

**PROFESSIONAL SERVICES AGREEMENT
FOR
Water Master Plan and Distribution Model**

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, passed and approved on the _____ day of _____, 2011 and Lockwood, Andrews & Newnam, Inc. (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

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

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:¹

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

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

“Director” shall mean the City Manager or designee.

II. TERM

²2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on _____ and terminate 3 years after the commencement date.

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.

¹ Consult your legal counsel if you think you may need to include additional definitions.

² If this clause does not suit your project, consult your legal counsel.

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III. SCOPE OF SERVICES

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.³ *The Scope of Services is shown in Attachment A.*

All work performed by Consultant hereunder shall be performed to the satisfaction of the City Manager (“Director”). The determination made by Director 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 Director. 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 Director; 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 Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed Three hundred three thousand six hundred dollars (\$303,600) as total compensation, to be paid to Consultant as follows:⁴

A lump sum fee of for all services of Consultant including services of Consultant’s Subcontractors. Invoices for Basic and Additional Services and Reimbursable Expenses will be prepared in accordance with Consultant’s standard invoicing practices and will be submitted to OWNER by Consultant at least monthly. Invoices are due and payable on receipt. The portion of the compensation amount billed monthly for Engineer’s services will be based upon Engineer’s estimate of the percentage of each phase actually completed during the billing period.

The following provides the lump sum fee for each of the project phases:

Phase A – State of the system and distribution system model -	\$118,405
Phase B – Long term service area plans and projections -	\$ 62,710
Phase C – Perform capacity analyses and develop phased CIP for 5 and 15 yr periods -	\$ 48,585
Phase D – Prepare Master Plan Report -	<u>\$ 73,900</u>
Total:	\$303,600

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

³ *Insert your scope of services provision below. Give your legal counsel the opportunity to review your scope provisions to make sure they are enforceable as worded.*

⁴ *Clearly state how payments are to be made to Consultant. Tie each payment to a deliverable. Payments should be made after completion of a specific task, not in advance. Give your legal counsel the opportunity to review your compensation provisions to make sure they are enforceable as worded.*

section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the Pflugerville City Council by passage of an ordinance therefore.⁵

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

V. OWNERSHIP OF DOCUMENTS

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

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Consultant shall not be liable to the City or to parties claiming through the City for use of such documents on extensions of this project or on any other project and City hereby releases Consultant for any damages associated with such claims.

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,

⁵ Consult your legal counsel for assistance if the City will be reimbursing the Consultant for any expenses, such as travel.

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 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, 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:⁶

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 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

⁶ Consult your legal counsel for applicability and assistance with this provision.

⁷ Consult your legal counsel for applicability and assistance with this provision.

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: Brandon Wade
100 E. Main Street, Suite 400
P. O. Box 589
Pflugerville, TX 78691-0589

If intended for Consultant, to: Lockwood, Andrews & Newnam, Inc.
Attn: Brian D. Rice
10801 N. Mopac Blvd., Bldg 1, Suite 120
Austin, Texas, 78759

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 the City's Engineering Department, which shall be clearly labeled Water Master Plan and Distribution System Model 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's Engineering Department. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

10.2 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.

10.3 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 (excepting Professional Liability 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:

Workers Compensation - \$500,000/\$500,000/\$500,000

Commercial General Liability as follows

\$2,000,000	General Aggregate Limit
\$1,000,000	Each Occurrence, combined single limit
\$1,000,000	Aggregate Products, combined single limit
\$1,000,000	Aggregate Personal Injury/Advertising Liability
\$50,000	Fire Legal Liability
\$5,000	Premises Medical

Business Auto Liab \$1,000,000 each occurrence

Umbrella Excess Liab \$1,000,000 each occurrence

Professional Liab. - \$1,000,000 each claim/annual aggregate

10.4 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
Attn: Engineering Department
P.O. Box 589
Pflugerville, Texas 78691-0589

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:

- Excepting Worker's Compensation and Professional Liability, Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by blanket endorsement, 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.

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 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.

10.7 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.

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 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.

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. INDEMNIFICATION⁸

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

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

11.2 ~~Defense Counsel~~ City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall

~~have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.~~

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

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 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: Design Workshop. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of Pflugerville City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

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

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 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.

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, 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.

XIII. 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.

XIV. RESERVED

XV. CONFLICT OF INTEREST

15.1 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.

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

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 City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.

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 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 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.

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 the City of Pflugerville, 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:⁹

⁹ Consult your legal counsel regarding what documents need to be attached as Exhibits to your particular agreement.

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. MICELLANOUS CITY 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.

**CITY OF
PFLUGERVILLE**

CONSULTANT
Lockwood, Andrews & Newnam, Inc.
10801 N. Mopac Blvd., Bldg 1, Suite 120
Austin, Texas, 78759

(Signature)



(Signature)

Printed Name: _____
Title: _____
Date: _____

Printed Name: **Brian D. Rice**
Title: **Vice President**
Date: **6/30/11**

Approved as to Form:

City Attorney

Attachment A
Pflugerville Master Plan and Water Distribution Model
Scope of Services
June 30, 2011

Overview

LAN will provide a phased approach to the Pflugerville Master Plan and Water Distribution Model as described below.

- Phase A – “State of the System”. This phase will result in a “State of the System” memorandum summarizing the current condition of the water distribution system as well as evaluation of the contractual commitments Pflugerville has with its wholesale customers. Phase A will also include development of the Water Distribution Model.
- Phase B – Future Model Development. This phase includes preparing the future population projections for a 5- and 15-year planning period and developing the associated water models.
- Phase C – Future Recommendations and CIP Development. This phase includes recommendations for improvements of existing system and determine long range plan.
- Phase D – Master Plan. This phase includes developing the CIP and Water Master Plan and providing training and future support for the City.

Below is a list of the tasks that will be performed during Phase A. A more detailed description of each task is provided later in the scope. Phase A tasks will be performed for a lump sum fee of \$118,405.

1. Review master plan studies, planning documents, water system operational and facilities data;
2. Evaluation and recommendation of water model software;
3. Develop an extended period simulations (EPS) water model based on the City’s GIS data;
4. Field pressure testing and model calibration;
5. Existing system analysis to determine existing system deficiencies;
6. Review Pflugerville existing CCN in conjunction with neighboring water utilities;
7. Wholesale customer service requests and pass-through evaluation;
8. Hydraulic capacity review of potential development requests; and
9. Evaluate compliance with TCEQ regulatory requests; and
10. Prepare a “State of the System” summary report.

Tasks anticipated to be included in Phase B are described below. A more detailed description of each task is provided later in the scope. Phase B tasks will be performed for a lump sum fee of \$62,710.

1. Identify Service Area for 5- and 15-year planning period;
2. Determine long term service area plan for Pflugerville ETJ;
3. Population & commercial acreage projections for 5- and 15-year periods;
4. Develop future system water models for hydraulic analyses of 5-year and 15-year periods for average day and maximum day including peak hour demand conditions;

Tasks anticipated to be included in Phase C are described below. A more detailed description of each task is provided later in the scope. Phase C tasks will be performed for a lump sum fee of \$48,585.

1. Perform hydraulic capacity analyses using hydraulic model for 5-year and 15-year periods for average day and maximum day (including peak hour) demand conditions; Recommend improvements to improve system reliability, prepare for long range plan, and comply with TCEQ regulatory capacity requirements;
2. Evaluate pressure plane delineation;
3. Develop prioritized and phased Water System CIP for 5- and 15-year periods; and
4. Develop estimates of probable construction cost for CIP projects.

Tasks anticipated to be included in Phase D are described below. A more detailed description of each task is provided later in the scope. Phase D tasks will be performed for a lump sum fee of \$73,900.

1. Prepare Water Master Plan Report;
2. Presentations of Water Master Plan to City Council;
3. Evaluate future developments; and
4. Coordination with City GIS staff regarding distribution system model.

Phase A (State of the System) Detailed Scope

1. Review master plan studies, planning documents, water system operational and facilities data.
 - a. Review Wastewater Master Plan (2008);
 - b. Review Pflugerville 2030 Plan;
 - c. Review Park, Recreation and Open Space Plan (On-going);
 - d. Review Plans from regional MUDs, WSCs, and agencies;
 - e. Meet with operations staff to understand system operations as it integrates with wholesale customers;
 - f. Collect and review historical operational data for past three years (if available), and
 - g. Collect and review water meter or billing data for the past three years in electronic format.
2. Evaluation and recommendation of water model software.
 - a. Develop matrix of water model software pros and cons such as cost, maintenance, customer service support, functionality, and user interface;
 - b. Meet with City staff to understand the City's desired level of involvement and ascertain their needs from the working water model;
 - c. Present matrix to City and determine software for use for the project.
3. Develop an extended period simulation (EPS) water model based on the City's GIS data;
 - a. The City's GIS data will be used to develop the water model. The model will include waterlines 6-inches and larger. Four 4-inch waterlines will be included for analyses as needed, depending on importance to the system. This proposal assumes that a GIS dataset with complete pipe network, including attribute information for pipe size, material, and age, will be provided by the City;
 - b. Coordinate with City staff to confirm water model schematically matches the existing water system;
 - c. Use City of Pflugerville customer billing data from the past three years (if available) to develop current system demands;

- d. Compare customer billing data and groundwater and historical water production data to estimate unaccounted for water in the system;
 - e. Allocate demands using customer billing data in conjunction with GIS,
 - f. Develop demand patterns for average day and maximum day (including peak hour) scenarios by using historical hourly or smaller time increments and, if available, operational data. If there is not enough historical operational data available then "text book" demand patterns will be used for the average and peak day scenarios;
 - g. Set up operational controls at pump stations and storage tanks to simulate extended period operations. This will involve multiple field visits and meetings with operational staff to simulate how the system is currently operated in the model;
 - h. De-bug and QC base model;
 - i. Incorporate take points for wholesale customers into the base model; and
 - j. Develop a skeletonized (12-inches and above) water model for wholesale customers including Manville and Travis County MUD#5 to understand interactions between providers and incorporate the wholesale customer water model into the base model. LAN will incorporate a model prepared by Carollo Engineers for Windermere into the Pflugerville model depending on the modeling software compatibility, model assumptions, and accuracy of model. Please note that LAN will develop these models based on information gathered from the City of Pflugerville and will not be coordinated with the customers. The accuracy of the operations of the wholesale customers' model will dependent on the information available.
4. Field pressure testing and model calibration.
 - a. Calibrate the model using the historic field data such as flows, pressure, and tank levels; and
 - b. Coordinate with City staff for the City to take system pressures at strategic locations for 24-hour periods.
 5. Existing system analysis to determine existing system conditions and deficiencies.
 - a. Perform average day and maximum day (including peak hour) EPS model runs to review existing system to determine areas of low pressures below 45 psi;
 - b. Determine areas of high head losses;
 - c. Conduct fire flow analyses at critical locations and problem areas identified in 5a and 5b for five locations per pressure zone, to verify TCEQ compliance and to determine areas of low pressure during fire flow scenarios; and
 - d. Perform average day, maximum day (including peak hour) EPS model runs with both systems (City's and wholesale customers) to determine system interaction deficiencies or challenges.
 6. Review Pflugerville existing CCN in conjunction with neighboring water utilities.
 - a. Review customer contracts for three (3) wholesale customers;
 - b. Understand contractual requirements between Pflugerville and wholesale customers;
 - c. Review CCN areas for Pflugerville and three (3) current water supply provisions;
 - d. Coordinate with Pflugerville staff and legal on alternatives for CCN and wholesale customer improvements; and
 - e. Assess opportunities to assist wholesale customers' operations.
 7. Wholesale customer service requests and pass-through evaluation.
 - a. Evaluate proposals for pass-through water service from a system operation perspective;
 - b. Evaluate water quality between City of Pflugerville system water and potential pass-through water with respect to quality, quantity, and reliability.
 8. Hydraulic capacity review of potential development requests prior to completion of model.

- a. Evaluate existing potential development requests (max of 2 developments) and coordinate with planning on requirements for service.
9. Evaluate compliance with TCEQ regulatory capacity requirements.
 - a. Determine required elevated and ground storage capacity for existing condition; and
 - b. Evaluate existing water system components including pumps and water supply for compliance with TCEQ requirements and identify deficiencies.
10. Prepare "State of the System" summary memo.
 - a. Prepare draft "State of the System" summary memorandum and exhibits;
 - b. QC draft summary memo;
 - c. Meet with City to obtain and discuss comments; and
 - d. Address comments and finalize report.

Phase B (Future Model Development) Detailed Scope

1. Identify Service Area for 5- and 15-year planning period.
 - a. Using the Pflugerville 2030 Plan as a guide, LAN and Design Workshop will identify the service area within the City for the identified planning periods. The eastern boundary for growth along the Weiss Lane corridor will generally be defined by the Melber Lane alignment;
 - b. Coordinate with City Planners; and
 - c. Evaluate opportunities for incorporation of current wholesale customer service areas into Pflugerville's CCN service area.
2. Determine long term service area plan for Pflugerville ETJ.
 - a. Using the Pflugerville 2030 Plan as a guide, LAN and Design Workshop will work with City Planners to identify the long term service area plan for the ETJ; and
 - b. Evaluate opportunities for annexations into the CCN service area.
3. Population & commercial acreage projections for 5- and 15-year periods.
 - a. LAN and Design Workshop will use census tract and block level population data to prepare a population projection model;
 - b. Use GIS to develop maps to simulate growth based on the City's plans for the study years;
 - c. Identify residential and commercial centers where population density is expected to increase using the 2030 Plan as a guide and as suggested in the land use phasing model;
 - d. Prepare population projections for wholesale customers to evaluate potential opportunity to increase wholesale water sales; and
 - e. Prepare population and commercial acreage projections for the identified planning periods.
4. Develop future system water models for hydraulic analyses of 5- and 15-year periods for average day and maximum day including peak hour demand conditions.
 - a. Incorporate future service areas for the City into the hydraulic model including the future ETJ and wholesale service customers;
 - b. Using population and commercial acreage projections, Develop demand projections for each of the identified planning periods for Pflugerville and wholesale water customers;
 - c. Evaluate Reclaimed Water System and opportunity to defer water usage through reclaimed systems.
 - i. Update Reclaimed Water System plan from 2008 Wastewater Master Plan to include deferment of Wilbarger Creek WWTP to update planning horizon.

- ii. Calculate reclaimed water demands, compare to treated water capacity and rates to determine if water treatment capacity expansion can be deferred by use of reclaimed water.
- iii. Evaluate cost/benefit of implementing reuse prior to construction of Wilbarger Creek WWTP and recommend implementation strategy. This task includes evaluating construction of purple pipe with new infrastructure projects as well as recommendations for sustainability of the pipe until implementation of the reuse system.
- d. Verify and update demand patterns and develop demand allocations for future service areas for each planning period identified for average day, maximum day, including peak hour conditions;
- e. Develop 5-year average and peak day extended period simulation model;
- f. Develop 15-year average and peak day extended period simulation model; and
- g. De-bug and QC future system models.

Phase C (Future Recommendations and CIP Development) Detailed Scope

1. Perform hydraulic capacity analyses using hydraulic model for 5- and 15-year periods for average day and maximum day (including peak hour) demand conditions. Recommend improvements to improve system reliability, prepare for long range plan, and comply with TCEQ regulatory capacity requirements.
 - a. Complete average and max day EPS for each planning period to evaluate hydraulic capacity of the system and identify areas requiring improvements to satisfy future system conditions;
 - b. Identify areas in the water system that are hydraulically constricted (bottlenecks) and recommend system improvements;
 - c. Conduct fire flow analyses at critical locations throughout the system to verify TCEQ compliance and to determine areas of low pressure during fire flow scenarios;
 - d. Evaluate elevated storage requirements for each planning period and recommend locations for new elevated storage tanks based on TCEQ and system requirements;
 - e. Evaluate the required future pumping capacity and determine the need and location for possible future pumping stations, or additional pumping capacity at existing stations;
 - f. Evaluate water sources (groundwater in the west and surface water in the east) and make recommendations to minimize mixing in the system;
 - g. Provide recommendations for new transmission main locations and sizes to serve future growth in Pflugerville, ETJ, and wholesale customers;
 - h. In coordination with City of Pflugerville and legal, identify opportunities to revise existing wholesale customer contracts; and
2. Evaluate pressure plane delineation.
 - a. Evaluate existing system pressure plane boundaries considering natural breaks in elevation and hydraulic grade, availability of elevated storage, system connectivity, location of planned pump stations, the ability to meet fire flow conditions, and changes in demand centers and future development;
 - b. Identify and provide feasible system options to modify and extend existing pressure plane boundaries; and
 - c. Provide recommendations regarding improvements to the City's facilities to accommodate the growing need to modify current pressure plane boundaries.

3. Develop prioritized and phased Water System CIP for 5- and 15-year periods. This scope assumes that LAN will meet with the City to present initial recommendations and receive input on preliminary recommendations. LAN will update the model and recommendations based on this meeting and follow up with a final results meeting.
 - a. Summarize recommended improvements for each of the identified planning periods;
 - b. Develop exhibits showing recommendations and phasing; and
 - c. QC recommendations summary and exhibits.
4. Develop estimates of probable construction cost for CIP projects.
 - a. Develop estimates of probable construction cost for each of the improvements recommended above;
 - b. Prepare phased approach to projects based on planning periods; and
 - c. QC cost estimates.

Phase D (Master Plan) Detailed Scope

1. Prepare Water Master Plan Report.
 - a. Prepare draft CIP and Master Plan Report;
 - b. Prepare exhibits illustrating improvements for draft CIP and Master Plan Report;
 - c. Meet with City to obtain and discuss draft CIP and Master Plan Report comments;
 - d. Address City's draft CIP and Master Plan Report comments;
 - e. Prepare final CIP and Master Plan Report and Exhibits; and
 - f. QC draft and final CIP and Master Plan Report and Exhibits.
 - g. Preparation of and presentation to City Council of Water Master Plan.
 - h. Scope assumes delivery of five (5) draft and five (5) final CIP and Master Plan Reports. An electronic PDF of the final CIP and Master Plan Report will also be provided.
2. Evaluate Future Developments.
 - a. Evaluate development requests for system capacity and serviceability, including impact to TCEQ elevated storage compliance; and
 - b. Recommend improvements required to adequately serve requested development.
 - c. Scope assumes review of up to five (5) development requests.
3. Water Model Training for Engineering and Utility Staff.
 - a. Prepare two (2) day hydraulic model training class; and
 - b. Provide two (2) day hands-on training for three (3) City staff members.

Schedule: The project will be completed within one year of the contract's notice to proceed with the exception of D.2.c (evaluate future developments).

Fee Schedule:

The following provides the lump sum fee for each of the project phases:

Phase A – State of the system and distribution system model -	\$118,405
Phase B – Long term service area plans and projections -	\$ 62,710
Phase C – Perform capacity analyses and develop phased CIP for 5 and 15 yr periods -	\$ 48,585
Phase D – Prepare Master Plan Report -	<u>\$ 73,900</u>
Total:	\$303,600

Items not included in scope and fee:

- Phase A.3.j – Carollo model incorporation shall not include model verification or calibration.
- Phase A.4 – Conduct field pressure tests to verify system pressures in the model. Assume tests will be conducted by City personnel.
- Phase B.3.d – Updating wholesale customer water system for future 5- and 15-year planning periods.
- Phase B.4.d – Preparation of a model with reuse demands incorporated. Potential reuse demands will be used to evaluate possible water system deferment. However, demand deferment will not be incorporated into the water model demands.