

**PROFESSIONAL SERVICES AGREEMENT
FOR
SH 130 CORRIDOR STUDY**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

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

I. DEFINITIONS

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

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

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

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

II. TERM

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

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

III. SCOPE OF SERVICES AND PROJECT SCHEDULE

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

All work performed by Consultant hereunder shall be performed to the reasonable satisfaction of the City Manager. The determination made by City Manager shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which does not meet the Standard of Care cited in section 10.4. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant’s work not be satisfactory to City Manager; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed five hundred two thousand two hundred thirty-one dollars and seventy-three cents (\$502,231.73) as total compensation, to be paid to Consultant as further detailed in Exhibit B and Appendix 1 of Exhibit B.

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

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

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

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

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

may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

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

VII. TERMINATION

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

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

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

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

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

7.4.1 Bankruptcy or selling substantially all of company's assets

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

7.4.3 Performing unsatisfactorily

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

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested

by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

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

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

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

VIII. NOTICE

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

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

If intended for Consultant, to: RS&H, Inc.
10748 Deerwood Park Boulevard South
Jacksonville, Florida 32256
Attention: Legal Department

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 "SH 130 Corridor Study" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

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

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

City of Pflugerville

Insurance Requirements

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

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

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

Type of Insurance	Amount of Insurance	Provisions
Commercial (Public) Liability to include Premises/Operations	General 1,000,000 per occurrence, 2,000,000 general aggregate coverage for: Or	City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage
Products/ Completed Operations	2,000,000 combined single coverage limit	City to be provided a waiver of subrogation
Independent Contractors		City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Personal Injury		
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. City will only accept the ACORD 25 or ISO certificate of insurance forms.

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

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

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

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

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

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

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

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

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

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

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

X. INDEMNIFICATION

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

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

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

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

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

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

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

XI. ASSIGNMENT AND SUBCONTRACTING

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

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

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

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

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

XII. INDEPENDENT CONTRACTOR

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

XIII. CONFLICT OF INTEREST

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

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

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

XIV. AMENDMENTS

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

XV. SEVERABILITY

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

XVI. LICENSES/CERTIFICATIONS

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

XVII. COMPLIANCE

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

XVIII. NONWAIVER OF PERFORMANCE

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

XIX. LAW APPLICABLE

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

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

XX. LEGAL AUTHORITY

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

XXI. PARTIES BOUND

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

XXII. CAPTIONS

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

XXIII. INCORPORATION OF EXHIBITS

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

Exhibit "A" - Scope of Services, including Project Description/Scope of Services; Exhibit "B", Appendix 1 & 2 – Compensation & Fee Summary for Professional Services and Exhibit C - Proposed Project Schedule

XXIV. ENTIRE AGREEMENT

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

XXV. MISCELLANEOUS CITY CODE PROVISIONS

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

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

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

25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that

any payments owing to Consultant under the Agreement may be applied directly toward any debt or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

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

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

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

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

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

**CITY OF
PFLUGERVILLE**

RS&H, Inc.

(Signature)



(Signature)

Printed Name: Sereniah Breland

Printed Name: Donald R. Glenn

Title: City Manager

Title: Vice President

Date: _____

Date: 08-11-2022

APPROVED AS TO FORM:

A handwritten signature in blue ink that reads "Megan R. Sauter". The signature is written in a cursive style with a clear, legible font.

Charles E. Zech

City Attorney

DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

EXHIBIT A



August 11, 2022

SH 130 Corridor Study Scope of Services



EXHIBIT A



SH 130 Corridor Study

Scope of Services

Version No. 1

August 11, 2022

Pflugerville, TX

Financial Project No.: TBD

Contract No.: TBD

RS&H No.: 1015-0093-000

Prepared by RS&H, Inc. at the
direction of the City of Pflugerville

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General

The City of Pflugerville (CITY) seeks to implement a corridor study and preliminary engineering (STUDY) effort in the State Highway (SH) 130 corridor. The STUDY includes planning, preliminary engineering, public involvement, and project management services. The STUDY will be developed to satisfy criteria set forth in the Transportation Master Plan, proposed development needs, and in coordination with landowners, TxDOT, Texas Toll Authority, Travis and Williams Counties, and applicable stakeholders. The CITY has selected RS&H, Inc. (CONSULTANT) to complete the STUDY.

Area Covered

The geographic area proposed for the STUDY is bounded by:

- i. Cameron Road on the south;
- ii. FM 685 corridor on the west;
- iii. County Road (CR) 138 on the north; and
- iv. Weiss Lane/Hodde Lane/CR 139 on the east.

The Study Area is shown in **Figure 1-1**.

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The STUDY will identify the highest priority project in the corridor and the CONSULTANT will identify opportunities for Federal grant funding for implementation and develop the grant application, including the narrative and Benefit Cost Analysis for the grant application.

Task 1: Project Management and Coordination

1.1 Perform Project Initiation / Setup

The CONSULTANT will complete the necessary Project initiation and documentation setup to appropriately manage the project.

1.2 Project Management Plan

Upon Notice to Proceed, THE CONSULTANT will develop a Project Management Plan (PMP). This PMP will outline the protocols for project communications, coordination, monitoring and invoicing procedures, and issue resolution. The PMP is dynamic and will be reviewed and updated as needed over the course of the project in coordination with CITY staff.

1.3 Project Kick-Off Meeting

Upon the issuance of Notice to Proceed, the CONSULTANT will schedule and participate in a single project kick-off meeting. This meeting will include staff from the CITY, TxDOT, Travis County, and Williamson County to establish the initial works tasks are consistent with TxDOT Project Development, if required. The meeting will define, among other things:

- Project goals and client expectations
- Describe the methods by which the project will be performed
- Consider budget and funding availability
- Discuss current condition of systems in question
- Understand other ongoing work that may impact the Project
- Define invoicing requirements (both for Airport as well as processing those for subconsultants)

1.4 Quality Control Review

The CONSULTANT will conduct in-house quality control reviews of the submittal documents noted herein. The Quality Control review will be performed as follows:

- Independent QC Review – An independent Architect/Engineer not actively involved in the Project will review for readability, accuracy, appearance, and acceptability

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- Independent Technical Peer Review – for each discipline associated with the Project an Engineer not actively involved will review the documents for alignment with assumptions, findings, and code compliance

1.5 Project Coordination

The CONSULTANT will coordinate closely with CITY staff and hold regularly scheduled project status meetings. The timing of these meetings will be established at the Project Kick-Off meeting and the CONSULTANT will prepare all meeting materials and meeting documentation. The CONSULTANT will submit monthly invoices, along with progress reports documenting all project activities over the previous month.

Task 1 Deliverables:

- Project Management Plan (Draft/Final)
- Project Kick-Off Meeting, Agenda, Minutes (Virtual)
- Monthly coordination to include virtual progress meetings (up to 9), invoices, and progress reports

Task 2: Research and Background

2.1 Data Collection Plan

The CONSULTANT will develop a draft Data Collection Plan for review and approval prior to the collection of any data. Once the review of the draft plan is complete, the CONSULTANT will finalize the plan and begin the collection of pertinent data.

2.2 Data Collection

The CONSULTANT will collect a wide range of transportation, land use, and environmental data for review. GIS will be used for the collection and review of the data whenever possible.

Anticipated data elements include the following:

- Socio-economic data within the study area
- Existing and planned transportation networks, including roadways, bicycle/pedestrian facilities, and transit routes
- Existing and historical traffic counts available through TxDOT's online source
- CAMPO Travel Demand Model
- Five-year crash analysis using data available from TxDOT CRIS to identify crash hotspots, types of crashes, and severity of crashes
- Drainage data to identify flood prone areas
- Environmental constraints, including:
 - Parcel data/ROW limits

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- Neighborhood and community resources
- Administrative, schools, places of worship, and cemeteries
- Water features available in the National Hydrography dataset or larger scale
- Hazardous waste – contamination and hazardous materials sites
- Threatened and Endangered Species
- Natural areas and ecosystems
- Parklands/conservation areas – local, state, federal
- Wetlands/Waters of the US/Hydric Soils – NWI, state, county, local
- Floodplains = FEMA flood prone areas
- Historic and Cultural Resources – archeological sites/districts, historic sites/districts, NRHP
- Utilities/Transmission – major existing and proposed electric, water and petro-chemical
 - Existing and Future Land Use
 - Current and projected development that may impact the corridor

In addition to the desktop data collection, the CONSULTANT will also conduct field reviews to become fully familiar with the corridor and ground-truth the data collected.

The CONSULTANT will use the Replica platform to identify key transportation and land use compatibility issues while mapping movement patterns for people and goods.

2.3 Review Previous Plans and Studies

In coordination with CITY staff, any pertinent plans and studies previously completed or ongoing plans will be identified and collected. The CONSULTANT will review and summarize each of these plans, particularly identifying any relevant information to the SH 130 corridor. These documents will include, but are not limited to, the 2019 Transportation Master Plan, Aspire Pflugerville 2040 Comprehensive Plan, TIA Studies and Data, Kelly Lane Major Investment Study, and other local transportation and/or development plans. All proposed improvements identified in these plans will be catalogued. In addition to the proposed projects, forecasts of future conditions developed within these plans will also be documented. A Summary Memorandum will be developed to document the findings from the existing conditions analysis.

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2.4 Existing Conditions Analysis

The CONSULTANT will analyze the collected data to determine the existing conditions of the study area. This analysis will provide a comprehensive understanding of the existing transportation, land use, and socioeconomic conditions within the corridor study area and provide the foundation for assessing the impacts on the operation of the corridor, as well as the full multimodal network. A Technical Memorandum will be developed to document the findings from the existing conditions analysis.

Task 2 Deliverables:

- Data Collection Plan (Draft/Final)
- Summary Memorandum of Previous Plans and Studies (Draft/Final)
- Existing Conditions Analysis Technical Memorandum (Draft/Final)

Task 3: Public and Stakeholder Engagement

3.1 Public Engagement Plan

The CONSULTANT will develop a draft Public Engagement Plan in conjunction with the Project Management Plan for the CITY staff to review. The plan will incorporate elements of the engagement process and include performance metrics to measure the success of the involvement activities. Once the CITY staff has reviewed the plan and provided comment, the CONSULTANT will finalize the plan and use it as a guide throughout the process.

3.2 Stakeholder Outreach

Working with CITY staff, the CONSULTANT will identify stakeholders who are involved with, or impacted by the study. A virtual meeting will be conducted with these stakeholders, who will likely include elected and appointed officials, nonprofit organization leaders, property owners, neighborhood representatives, developers, and business representatives.

3.3 Public Meeting

In addition to the stakeholder meeting, the CONSULTANT will host one public meeting with a hybrid/on-line option. The in-person meeting will be held in two different locations throughout the 7-mile corridor on separate nights to provide convenient access for all community members. One in-person meeting may be a pop-up event at a community meeting or event that is well attended by community members. The virtual meeting will be posted for no more than two (2) weeks. The meeting will include one electronic survey as an option for involvement.

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The virtual component of the hybrid public meeting will include information that can be experienced on-line through multiple devices (computer, tablet, phone, etc.). The virtual component will display similar information to the in-person meeting.

The public meetings will include an educational component and include discussions of alternatives for urban boulevard street design and street connectivity, as well as planning strategies that enable the creation of vital community centers and transportation corridors. At the conclusion of the workshops, the results of the meetings will be presented to the staff and City Council.

Public outreach will provide Environmental Justice (EJ) and Limited English Proficiency (LEP) opportunities to engage populations that are traditionally underserved in the planning process, in accordance with federal and state guidelines.

Task 3 Deliverables:

- Public Engagement Plan (Draft/Final)
- Stakeholder Database and Comment Log
- Stakeholder Meeting: Arrange, Invites, Materials, Facilitate (Up to 3 Virtual Meetings)
- Public Meeting Promotion: 1 Advertisement, Social Media Content for City's Use, Media Release for City's Distribution, 1 Flyer (Flyer in English and Spanish)
- Public Meeting Facilitation for Up to 2 Meetings: Booking Venue, Coordinating Logistics, Facilitation, Set/Clean Up (3 staff per meeting)
- Public Meeting Materials: Fact Sheet, Exhibit Boards, On-line Questionnaire, Sign-in Sheets (Fact Sheet, Exhibit Boards, Questionnaire in English and Spanish)
- Virtual Public Meeting: Provide Content and Materials to be posted on the City's website
- Public Involvement Summary

Task 4: Preliminary Corridor Study

4.1 Goals and Objectives

The first step in the development of the corridor study is to define the goals and objectives for the effort. The CONSULTANT, in coordination with CITY staff, will develop the study's goals and objectives which will build on the goals from previous work. These goals will form the framework for the development of the corridor plan.

4.2 Needs Assessment

Building on the results of the previous studies review and existing conditions analysis, the future anticipated conditions of the corridor will be established. These existing and future conditions will incorporate the comprehensive documentation of all transportation related elements, as well

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as the land uses within the study area. An environmental constraints profile will be developed as part of the Needs Assessment Technical Memorandum.

The catalogue of proposed improvements from previous studies will be carefully reviewed within the context of the updated existing and future conditions. As elements change over time, the need and/or scope for proposed projects may also change and need to be updated. Through this review, the CONSULTANT will confirm that proposed projects are still viable and will address the identified deficiencies, as well as identify any needed updates and new projects that may be needed to address existing and future needs.

Transportation needs and deficiencies will be identified based on these existing and future conditions. The CONSULTANT will obtain the appropriately licensed CAMPO travel demand model for 2045. The CONSULTANT will also use the results of the Pflugerville Transportation Master Plan (TMP) model for review of build-out conditions, alongside the 2045 CAMPO Plan conditions indicated by the forecast models. The CONSULTANT will review land use and compare/contrast CAMPO model and TMP model production/attractions at the Traffic Analysis Zone (TAZ) level.

The CONSULTANT will also review and map the expected timeline of major subdivisions and employment centers, with attention to high traffic generators, retail locations, schools, and major residential developments. A high-level analysis of planning considerations for the impact of these developments on existing and proposed arterial capacity will be completed.

The CONSULTANT will obtain five years of crash data from the TxDOT Crash Records Information System (CRIS). The CONSULTANT will prepare crash statistics (such as crash types, severity, time of day) and identify crash patterns within the Study Area. The CONSULTANT will segregate intersection-related crashes and segment-related crashes on SH 130 study corridor and create hotspot maps showing intersection and segment locations with highest crash frequency. The team will examine locations with highest crash frequency (as identified in the hotspot analysis) through virtual site visits to obtain information on roadway features (such as number of lanes, shoulder width, striping condition, intersection control) and identify countermeasures from the TxDOT Highway Safety Improvement Plan (HSIP) work code list to address safety needs at the hotspot locations within the SH 130 Study Area.

4.3 Corridor Segmentation and Project Development

Existing and proposed roadways in the study area will be segmented into logical termini for planning analysis. Both the CAMPO 24-hour and peak period travel forecast volumes and the results of the TMP model will be compiled for each segment. Volume-to-capacity ratios will be listed for each segment from both models as part of an overall decision matrix. Criteria from the

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latest version of the FHWA Highway Capacity Manual and/or the latest documentation from TRB/NCHRP reports (such as NCHRP 716) will be used to determine a high-level segment-based laneage requirement to bring the proposed capacities to a reasonable v/c ratio indication of Level of Service (LOS). The results of this high-level planning capacity analysis will also indicate which junctions will need further capacity analysis and lane configuration planning. Detailed simulation of intersections and design considerations are not part of this scope.

The CONSULTANT will identify proposed improvements within the Study Area to address existing and future multimodal mobility deficiencies and each will be cross-referenced with the comprehensive data analysis to identify any environmental, social, or physical constraints that must be considered. These projects could include proposed intersection improvements, bicycle/pedestrian facilities, lane configurations, speed control devices, and any other special features.

These draft projects will be developed in coordination with CITY staff and submitted for full review and comment to CITY staff and involved agencies. Comments will be addressed, and the project list finalized.

4.4 Project Prioritization

To prioritize the potential projects, the CONSULTANT will develop a decision support matrix, which will consist of performance metrics such as fiscal impact assessment results, planning level cost estimates, and environmental constraints. These parameters will be utilized to assess each alternative to maximize benefit cost of the project and to best meet the goals of the effort. The application of the matrix will result in the prioritized list of projects.

In providing estimates of probable construction cost, the CITY understands that the CONSULTANT has no control over the cost or availability of labor, equipment, or materials, or over market conditions or a Contractor's method of pricing, and that the CONSULTANT's estimates of probable construction costs are made on the basis of the CONSULTANT's professional judgement and experience at the time of preparation. The Consultant makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from the CONSULTANT's estimate of probable construction cost.

Task 4 Deliverables:

- Goals and Objectives Technical Memorandum (Draft/Final)
- Needs Assessment Technical Memorandum (Draft/Final)
- Conceptual Layouts (Draft/Final)
- Project Prioritization Technical Memorandum (Draft/Final)

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Task 5: Identify Funding Sources

5.1 Potential Funding Sources

The CONSULTANT will review the preferred alternatives and cross-reference with the grant opportunities that are available through the new Bipartisan Infrastructure Law (BIL) and other funding sources. The CONSULTANT will review the numerous funding vehicles available for various types of projects and identify and match the projects with the grant opportunities based on the criteria for each grant program.

5.2 Grant Application

If desired, the CONSULTANT will also develop one (1) grant application. The CONSULTANT will coordinate with the CITY staff on the grant application schedule, review the Notice of Funding Opportunity, complete the research needed and develop the narrative, as well as complete the Benefit Cost Analysis.

Task 5 Deliverables:

- List of Potential Funding Sources (Draft/Final)
- Complete Grant Application (Draft/Final)

Task 6: Final Report and Executive Summary

6.1 Draft Final Report

The CONSULTANT will prepare a Draft Final Report that incorporates the planning processes, analyses, and results and recommendations developed over the course of the study. The project priorities will be included, along with public outreach efforts, benefit cost results, potential funding sources, and a comparison with the regional goals identified in the plan review.

6.2 Executive Summary

With a document including the vast amounts of technical information and documentation, an Executive Summary is a key element to a final product. In addition to the written Executive Summary, the CONSULTANT will also develop a Graphical Executive Summary in poster format. This approach will provide a quick reference guide to the study recommendations.

6.3 Presentation to City Council

After review by CITY staff, the planning process and results detailed in the Draft Final Report will be incorporated into a Presentation for the City Council that will be given at a meeting to be determined by the project team and CITY staff. The deliverable will synthesize large amounts of

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information into a presentation that communicates all important concepts, details, and results at a level appropriate for a policy committee.

6.4 Final Report

Following receipt of any comments from City Council members, or additional comments from CITY staff, the Final Report will be prepared. Extensive detailed technical information will be incorporated in an appendix so that data is available for those who wish to see details, while communicating all pertinent information and recommendations in the report.

Task 6 Deliverables:

- Draft Final Report and Executive Summary
- Presentation to City Council
- Final Report

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Subconsultant Responsibilities are described in **Table 1-1** below.

Table 1-1: Subconsultant Responsibilities

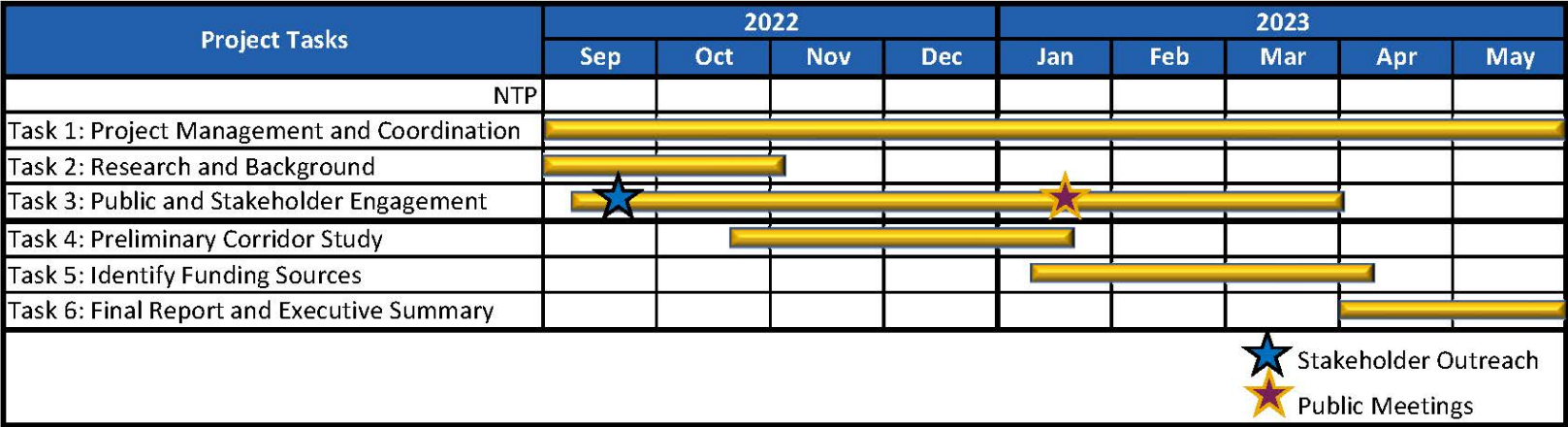
	DKS	Hicks	CD&P
Task 1: Project Management and Coordination	Monthly: Progress Meeting, Report, Invoicing. QC Procedures.	Monthly: Progress Meeting, Report, Invoicing. QC Procedures.	Monthly: Progress Meeting, Report, Invoicing. QC Procedures.
Task 2: Research and Background	Summary of Previous Studies	Data Collection, Existing Conditions Analysis	None
Task 3: Public and Stakeholder Engagement	Attend Stakeholder Meeting	None	Develop PIP, Prepare for and attend Stakeholder and Public Meeting
Task 4: Preliminary Corridor Study	Needs Assessment	Environmental Constraints	None
Task 5: Identify Funding Sources	Grant Writing Support	None	None
Task 6: Final Report and Executive Summary	Tables/Figures	Figures/Environmental Discussion	None

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Schedule

The proposed STUDY schedule is illustrated in **Figure 1-2** below.

Figure 1- 2: SH 130 Corridor Study Schedule



The actual schedule may vary significantly as the Project progresses and the scope is further developed. Changes to the project schedule outside of the CONSULTANT’s control may require changes in the CONSULTANT’s efforts and require adjustments to the compensation indicated in this proposal.

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Fee

The proposed STUDY fee is shown below in **Table 1-2** below.

Table 1-2: Fee Breakdown

	RS&H	DKS	Hicks	CD&P
Fee by Firm	\$310,784.13	\$55,103.00	\$54,994.60	\$81,350.00
Total Fee: \$502,231				