

**PROFESSIONAL SERVICES AGREEMENT
FOR**

2012 Wastewater Master Plan Update

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This Agreement is entered into by and between the City of Pflugerville, a Texas Municipal Corporation (“City”) acting by and through its City Manager, pursuant to and Lockwood, Andrews, and 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:

“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 Assistant City Manager for Community Services.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on July 25, 2012 and terminate on July 25, 2013.

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

III. SCOPE OF SERVICES

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in *Attachment “A” Scope of Services including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule* 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 Assistant City Manager for Community Services. 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 Two hundred seventy four thousand, six hundred twenty eight (\$274,628) as total compensation, to be paid to Consultant as follows:

A lump sum fee 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 tasks:

Task 1 – Wastewater Planning Design Assumption	\$ 2,252
Task 2 – Service Area Delineations and Growth Projections	\$ 24,780
Task 3 – Wastewater Treatment Analysis	\$ 79,929
Task 4 – Wastewater Conveyance Evaluation	\$ 73,835
Task 5 – Alternative Analysis and CIP Development	\$ 45,198
Task 6 – WW CIP and MP Report	\$ 48,634
Total	\$274,628

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

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

V. OWNERSHIP OF DOCUMENTS

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

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

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

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

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

VII. TERMINATION

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

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

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

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

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be

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

- 7.4.1 Bankruptcy or selling substantially all of company's assets
- 7.4.2 Failing to perform or failing to comply with any covenant herein required
- 7.4.3 Performing unsatisfactorily

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

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

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

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

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

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in

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

If intended for City, to: City of Pflugerville
Attn: Thomas E. Word, Jr., P.E.
Assistant City Manager for Community Services
400 Immanuel Road/P.O. Box 589
Pflugerville, Texas 78660

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

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's Parks and Recreation Department, which shall be clearly labeled "2012 *Wastewater Master Plan Update*" 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 Parks and Recreation Department. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

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

9.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of

Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

City of Pflugerville

Insurance Requirements

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

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

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

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

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

9.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the

City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of Pflugerville
Attn: Parks and Recreation Department
500 Immanuel Road/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, 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 Consultant's insurance shall be deemed primary and non-contributory

with respect to any insurance or self insurance carried by the City of Pflugerville for liability arising out of operations under this Agreement.

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

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

X. INDEMNIFICATION

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

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

10.2 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is

invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

XI. ASSIGNMENT AND SUBCONTRACTING

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

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

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

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

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant

from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

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

XIII. CONFLICT OF INTEREST

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

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

XIV. AMENDMENTS

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

XV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of Pflugerville, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such

invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. LICENSES/CERTIFICATIONS

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

XVII. COMPLIANCE

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

XVIII. NONWAIVER OF PERFORMANCE

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

XIX. LAW APPLICABLE

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

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

XX. LEGAL AUTHORITY

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

XXI. PARTIES BOUND

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

XXII. CAPTIONS

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

XXIII. INCORPORATION OF EXHIBITS

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

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

XXIV. ENTIRE AGREEMENT

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

XXV. MISCELLANEOUS CITY CODE PROVISIONS

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

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

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

25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

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

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

**CITY OF
PFLUGERVILLE**

CONSULTANT
Lockwood, Andrews & Newnam, Inc.

(Signature)

Printed Name: Brandon E. Wade, P.E.
Title: City Manager
Date: _____



(Signature)

Printed Name: Brian D Rice
Title: Vice President
Date: 7/17/12

Approved as to Form:

City Attorney

Attachment A
City of Pflugerville 2012 Wastewater Master Plan Update
Scope of Services
Prepared by Lockwood, Andrews, and Newnam, Inc.
July 10, 2012

1. Wastewater Planning Design Assumptions and Master Plan Report Outline
 - a. Wastewater planning design assumptions memo to determine basis of design and project parameters to be submitted.
 - b. Develop Master Plan Report Outline, showing major bulleted items of the report.
 - c. Prepare Summary Outline Table of Existing WW Infrastructure.

2. Service Area Delineations and Growth Projections
 - a. LAN will use the Pflugerville Water Master Plan growth analysis as a guide and will compare actual flows from 2011 with projections to evaluate the accuracy of the first-year projections. LAN will coordinate closely with the City of Pflugerville to update the land use projections for the identified service area east of Melber to develop an anticipated growth based on average LUEs per acre to determine full build out flows in the City's entire ETJ/service area. The 5-year, 10-year and full build out dwelling unit study will be performed only on areas not included in Water Master Plan study.
 - b. Re-define service area boundaries for Gilleland, Wilbarger, and Cottonwood natural basins. Prepare GIS shape files for the City's use.
 - c. Determine Existing WW flow per dwelling unit for WWTP capacity analysis
 - i. Use water-customer billing data established in the Water Master Plan and graphically compare total water demand to one week of inflow data at the Central WWTP during average day dry conditions (data to be provided by the City). Develop a WW flow per dwelling unit based on the difference between water demand and WW inflow.
 - ii. Determine I&I in Gilleland service area by comparing one week of effluent/influent data during wet weather season to dry inflow data (data to be provided by the City).
 - iii. Determine peaking factor based on WWTP inflow data from a recent storm event.
 - iv. All data provided will be from the same calendar year.
 - d. Determine average, peak, and wet weather (I&I) flows for 5-year, 10-year and full build out in new service area basins, using existing WW flow per parcel developed in 1.c, to determine required WWTP capacity.
 - e. Determine average, peak, wet weather (I&I) flows for 5-year, 10-year and full build out for developed parcels in new service area basins, based on City of Pflugerville design criteria, to determine interceptor sizes.
 - f. Prepare a Technical Memo with results of the flow study and service area delineations and recommendations for basin capacity for 5-year, 10-year, full build out planning periods.
 - i. Discuss existing versus possible proposed flow to the Central WWTP
 1. Existing Gilleland natural drainage basin only

2. Existing Gilleland natural drainage basin plus a portion of Wilbarger natural drainage basin (redefined Central service area)
 - ii. Discuss possible proposed flow to the future Wilbarger WWTP site
 1. Existing Wilbarger natural drainage basin only
 2. Existing Wilbarger natural drainage basin minus a portion redefined for Central WWTP
 - iii. Discuss possible proposed flows to the future Cottonwood Creek WWTP site
 1. Existing Cottonwood natural drainage basin only
 2. Existing Cottonwood natural drainage basin plus Wilbarger natural drainage basin
 3. Existing Cottonwood natural drainage basin plus Wilbarger minus a portion redefined for Central WWTP
 - iv. Analysis of Results
 1. Time/Flow comparison of the above alternatives (i-iii)
 2. Develop high level cost estimates for significant capital improvements required for each scenario listed above
 3. Develop time/cost analysis to evaluate overall costs in comparison to timing of projects and relevant to today's dollar
 4. Meet (assume single meeting) with City to discuss results and receive feedback. Results from this task will include decision on service areas and flows for each service area.
3. Wastewater Treatment Analysis
 - a. TCEQ Coordination and WWTP Permit Evaluation
 - i. Establish total permitted flow for Central and Wilbarger WWTPs
 - ii. Establish additional effluent discharge quantity that may be allocated by TCEQ to Central WWTP.
 - iii. Confirm discharge limits and TMDLs for receiving stream required by TCEQ for Central WWTP if effluent discharge quantity is increased.
 - iv. Assess discharge permit implications for Central WWTP if effluent discharge quantity is increased (major amendment) including high level identification of major changes that might result in significant process improvements.
 - v. Evaluate potential for implementation of dedicated reuse concepts at Central WWTP to reduce discharge volume. Note this proposal does not include a detailed reuse system evaluation.
 - vi. Evaluate possible use of existing Wilbarger WWTP discharge permit to accommodate flow diversion from Central WWTP to Wilbarger discharge point.
 - vii. Assess discharge permit implications for existing Wilbarger WWTP, assuming diversion of flow from Central WWTP.
 - viii. Evaluate feasibility of discharging WWTP effluent downstream of Lake Pflugerville (Wilbarger Creek) to satisfy LCRA base flow requirements defined in the Lake Pflugerville agreement. Coordinate with LCRA to

- determine if WWTP effluent could be used as a “credit” in lieu of discharging flow from Lake Pflugerville.
- ix. Discuss possible future discharge permit limits (general for all WWTPs).
 - x. These tasks are only evaluations and do not include the development of any permit or amendment applications.
- b. Central WWTP Expansion Evaluation
- i. Review existing Central WWTP treatment process based on record drawings provided by City;
 - ii. Assess use of existing treatment units to accommodate increased flow:
 - 1. Determine maximum additional flow (above currently permitted 5.85-mgd) and load capacity of the existing CARROUSEL® through the addition of an aerator; and
 - 2. Determine limitations of existing secondary clarifiers, filters and disinfection units, in terms of their ability to treat the additional CARROUSEL® process flow, as determined in 3.b.ii.1 above, and recommend additional units as necessary.
 - iii. Assess use of new treatment units to accommodate increased flow
 - 1. Using TCEQ-provided flow from 3.a.ii above, determine treatment process units required to accommodate additional flow, assuming duplication of existing treatment process;
 - 2. Evaluate concepts for existing plant lift station expansion (i.e., deepening wet well and replacing existing screw pumps or building new lift station);
 - 3. Evaluate obstacles associated with existing site that could impede expansion, including wetland and floodplain areas; and
 - 4. Identify in what year TCEQ-defined 75% and 90% capacity thresholds will occur for the Central WWTP, based on City-approved results of Item 2, Service Area Delineations and Growth Projections, above, and discuss their impact on the schedule for plant expansion.
- c. Future/New WWTP Evaluation
- i. Establish when the excess flow will occur.
 - ii. Establish where excess flow will originate (Wilbarger or Cottonwood Creek).
 - iii. Recommend location for new WWTP (Wilbarger or Cottonwood Creek), based on future development, capital cost, operational cost, pumping cost, and site requirements.
 - iv. Recommend sizing and phased development plan for new WWTP (Wilbarger or Cottonwood Creek).
 - v. Develop preliminary layout for new plant, assuming conventional treatment.
- d. Cost Evaluation
- i. Develop high level cost estimate for Central WWTP expansion alternatives.
 - ii. Develop high level cost estimate for new WWTP (Wilbarger or Cottonwood Creek).

- iii. Develop high level cost estimates for programmed, large-scale plant maintenance projects in the 10-year planning period for equipment over 50 HP.
- e. Meetings and Technical Memorandum
 - i. Meet with City (assume single meeting) prior to initiating Task 3 to tour Central WWTP.
 - ii. Develop draft Technical Memorandum documenting tasks and sub-tasks outlined in Task 3.
 - iii. Present findings of draft Technical Memorandum to City and submit hard copies for review and comment (assume maximum of five).
 - iv. Meet with City (assume single meeting) following completion of draft Technical Memorandum review to discuss comments.
 - v. Revise draft Technical Memorandum based on City comments.
 - vi. Submit Final Technical Memorandum to City.

4. Wastewater Conveyance Evaluation

- a. Existing Conveyance Evaluation
 - i. Gather information on existing WW pumps and force mains and any missing information on WW GIS gravity lines.
 - ii. Develop a 24-hour Extended Period Simulation (EPS) average dry weather existing, skeletonized model using WW GIS shape files. Use Sewer GEMs/CAD modeling software. Based on the existing system, the following parameters will be used in development of the existing, skeletonized model:
 - 1. Include force mains 10-inch and above.
 - 2. Include interceptors 18-inch and above.
 - 3. Calibrate flow with existing Central WWTP inflow.
 - iii. Develop a steady state peak dry weather and peak wet weather existing, skeletonized model with major wastewater lines, as defined in 4.a.ii, using WW GIS shape files and calibrate with existing Central WWTP inflow.
- b. Route Analysis for Future WW Conveyance Options
 - i. Prepare routing exhibit showing critical elevations and planned routing for the following:
 - 1. West SH-130 interceptor
 - 2. Carmel interceptor
 - 3. Colorado Sands interceptor
 - 4. Sorento/Carmel Force Main
 - 5. Wilbarger to Cottonwood interceptor
 - 6. SH-130 interceptor tunnel to Central WWTP
 - 7. Up to 3 additional interceptors identified during analysis
 - ii. One (1) meeting with the City for discussion and approval of WW line routing. Multiple route evaluations for each wastewater line are not included.
- c. Full Build Out Conveyance Analysis
 - i. Develop a 24-hour EPS average dry weather future, skeletonized model with proposed force mains and interceptors (10-inch and above for force main and 18-inch and above for interceptors). Develop a future steady

state peak dry and peak wet weather model, both to determine the following:

1. Diameter of major proposed interceptors.
 2. Slope requirements of interceptors.
 3. Sizes of force mains and lift stations.
 4. Final invert elevations at WWTP (Gilleland, Wilbarger, and Cottonwood Creek service area).
 5. Central WW interceptor/tunnel (if needed based on Route analysis).
- d. CIP Planning Period Conveyance Analysis
- i. Develop 5-year and 10-year dry day future skeletonized model with major force mains and interceptors (10-inch and above for force mains and 18-inch and above for interceptors). Develop a future steady state peak dry and peak wet weather model, to determine the following:
 1. Timing of CIP projects.
 2. Phasing of interceptor construction based on the specific location of new proposed subdivisions for Wilbarger/Cottonwood and Central WWTP service area.
 3. Diameter of the WW gravity lines feeding Sorento/Carmel lift station to determine the number of manholes, manhole invert elevations, and final depth of Sorento/Camel lift station.
 4. Size of Sorento/Carmel lift station and force-main. Perform conceptual analysis to determine the size of pumps required to pump sewage into 24-inch force-main without adversely affecting existing Weiss Lane lift station.
 5. Timing on the decommissioning of Weiss Lane lift station.
 6. Timing on the decommissioning of Eagle Point and sizing of "Sorento interceptor".
 7. New use of Highland Park LS. Evaluate sending all flow to Central rather than splitting between Central and Wilbarger as currently configured.
 8. Feasibility of eliminating existing and proposed permanent lift stations with the installation of gravity sewer interceptors including evaluation of initial capital costs of interceptors compared to 20-year O&M costs of lift stations.
- e. Cost Evaluation
- i. Develop high level cost estimate for future interceptors.
 - ii. Develop high level cost estimate for new lift stations and force mains.
 - iii. Develop long term (20 year) O&M cost for lift stations.
 - iv. Develop high level cost estimates for programmed, large-scale lift station maintenance projects in the 10-year planning period for equipment over 50 HP.
5. Alternatives Analysis and CIP Development
- a. Cost benefit evaluation for proposed interceptors and force main for two alternatives


- i. Central WWTP expansion versus construction of Wilbarger in the near term.
 - ii. Cottonwood/Regional WWTP versus Wilbarger and Cottonwood WWTP.
 - b. Cost evaluation of plant expansions and/or new plants.
 - c. Service Area Analysis
 - i. Central WWTP expansion versus construction of Wilbarger in the near term.
 - ii. Cottonwood/Regional WWTP versus Wilbarger and Cottonwood WWTP.
 - d. Presentation of cost to re-delineate sewer service area
 - i. One meeting with the City.
 - ii. Acknowledgement and Agreement on Wastewater Plan Approach from the City with regard to future sewer system philosophy.
 - e. Develop CIP based on the approved plan
 - i. Develop 5-year and 10-year wastewater CIP projects.
 - ii. Identify in what year 75% and 90% capacity thresholds occur for the WWTP in the approved plan.
 - iii. Develop yearly timing for projects.

6. WW CIP and 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 up to 2 times 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.
- f. QC draft and final CIP and Master Plan Report and Exhibits.
- g. Preparation of and presentation to City Council of Wastewater 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.

Reuse

1. Not included in this scope except to determine Future Central WWTP Discharge Flow Rate.

 Lockwood, Andrews & Newnam, Inc. <small>A LEO A DALY COMPANY</small>			City of Pflugerville Wastewater Master Plan Task List and Associated Fees July 10, 2012
Task 1	Wastewater Planning Design Assumptions	\$ 2,252	
Task 2	Service Area Delineations and Growth Projections	\$ 24,780	
Task 3	Wastewater Treatment Analysis	\$ 79,929	
Task 4	Wastewater Conveyance Evaluation	\$ 73,835	
Task 5	Alternative Analysis and CIP Development	\$ 45,198	
Task 6	WW CIP and MP Report Plan Report	\$ 48,634	
Total	City of Pflugerville WWMP	\$ 274,628	

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