

**PROFESSIONAL SERVICES AGREEMENT
FOR
WATER TREATMENT PLANT ENGINEERING SERVICES**

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 in conformation with Texas Government Code Chapter 2254, and DCS Engineering, LLC (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

Whereas the City determined the Consultant is the most highly qualified provider of Water Treatment Plant Engineering Services, and has demonstrated competence and qualifications to perform these services.

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

I. DEFINITIONS

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

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

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

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

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on January 19, 2015 and terminate on January 19, 2020.

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

III. SCOPE OF SERVICES

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

All work performed by Consultant hereunder shall be performed to the satisfaction of the City Manager or his designee. The determination made by City Manager and/or his designee shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Manager and/or his designee. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to City Manager and/or his designee; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager and/or his designee, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount for services rendered at time of invoicing, to be paid to Consultant as further detailed in Exhibit A.

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

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

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

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

making excerpts or copies of same by City and any of its authorized representatives.

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

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

VII. TERMINATION

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

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

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

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

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

7.4.1 Bankruptcy or selling substantially all of company's assets

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

7.4.3 Performing unsatisfactorily

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

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

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

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

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

VIII. NOTICE

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

If intended for City, to:

City of Pflugerville
Attn: Brandon Wade
City Manager
P.O. Box 589

Pflugerville, Texas 78660

If intended for Consultant, to: DCS Engineering, Inc.
Attn: Mr. Darren C Strozewski, P.E.
Principal
1101 S. Capital of Texas Hwy, Bldg G-100
Austin, TX 78746

IX. INSURANCE

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

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

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

Insurance Requirements

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

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

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

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

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

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

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

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement under terms satisfactory to the

City, as respect to the operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

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

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

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

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

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

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

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

X. INDEMNIFICATION

10.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability resulting from the negligent or intentional acts or omissions, intellectual property infringement, or failure to pay a subcontractor or

supplier of the Consultant, its employees, agents and/or assigns. The acts may include personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

10.2 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

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

XI. ASSIGNMENT AND SUBCONTRACTING

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

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use subcontractors in the performance of this Agreement: Subcontractors will be used on an as needed basis for surveying, geotechnical, electrical, instrumentation, environmental investigations, or other specialty surfaces. Subcontractors to be used will be delineated per each Supplemental Agreement for the specified task. 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:

Exhibit "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
DCS ENGINEERING, LLC**

(Signature)

Printed Name: Brandon E. Wade

Title: City Manager

Date: _____



(Signature)

Printed Name: Darren Strozewski, P.E.

Title: Principal

Date: 12/23/14

City of Pflugerville Water Treatment Plant Engineering Services

SCOPE

I. Project Management

- A. Attend project review meetings.
- B. Prepare monthly invoices.
- C. Provide monthly project status reports.
- D. Provide project tracking data.
- E. Set up and maintain project files.
- F. Coordinate with project team or authorized representatives as needed.

II. Regulatory and State Agency Coordination

- A. Review available data and consult with the owner to clarify and define the owner's requirements for the project.
- B. Attend meetings with the TCEQ, Owner, City Operators, and other interested parties regarding the Project.
- C. Conduct file research at TCEQ and obtain requisite documentation to support proposed efforts.
- D. Coordinate with the City to adequately outline the proposed work.
- E. Prepare and submit formal notification to the executive director of the TCEQ of proposed water system improvements.
- F. Prepare and submit notification to the TCEQ when construction of a project is complete.
- G. Prepare and submit sludge discharge and disposal permits
- H. Review and negotiate with TCEQ on contested case permits
- I. Work with, support, and/or represent the City in water rights negotiations
- J. Prepare application forms and submit to the TWDB for funding assistance.

III. Discharge Permitting

- A. Assist the City in securing a Texas Pollutant Discharge Elimination System (TPDES) permit for the ultimate discharge flow.
- B. Conduct a discharge location evaluation that will involve coordinating with TCEQ on the analysis of the discharge using water quality models to confirm the receiving stream has the capacity to accept the proposed ultimate discharge volume and confirming the list of potential landowners affected by the project.
- C. Review the approved water quality model to determine if it accurately reflects the conditions of the receiving creek for the proposed discharge and if the water quality standard for dissolved oxygen assumed for the creek is appropriate. If it is determined that the TCEQ model or the assumed water quality standard is not appropriate, DCS can design a study to obtain data to refine the model to reflect conditions for the proposed discharge or to determine the appropriate water quality standard for the creek. If the result of the review indicate that the TCEQ model is appropriate, proposed discharge flows and concentration limits will be applied to the model to determine discharge conditions necessary to maintain water quality standards for the creek.
- D. Confirm the landowners affected by the proposed project and identify any that may submit objections to TCEQ regarding a permit or permit amendment. Affected landowners are those adjacent to the treatment plant property and the landowners one mile downstream of proposed discharge location(s).
- E. Obtain landowner information from County Appraisal District.
- F. Notify potential landowners downstream of the proposed discharge to request access to make observation of the stream characteristics and document concerns to the proposed discharge that are expressed by the affected landowners.

- G. Identify the need for publishing the public notices in an alternative language newspaper and coordinate the publications in the required newspapers at the appropriate times. Publications will be required after administrative review and technical review by the TCEQ.
 - H. Prepare documents that present the proposed conceptual design to treat the proposed flow, site plans, treatment process description, process flow schematics, number and dimensions of treatment units, design calculations, solids management plans, affected landowners information and plant boundaries.
 - I. Prepare and complete appropriate permit application forms and include required attachments to the application.
 - J. Assist the City in preparing a response to any administrative review comments. Once the TCEQ is satisfied that all of the required information has been included, the TCEQ will declare the permit application to be administratively complete.
 - K. Provide support during the TCEQ technical review and processing of the permit application. Support may include telephone conversations with TCEQ staff during the review process to answer questions regarding the application. When all technical reviews are completed, TCEQ will prepare an initial draft permit and provide a copy to the City for review.
 - L. Review the draft permit and, if necessary, assist the City in preparing a written response to the TCEQ.
 - M. Communicate with the TCEQ and City staff through the permitting process to discuss the status of the agency's review and, as necessary, to develop strategies for negotiating with TCEQ to obtain appropriate permit provisions in the draft permit.
 - N. Other permitting services may include:
 - Field reconnaissance by DCS to collect data or information.
 - Meetings with the District, or with the TCEQ or other regulatory authorities (e.g., the EPA) to discuss the permit
 - Meetings or telephone calls with potential or actual protestants, or the development of public information or strategies to aid in avoiding protests.
 - Services required to respond to a permit protest or a contested case hearing.
- IV. Water Treatment Plant and Water System Master Planning Services**
- A. Develop growth projections and compare to previous projections.
 - B. Review and analyze existing infrastructure and water demand and usage data.
 - C. Evaluate the water system using WaterCAD unlimited pipe modeling software.
 - 1. Review Relevant Studies by working with City staff members to gather, review, and understand future growth plans including the Water Master Plan; and plans from regional MUDs, WSCs and agencies. The City's water system design criteria will be reviewed and incorporated where applicable.
 - 2. Collect and Review Water Agreements with wholesale water providers and buyers.
 - 3. Confirm existing CCN in conjunction with neighboring water utilities. As part of the modeling effort, identify potential emergency interconnections if needed.
 - 4. Perform field evaluations of the system's plants, pumps, tanks and electrical systems to develop a list of facility needs to confirm existing infrastructure, pump and storage capacities. Work closely with the City Engineering and Operations Departments to evaluate the existing water facilities and review water facility pump curves and system operational data, elevated and ground storage capacities, and SCADA operating information not previously obtained during previous modeling efforts.
 - 5. Determine existing and future demands and demand curves. An average and maximum day demand diurnal curve for the model will be developed using the City's historic system flow data. For a starting point these diurnal curves may be based upon similar user types from other municipalities with similar demographics. Using population projections, land use, historical water flow, and billing data, project future water demand for 5-year, 10-year, and ultimate build-out planning periods. Calculated demands will

reflect the average daily usage of water to meet all non-emergency usage demands in the system. At the conclusion of the demand forecasting efforts, summarize the criteria and factors developed in the final report including those demand curves for future projected years.

6. Collect pump and flow data for input into the model.
7. Perform field testing to develop an accurate model. The tests and data collected may include but not be limited to flow tests to obtain calibration data, head loss tests, pressure observations, and pump performance.
8. Perform model testing and calibration to verify PSV and PRV Settings. Calibrating the model will be performed after the existing water demands and curves representing maximum day and peak hour are incorporated into the model. Verify the demands by comparing the total demand in the model with the City's water production data. Basic model input regarding control elevations, system operation, design pressures, and system constraints will be reviewed with City staff during the model development. Perform an extended period simulation analysis to simulate existing system conditions. Potential deficiencies could include low pressures in nodes, high velocity in pipes, redundancy in pipe networks, low pressure and high velocities during 2-hr fire flow testing, waterlines with high head loss, pump station performance, pressure plane delineation, tank operation and turn-over rate, and wholesale take points.
9. Determine TCEQ Compliance. Based on the collected data, determine the number of water connections the City currently has in service and use this information to evaluate the City's current system for TAC 30 290 TCEQ capacity requirements. Submit this information as part of the final report showing the results of the baseline capacity analysis.
10. Collect and review land use and population projection data and calculate ultimate water system average day, peak day, and two-hour peak day demands. Supply and demand forecasts will be based off of the master plan projections.
11. Evaluate Pressure Planes. Evaluate the pressure plane boundaries for better service to the City's system and pressure needs, wholesale customers, and to more efficiently balance PSV and PRVs in the system. Using engineering judgment and previous pressure plane experience, consider many elements including natural breaks in elevation and hydraulic grade, availability of elevated storage, system connectivity, the ability to meet fire flow conditions, operational savings and changes in demand centers and future development. Based on results of the system evaluation, identify options to modify and extend the existing pressure planes boundaries that meet City and TCEQ system requirements.
12. Evaluate Elevated Tank Operations and their effect on the water supply capabilities of the Water Treatment Plant. Evaluate the existing elevated tanks to determine their use in the short term and long term water system. The calibrated model will be used to identify potential problems with and test alternative strategies for proper EST, PRV and PSV operations. Develop modeling scenarios for average and maximum day and peak hour conditions to identify tank filling, turnover/mixing, and emptying fluctuations. Use 48-hour extended period model simulations to evaluate the operations of system ESTs and GSTs. Perform a fire flow analyses for maximum day conditions to determine the ability of the ESTs to recover after an emergency situation. Tank volumes will also be assessed to determine the need for additional ultimate storage to serve the City's CCN.
13. Develop growth projections and models representing existing conditions, five year, ten year, and ultimate build-out growth periods based on the identified areas of future development, water demands, and wholesale customer demands. An extended period simulation will be run for each model to verify capacity compliance with TCEQ for average day, maximum day, and maximum hour scenarios. Identify potential bottlenecks, locations for new elevated storage tanks, future pump capacities, and size

new waterlines to support development. The study year models will be used to define the water infrastructure and develop the basis CIP list.

14. Provide an overall system evaluation. The goal is for the City's pressure planes to work together in an automated fashion so that pressure and flows are evenly maintained during the course of a day and throughout the year. Conduct further analysis to determine if any additional modifications/additions/adjustments are needed to meet the growth demands that will be placed on the system or tank mixing needs.
 15. Identify water supply needs. Once the future modeling is complete, identify if and when additional supply is needed and what sources would be best suited to provide that supply based on growth trends.
- D. Develop Capital Improvement Plan
1. Develop CIP list of projects to address issues identified at the water treatment plant from water master planning efforts including but not limited to future water treatment, pumping, transmission, and storage.
 2. Work with the City to prioritize this CIP list. Develop a plan that summarizes the anticipated priority and schedule for future improvements. The plan will include a phased and prioritized schedule of the system improvements based on capacity to meet future growth requirements, the improvement's effectiveness at satisfying secondary goals, and the need for the improvement to serve future customers.
 3. Develop engineer's opinion of most probable construction cost estimates. DCS will generate cost estimates for each project identified. Estimates will utilize bid unit prices for treatment equipment, piping, pumping equipment, water wells, and storage tanks; and/or include equipment quotes from suppliers.
 4. Prepare a report with a narrative discussion of system assessment results, cost estimates of improvements, priorities and phasing schedule for improvements, exhibits showing location of improvements, and exhibits supporting the findings. The plan will also indicate the requirements for each project and the factors that might be used in a decision to initiate a project.
- E. Develop System-wide flushing plan
1. Review system maps and hydraulic model.
 2. Perform water quality analysis.
 3. Work with operators to verify locations for hydrants, valves, and blow-offs.
 4. Add hydrants and valves to the model and account for headlosses.
 5. Divide system into sectors; define sequences for (uni)directional flushing; mark loops sized for completion by flushing crew in one day.
 6. Run model simulations to determine the effectiveness of the flushing technique.
 7. Develop system flushing field operation mapbooks with GIS.
 8. Arrange and assist pilot testing to road test mapbook procedures with field staff.
 9. Prepare Flushing Implementation Program Plan.
- F. Water rate studies and analysis
1. Review water supply contracts to evaluate source water costs.
 2. Identify and review operational costs within the water system.
 3. Calculate the fiscal costs associated with past and project capital improvements.
 4. Estimate current and projected actual costs to produce and supply potable water. Evaluate alternative water sources including utilization of reclaimed water for direct and indirect potable water use.
- G. Provide professional engineering services to the City for updating the City's Water Conservation and Drought Contingency Plans; and creating a Water Conservation Implementation Report per the recently amended Texas Administrative Code Title 30, Chapter 288.
1. Evaluate Drought Contingency Plan triggers for activating stages and impacts of wholesale water suppliers' stages on City's stages.

2. Update Water Conservation Plan per latest revision of Texas Administrative Code Title 30, Chapter 288.
 3. Review available data and consult with the Owner to clarify and define the Owner's water conservation goals.
 4. Update utility profile and conservation plan with detailed data.
 5. Develop specific, quantifiable 5 and 10 years targets for water savings in gallons per capita per day.
 6. Update Drought Contingency Plan per latest revision of Texas Administrative Code Title 30, Chapter 288.
 7. Develop Implementation Report
- H. DCS will work with the City on developing strategies and plans for potential CCN annexations and buying/selling water to/from potential wholesale customers.
1. Evaluate potential wholesale water connections to understand the capital, operations, and maintenance impacts that the potential contracts' terms and conditions will impose on the City. Terms of delivery require particularly close attention to avoid harm to the City's water treatment system and ability to serve its existing customers.
 2. Identify needed transmission facilities related to the wholesale connection.
- V. **Preliminary Design Services**
- A. Perform topographic and control surveying
1. Control surveys shall include the establishment of horizontal and vertical control points. Horizontal control shall be on the Texas State Grid Coordinate System carried to second-order accuracy.
 2. All topographic features will be tied to the control survey, including, but not limited to, the following:
 - Locations of property and easement lines to the extent necessary to overlay and verify legal descriptions of property and easement lines.
 - Horizontal locations of any overhead and underground utilities.
 - Locations, sizes, and types of trees over 6" in diameter.
 - Locations of other physical features that may affect site planning and/or future construction such as access driveways, fences, buildings, sheds, creek banks, rock outcroppings, ponds, etc.
 - Sufficient ground elevation data to determine the approximate 100-year floodplain location on the plant property.
 - Sufficient ground elevation data to establish one-foot contours in the area identified for a project.
- B. Provide Subsurface Utility Engineering. The horizontal and vertical locations of subsurface utilities will be determined to prevent conflicts during construction.
- C. Determine the 100-year floodplain across the site utilizing current FEMA flood plain maps.
- D. Review existing geotechnical report(s) conducted on behalf of the City. DCS will make recommendations for obtaining additional geotechnical information if needed based on the facilities to be constructed.
- E. Make preliminary structural evaluations using existing or preliminary geotechnical investigation results. This evaluation shall include preliminary foundation requirements as needed for development of cost opinions for structures.
- F. Schedule and attend equipment tours of existing facilities with City operations staff. These equipment tours will be scheduled based on operator input on equipment they want to evaluate and the tour locations. DCS will coordinate the tours to assure that City staff will have the opportunity to meet with other operators regarding the operation and maintenance of the equipment.

- G. Review and/or develop water demand projections. The demands will be projected by month and establish when plant capacity will be reached. The projections will be used to evaluate the need to construct additional plant capacity or consider alternate sources of water.
- H. Develop process flow schematics and hydraulic profile for the water treatment plant.
- I. Review existing reports or coordinate environmental evaluations required for the site related to site assessment, Section 404 permitting, endangered species, and archeology.
- J. Review or coordinate with subconsultants to determine the impacts and regulatory permitting requirements as a result of a proposed project. A pedestrian investigation may be required to complete a jurisdictional determination for the presence and possible impact to waters of the U.S. regulated under Section 404 of the Clean Water Act. The purpose of the jurisdictional determination is to identify waters of the U.S. as outlined in the U.S. Army Corps of Engineers' (USACE) Regulatory Program Regulations Section 33 CFR 328.2 that may be impacted by the project.
- K. Review or coordinate with subconsultant providing a letter report of an assessment for any potential threatened or endangered species as listed by the U.S. Fish and Wildlife Service and the Texas Parks and Wildlife Department.
- L. Review or coordinate with subconsultant performing archeological investigation in accordance with Texas Historical Commission requirements.
- M. Perform field reconnaissance to collect data or information not otherwise provided by the City.
- N. Provide coordination with other regulatory agencies or private utilities.
- A. Perform water hammer and surge analysis for pressurized pipelines.
- O. Develop conceptual layout and design of the project.
- P. Prepare preliminary plans and a preliminary Engineer's Opinion of Probable Construction Cost.

VI. Design Services

- A. Conduct project kickoff meeting with the City for critical aspects of the project.
- B. Provide monthly project status updates.
- C. Advise the City of special testing or investigations which in the opinion of the Engineer may be required for proper execution of the project.
- D. Update the engineer's opinion of most probable cost of construction and advise the City of any changes to this cost through the design process.
- E. Perform field surveys to collect information, which in the opinion of the Engineer, is required in the design of the project.
- F. Prepare specifications and contract drawings, for construction authorized by the City and submit to the applicable local and state agencies for approval.
- G. Furnish the City all necessary copies of review sets and final approved plans, specifications, notices to bidders, and proposals.
- H. Design services may include but not be limited to the following:
 - 1. Water treatment plant design, expansion, and rehabilitation
 - 2. Chemical treatment including: chlorine and chloramine disinfection, iron and manganese sequestration, ion exchange treatment, water fluoridation, etc.
 - 3. Surface water pre-treatment including flocculation and sedimentation.
 - 4. Potable water system interconnections
 - 5. Transmission mains, upgrades and extensions
 - 6. Hydraulic control valves
 - 7. Pumping stations
 - 8. Site design, grading and drainage
 - 9. Ventilation and odor control
 - 10. Backup power generation
 - 11. Ground storage tank design
 - 12. Sludge dewatering and disposal

- 13. Ground water well design and rehabilitation
- 14. Surface water intake design, expansion, and rehabilitation

VII. Bidding Services

- A. Assist the City in advertising for and obtaining proposals or negotiating proposals for the prime contract for construction materials, equipment and services to be performed by a contractor for a project
- B. Maintain a record of prospective bidders to whom Contract Documents have been issued, attend pre-bid conference and receive and process checks for Contract Documents.
- C. Issue addenda as appropriate to interpret, clarify or expand the Contract Documents.
- D. Consult with the City to determine the acceptability of substitute materials and equipment proposed by potential contractor(s) when substitution prior to the award of contracts is allowed by the Contract Documents.
- E. Attend and conduct a bid opening and prepare bid tabulation sheets.
- F. Evaluate bids or proposals; prepare bid tabulation sheets and letter recommending award of contract to the lowest and most qualified bidder.
- G. Assist the City in assembling and awarding contracts for construction materials, equipment and services.

VIII. Construction Administration

- A. Consult with and advise City through the duration of Construction.
- B. Make periodic on-site visits to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents. In performing this service, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work or material; he will not be responsible for the techniques and sequences of construction or the safety precautions incident thereto, and he will not be responsible or liable in any degree for the contractors' failure to perform the construction work in accordance with the Contract Documents. During visits to the construction site, and on the basis of the Engineer's on-site observations as an experienced and qualified design professional, he will keep the City informed of the extent of the progress of the work, and advise the City of material and substantial defects and deficiencies in the work of contractors which are discovered by the Engineer or otherwise brought to the Engineer's attention in the course of construction, and may, on behalf of the City, exercise whatever rights the City may have to disapprove work and materials as failing to conform to the Contract Documents.
- C. Make recommendations to City concerning the disapproval or rejection of Contractors' Work while it is in progress if Engineer believes that such Work will not produce a completed project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the project as reflected in the Contract Documents. Engineer shall have access to the Work at all times wherever it is in preparation or progress.
- D. Consult and advise with the City; issue all instructions to the contractor requested by the City; and prepare routine change orders as required.
- E. Evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor.
- F. Make recommendations to the City regarding the advisability of requiring special inspections or testing of the Work and have the City, for the purposes of this paragraph, receive and review all certificates of inspections, testing and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents.
- G. Act as initial interpreter of the requirements of the Contract Documents, judge the acceptability of the Work and make decisions on all claims of the City and Contractor relating to the acceptability of the Work or the interpretation of the requirements of the

Contract Documents pertaining to the execution and progress of the Work. Engineer shall not be liable for the results of any such interpretations or decisions rendered in good faith.

- H. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of materials and equipment and other data which the contractor is required to submit, only for conformance with the design concept of the Project and compliance with the information given by the Contract Documents; and assemble written guarantees which are required by the Contract Documents.
- I. Determine the amount owing to Contractor based on Engineer's observations at the site and the data comprising the Application for Payment, and recommend in writing payments to Contractor in such amounts. Such recommendations of payment will constitute a representation to the City that the Work has progressed to the point indicated and that, to the best of Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections of others, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by Engineer. The issuance of a recommendation will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a recommendation for payment will not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Price.
- J. Receive and review maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection and tests and approvals of equipment, which are to be provided by Contractor in accordance with the Contract Documents. Determine that their content complies with the requirements of the Contract Documents and transmit them to the City with written comments.
- K. Conduct, in company with the City, a preliminary and a final inspection of the Project for assessing conformance with the design concept and compliance with the Contract Documents, determining the substantial completion date for the Project, and recommending final payment to the contractor in writing.
- L. Revise contract drawings, with the assistance of the City's representative, to provide record drawings of the completed Project. Furnish full size paper drawings, and PDF of drawings on CD ROM of the record drawings to the City. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Engineer shall not be responsible to maintain documents stored in electronic media format after acceptance by the City. When transferring documents in electronic media format, Engineer makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Engineer at the beginning of this Project. The City may make and retain copies of Documents for information and reference in connection with use on the Project by the City. Such Documents are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by Engineer, as appropriate for the specific purpose intended, will be at the City's sole risk and without liability or legal exposure to Engineer or

to Engineer's subconsultants. The City shall indemnify and hold harmless Engineer and Engineer's subconsultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting there from. If there is a discrepancy between the electronic files and the hard copies, the hard copies will govern.

- M. Compile, review, and comment on operation and maintenance manuals, which will be provided by Contractor in accordance with the Contract Documents.
 - N. Assist the Operator and/or the City's representatives during start-up of the project. The Engineer shall provide technical support and professional advice regarding any unforeseen problems with the operation and maintenance of the Project for a period of 1 year to the City.
- IX. Resident Project Representation**
- A. Provide periodic inspection of the construction or implementation of a project when City Inspectors are not utilized or specialized inspection is required due to the nature of the work.
- X. Consultation and Troubleshooting Services**
- A. Meet with the City on an as needed basis to discuss general operation and maintenance of the City's water system.
 - B. Provide guidance and council regarding proposed improvements and repairs based on experience and institutional knowledge of the City's facilities.
 - C. Provide field engineering
 - D. Review of plans and specifications submitted to the City
 - E. Provide expert witness testimony
- XI. Additional Services Provided through Subconsultants**
- A. Geotechnical engineering
 - B. Hydrogeologic investigations
 - C. Electrical engineering
 - D. Traffic impact studies
 - E. Environmental assessments
 - F. Topographic and boundary surveys
 - G. Easements
 - H. Subsurface Utility Engineering
- XII. Hourly Rates for Professional Services**
- We propose to provide the services described above on a time and material basis; or lump sum fee basis using the below rates. Mr. Strozewski will be billed at \$165 per hour. Support staff will be billed separately per the below Standard Hourly Rate Table by Staff Category and utilized as needed. In addition, certain out-of-pocket expenses, including plotting and reproduction, deliveries, automobile mileage, equipment rental, and travel expenses will be billed at a direct cost for time and material tasks. For lump sum assignments, expenses will be included in the lump sum cost and will not be billed separately. DCS may submit adjusted hourly rates, when needed, on January 1st of each year to account for changes in labor and operation costs over time. The City shall review and approve any new hourly rates prior those rates being applied by DCS.

Staff Category	Hourly Rate
Principal	\$200.00 per hour
Senior Project Manager	\$165.00 per hour
Project Manager	\$140.00 per hour
Project Engineer	\$120.00 per hour
Engineer in Training	\$110.00 per hour
Designer	\$125.00 per hour
Technician	\$80.00 per hour
Administrative Assistant	\$65.00 per hour