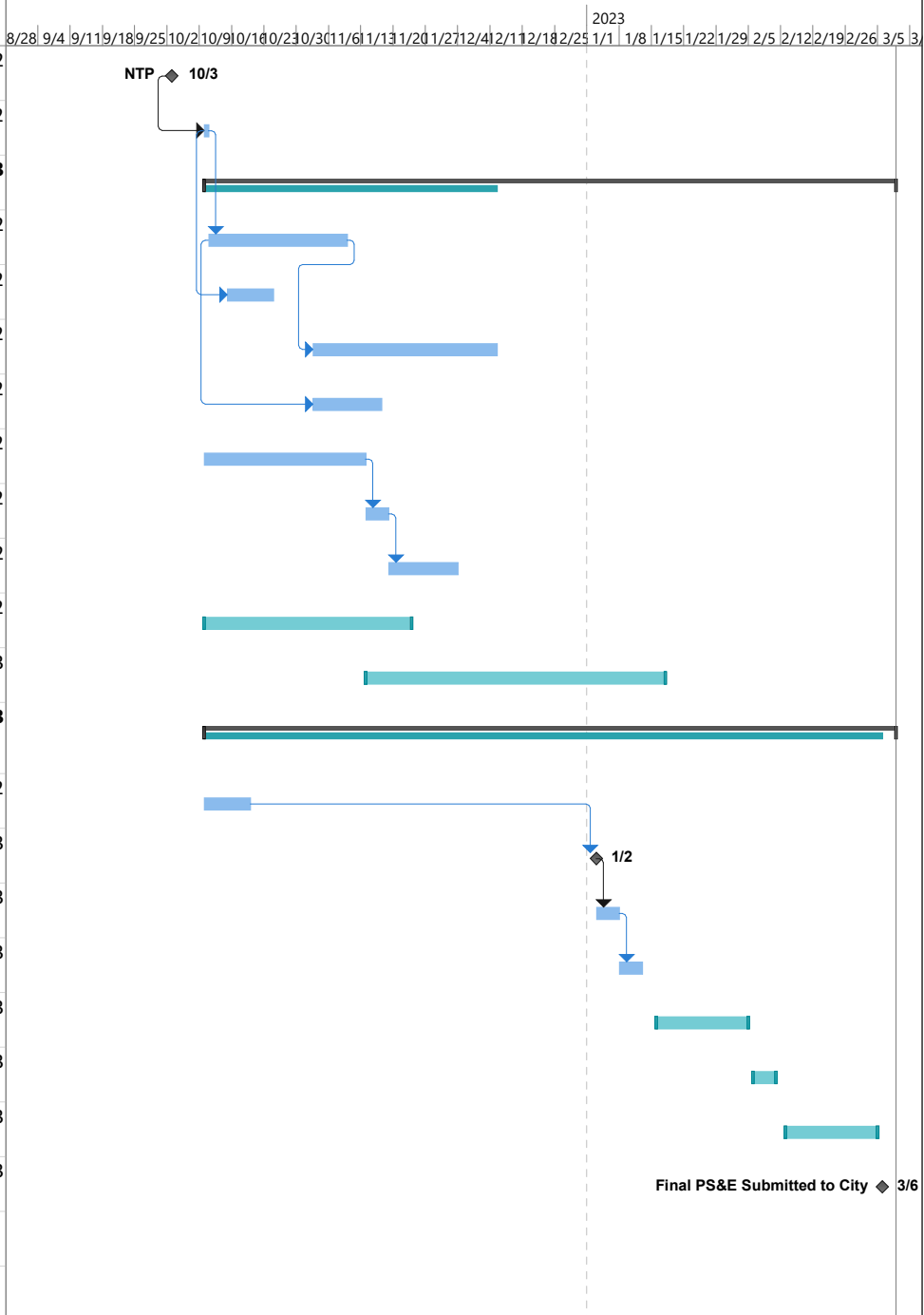
- Intersections base drawing obtained from Google Earth (TNRIS), unless city provides survey files in Microstation or ACAD
- Existing intersection layout and configuration including existing Ped pushbuttons and curb ramps
- Field visit to verify field condition
- Existing pedestrian indications
- Proposed APS locations
- Proposed pedestrian indications if warranted
- Proposed conduits and wiring
- Construction plan set
- Quantity summary and cost estimate

**Cost associated with this Task (Task F) is included in Item E, Design/Plan Preparation of Curb Ramps**

Traffic Signal Improvements Schedule

ATTACHMENT 1 - PROJECT SCHEDULE

ID	Task Name	Duration	Start	Finish
1	<b>NTP</b>	0 days	10/3/22	10/3/22
2	Kick Off Meeting	1 day	10/10/22	10/10/22
3	<b>Signal Retiming</b>	<b>150 days</b>	<b>10/10/22</b>	<b>3/8/23</b>
4	Data Collection ( Traffic Counts & Background)	30 days	10/11/22	11/9/22
5	Field Visit/Signal Operation Reviews	10 days	10/15/22	10/24/22
6	Traffic Analysis/Synchro Modeling	40 days	11/2/22	12/12/22
7	Data input into controllers	15 days	11/2/22	11/17/22
8	Field Implementation & Fine Tuning	35 days	10/10/22	11/13/22
9	City Review	5 days	11/14/22	11/18/22
10	Final Report	15 days	11/19/22	12/3/22
11	<b>Left Turn Signal Modification</b>	45 days	10/10/22	11/23/22
12	<b>Programming Traffic Signal Controller &amp; MMUs</b>	65 days	11/14/22	1/17/23
13	<b>ADA Ramps/Pedestrian Infrastructure Upgrades</b>	<b>150 days</b>	<b>10/10/22</b>	<b>3/8/23</b>
14	Field Visit/Data Collection	10 days	10/10/22	10/19/22
15	60% Plans	75 days	10/20/22	1/2/23
16	City Review	5 days	1/3/23	1/7/23
17	Comment Resolution	5 days	1/8/23	1/12/23
18	90% Plans	20 days	1/16/23	2/4/23
19	City Review	5 days	2/6/23	2/10/23
20	100% Plan	20 days	2/13/23	3/4/23
21	<b>Final PS&amp;E Submitted to City</b>	0 days	3/6/23	3/6/23
22				
23				



Attachment A

Int. ID	INTERSECTION
22	Pflugerville Pkwy & Grand Ave Pkwy
23	Picadilly Drive & Grand Ave Pkwy
24	Pflugerville Pkwy & Heatherwilde Blvd
25	Pflugerville Pkwy & Railroad Avenue
26	Pfenning Lane & Railroad Avenue
27	Kelly Lane & Colorado Sand Drive
28	Kelly Lane & Kennemer Drive
29	Kelly Lane & Falcon Pointe Blvd
30	Weiss Lane & Wolf Pack Drive
31	Pflugerville Pkwy & Weiss Lane
32	Pecan Street & Weiss Lane
33	Pecan Street & Old Austin Hutto Immanuel Rd
34	Immanuel Road and Oxford Drive
35	Wells Branch & Dessau Lane
36	Grand Ave Pkwy at Black Locust Dr
37	Heatherwilde Blvd at Kingston Lacy Blvd
38	Heatherwilde Blvd at New Meister Ln
39	Heatherwilde Blvd at Cheyenne Valley Dr

<b>FEE SUMMARY</b>		
<b>Summary</b>	<b>Firm</b>	<b>Labor</b>
A. Project Management	LJA Engineering	\$ 5,000.00
B. Traffic Signal Retiming	LJA Engineering	\$ 99,500.00
C. Left Turn Signal Indication Modification (FYA)	LJA Engineering	\$ 7,500.00
D. Programming Traffic Signal Controllers	LJA Engineering	\$ 6,000.00
E. Programming MMUs	LJA Engineering	\$ 6,000.00
F & G. ADA Ramp/APS PS&E	LJA Engineering	\$ 120,500.00
Synchro Modeling and Report	Pacheco Kock	\$ -
Traffic Count	CJ Hensch	\$ 12,960.00
<b>Total Labor:</b>		<b>\$ 257,460.00</b>
LJA	Non-Labor	\$ 1,000.00
<b>Total Engineering Fee:</b>		<b>\$ 258,460.00</b>

**Note: Pacheco Kock fee TBD**

Int. ID	INTERSECTION	Add APS Pedestrian Units with Countdown Heads	Update Pedestrian Ramps and pole access to be ADA Compliant	Engineering Fee	Comments
22	Pflugerville Pkwy & Grand Ave Pkwy	8	4	\$ 18,000.00	All corners need to be modified for ADA, new curb ramps, new APS, new crosswalk marking, stop bars
23	Picadilly Drive & Grand Ave Pkwy	8	2	\$ 18,000.00	All corners need to be modified for ADA, new curb ramps, new APS, new crosswalk marking, stop bars
24	Pflugerville Pkwy & Heatherwilde Blvd	8		\$ -	All corners need to be modified for ADA, new curb ramps, new APS, new crosswalk marking, trim median noses, stop bars
25	Pflugerville Pkwy & Railroad Avenue	4	1	\$ 5,000.00	Design one curb ramp on SE corner
26	Pfenning Lane & Rialroad Avenue	4	1	\$ 4,000.00	Add one ped pole
27	Kelly Lane & Colorado Sand Drive				
28	Kelly Lane & Kenemer Drive		2	\$ 5,000.00	NW corner: adding 2 short pole for PB and relocating one ped indication on opposite side of the pole for improved visibility
29	Kelly lane & Falcon Pointe Blvd		1		Need clarification
30	Weiss Lane & Wolf Pack Drive				
31	Pflugerville Pkwy & Weiss Lane		1	\$ 7,500.00	modify ramps and provide APS NW corner (Cabinet corner)
32	Pecan Street & Wiess Lane	4	4	\$ 18,000.00	drainage issue. Add 4 ramps at 3 corners, crosswalk marking,
33	Pecan Street & Old Austin-Hutto Immanual Rd	8	4	\$ 5,000.00	NE Corner: Place ped indications and ped PB on 4 inch pipe close to ramps for improved visibility. SW Corner: Place ped indications and ped PB on 4 inch pipe close to ramps for improved visibility.
34	Immanual Road and Oxford Drive	8	8	\$ 18,000.00	Curb Ramps and APS on all corners
35	Wells Branch & Dessau Lane	6	8	\$ 22,000.00	corner curbs radius also need to be adjusted as well to reduce unnecessary pedestrian exposure to traffic. New curb ramps and APS, median modifications
36	Grand Ave Pkwy at Black Locust Dr				
37	Heatherwilde Blvd at Kingstone Lacy Blvd				
38	Heatherwilde Blvd at New Meister Ln				
39	Heatherwilde Blvd at Cheyenne Valley Dr				
<b>TOTAL (UNITS)</b>		<b>58</b>	<b>36</b>	<b>\$ 120,500.00</b>	