

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONSTRUCTION MANAGEMENT AND INSPECTIONS for the
WILBARGER CREEK REGIONAL WASTEWATER TREATMENT FACILITY**

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

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

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed Eight Million Seven Hundred Thirty-eight Thousand One Hundred Ninety-five dollars and no cents (\$8,738,195.00) as total compensation, to be paid to Consultant as further detailed in *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: Andrea Brinkley
CIP Director
P.O. Box 589
Pflugerville, Texas 78660

If intended for Consultant, to: Ardurra Group
Attn: Yue Sun, PE, BCEE
Project Manager
7500 Rialto Blvd., Bldg 1, Suite 240
Austin, Texas 78734

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 “*Wilbarger Creek Regional Wastewater Treatment Facility*” 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, 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: JH Engineering, LLC. 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 and Exhibit B - Scope of Services, including Project Description/Scope of Services; Fee Summary for Professional Services.

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**

CONSULTANT
Ardurra Group



(Signature)
Printed Name: Sereniah Breland
Title: City Manager
Date: _____

(Signature)
Printed Name: Yue Sun
Title: Project Director
Date: 4/6/2023

APPROVED AS TO FORM:

Meghan R. Santos

Charles E. Zech

City Attorney

DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

Exhibit A / Detailed Scope of Engineering Services

SCOPE OF SERVICES FOR CITY OF PFLUGERVILLE WILBARGER CREEK REGIONAL WASTEWATER TREATMENT FACILITY PHASE 1 CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES

GENERAL

The Engineer will execute tasks necessary to perform Construction Management and Construction Inspection (CMCI) duties and responsibilities for pre-construction and construction phase activities related to the Wilbarger Creek Regional Wastewater Treatment Facility (WTF) Phase 1 project for the City of Pflugerville.

It is understood that this project will be delivered via a Construction Management at Risk (CMAR) method. It is anticipated that the selected CMAR team will provide pre-construction and construction services. As such, the CMCI duties and responsibilities will align with these activities accordingly.

CP&Y currently serves as Owner's Representative on this project and it is understood they will continue to provide quality control reviews, technical reviews and coordination with funding agencies throughout the construction phase.

It is anticipated that CMAR pre-construction service will begin in April 2023 and final completion of construction in October 2026, with a total project duration of 42 months, and a total duration of 36 months for the construction of the balance of the plant.

Stakeholders for this project include:

- City of Pflugerville as "City"
- CP&Y as "Owner's Representative (OR)"
- Garver and its teaming partners as "Engineer of Record (EOR)"
- Ardurra and its teaming partners as "CMCI"
- Selected contractor and its teaming partners as "CMAR"

SCOPE OF WORK

The tasks associated with the CMCI services are separated into the following services and tasks:

1. PROJECT MANAGEMENT COORDINATION

- 1.1. Coordinate with the City to confirm/establish electronic document system/repository for use in the Project. Coordinate with the City to determine communication protocols and establish project controls.
- 1.2. Coordinate with project team members to complete project tasks and meet project objectives.

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- 1.3. Maintain a project schedule with detailed milestones. Generate monthly status reports and preparation of invoices to be submitted together for review and approval.

2. CMAR PRECONSTRUCTION COORDINATION

- 2.1. Attend the following CMAR coordination meetings:
 - CMAR Kickoff Meeting with the City, City's OR, CMAR, and EOR. The kickoff meeting will be led by the CMAR team to discuss baseline activities, design optimization coordination, and workflow prioritization.
 - CMAR Early Work Packaging Workshop with the City, City's OR, CMAR, and EOR. The Early Work Packing Workshop meeting will be led by the CMAR team, to discuss work packaging.
 - CMAR Optimization Workshop with the City, City's OR, CMAR and EOR. The Optimization Workshop meeting will be led by the CMAR team to discuss constructability reviews, design and cost optimization, phasing, pre-procurement process etc. for work identified for subsequent bid packages per coordination indicated during the initial early work packaging phase.
 - Participate in up to six (6) additional CMAR progress/coordination meetings with the City, City's OR, CMAR, and EOR as needed.
- 2.2. Construction Procurement Plan Coordination and Review. Review construction packaging, timelines, schedules proposed by the CMAR team and provide comments. This may include:
 - Review project execution plan prepared by CMAR, including project schedule for construction phasing, submittals, equipment delivery, general construction, facility commissioning & start-up and sequence of construction.
 - Review project risk management plan and Risk and Responsibility Matrix prepared by CMAR.
 - Review listing of potential design and cost optimization items/recommendations proposed by CMAR and associated cost savings, schedule enhancement, constructability and overall project benefits.
 - Review procurement plan, packaging and solicitation process and review proposed construction bid packages, timelines for early work package(s), subsequent work packages, and the balance of the plant package.
 - Review bid packages template for incorporating all regulatory requirements/funding agency requirements and each bid package for completeness.
 - Review equipment selection and coordination, and packaging for common elements to maintain equipment and material continuity throughout the project.

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- Review project planning and scheduling prepared by CMAR and associated impacts on construction schedule. Look for opportunities to optimize the schedule.
- Review other construction management and quality control plans (construction emergency response plan, construction site safety plan, quality management plan, environmental management plan, etc.) prepared by CMAR.
- Review the technical requirements and the selection criteria to be used in preparing the Procurement bid packages; review the completed bid documents and participate in the analysis and selection of the most responsive bidder.
- Review Early Work Packages. Review Bid documents/Bids/Subcontractor recommendations/Selections.
- Review Balance of Plant Packages. Review Bid Documents/Bids/Subcontractor recommendations/Selections.
- Review GMP proposal prepared by CMAR.

3. CONSTRUCTION MANAGEMENT AND INSPECTION

Construction Management and Inspection services will include the following team members:

Position	Phase	Assumed Duration	Quantity	No. of Weeks	Estimated Average Hours per Week	Estimated Total Hours
Senior Construction Manager	CMAR Preconstruction	5/1/2023-8/31/2023	1	17	8	136
	Construction Phase	9/1/2023-10/31/2026	1	165	46	7590
Senior Construction Inspector	Construction Phase	9/1/2023-7/31/2026	1	152	46	6992
Construction Inspector	Construction Phase	1/1/2024-3/31/2026	1	117	40	4680
Document Control & Management	CMAR Preconstruction/ Construction Phase	5/1/2023-10/31/2026	1	182	32	5824

3.1. Pre-Construction Meetings

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- 3.1.1. Schedule and conduct the pre-construction meeting; record and disseminate minutes from pre-construction meeting.
 - 3.1.2. Utilize the City's Project Management system: set communications protocol and contract administration procedures, establish progress meeting schedule and submittal schedule.
 - 3.1.3. Provide agenda for meeting: Key milestone dates, pay application procedures, schedule, public notification issues and procedures, utility coordination issues, traffic control, permitting, property owner notification and coordination, temporary facilities, contractor's use of City's Project Management system, etc.
- 3.2. Construction Administration and Management Services
- 3.2.1. Act as the City's on-site representative administering the contract for construction and providing overall project oversight, maintain record of decisions and changes made.
 - 3.2.2. Meetings: Schedule and conduct construction progress meetings; record minutes from construction progress meetings and distribute via the City's Project Management program to: City Project Manager, Design Consultant and CMAR throughout the duration of the project. Assume a 2-hour duration for each meeting. Additional meetings required for the Project and/or requested by the City shall require an amendment. Software licenses required for construction document control will be provided by Others.
 - 3.2.2.1. Schedule monthly progress meetings to review the following: work progress and schedule, outstanding issues, status of submittals and responses, unforeseen issues and changes to the work.
 - 3.2.2.2. Coordinate additional meetings as necessary to discuss and resolve problems and provide guidance in a timely manner.
 - 3.2.2.3. Coordinate/monitor the following: utility relocation activities for compliance, utility installation verification, reporting, record management and as-built drawings.
 - 3.2.2.4. Attend all utility coordination, construction, and scheduling meetings.
 - 3.2.2.5. Coordinate and monitor progress of building inspections, specialty inspections and any utility services or relocation per permits/plans. It is anticipated that EOR will obtain building permits, and other permits required by utility, jurisdiction and regulatory agencies.
 - 3.2.3. Manage Construction
 - 3.2.3.1. All final documentation is required in electronic/digital format, utilizing the City's Project Management program as is feasible.
 - 3.2.3.2. As field problems arise, notify the Design Consultant and City Project Manager of proposed solutions to resolve problems.

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- 3.2.3.3. Review and update as-built documents regularly with CMAR.
 - 3.2.3.4. Monitor and ensure adherence to approved project baseline schedule. Review CMAR's schedule monthly, ensure compliance with City's intended schedule, and provide recommendations as needed to retain and regain schedule if needed.
 - 3.2.3.5. Recommend alternate project sequencing/scheduling to keep project on schedule.
 - 3.2.3.6. Prepare monthly summary report of construction activities with outstanding issues outlined for review. Monthly progress information associated with the project will be submitted to the Project Manager for review and approval.
 - 3.2.3.7. Record weather conditions on jobsite daily.
 - 3.2.3.8. Monitor, on an on-going basis, cost impacts (both increase and decrease) and track with schedule of values. Identify any potential cost impacts related to project delays and/or potential change orders and notify the City as appropriate.
 - 3.2.4. Coordinate work of CMAR with external agencies and utility companies. Coordinate CMAR's operations with regard to other City contracts and construction and adjacent construction projects as well as with adjacent occupants and uses, and city functions, property owners for planned service outages, deliveries, parking, street closures, and access control issues to properties including notifications.
 - 3.2.4.1. Verify construction conformance and compliance with TCEQ, NOI and NOT.
 - 3.2.4.2. Verify construction conformance with permitted activities such as: City permits, U.S. Army Corps of Engineers permits, TxDOT roadway permits, and any Railroad agreements.
 - 3.2.5. Maintain records of all decisions, actions, and activities with regard to construction operations via the City's Project Management program system (i.e. Change Orders, RFIs and responses, Submittals and responses, Request for Proposals, correspondence, SWPPP inspections.)
 - 3.3. Funding Source Compliance
 - 3.3.1. Conduct monthly review of funding source requirements for the Texas Water Development Board's (TWDB) Clean Water State Revolving Fund and the United States Environmental Protection Agency's Water Infrastructure Finance and Innovation Act (WIFIA) and review equipment and material submittals for source compliance with American Iron and Steel requirements as required. Notify the City Project Manager, Design Engineer, and CMAR promptly if any
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requirements are not compliant with the funding agency. Funding and source requirement certifications shall be provided by Others. Assume reviewing and preparing 44 monthly compliance summary reports per funding source requirements.

- 3.3.2. Review monthly certified payrolls from CMAR for compliance with David-Bacon labor wage requirements. Assume quarterly wage-rate verification interviews with the hourly employees of the CMAR and its subcontractors will be conducted by City staff to determine if reported wages are following labor wage requirements. A quarterly summary report will be provided to document the interviews and monthly reviews of certified payrolls. Assume reviewing 44 monthly certified payroll reports submitted by CMAR.
- 3.4. Construction Inspection Services
- 3.4.1. Provide full-time on-site technical observation of CMAR's activities to verify and ensure all work materials, structures, equipment, and workmanship comply with the Contract Documents including Addenda, and Change Orders. Confirm that CMAR maintains good construction practices and professional standards prevailing in the local, City, County, and State of Texas. Utilize City's Project Management program system for all inspection reports.
 - 3.4.1.1. Notify the City Project Manager if CMAR's work is not in compliance with the Contract Documents or specifications. Notify the City Project Manager and Design Consultant of any failure of the Contractor to take measures to repair and bring work into compliance.
 - 3.4.1.2. Issue Advisory Notices to CMAR for work that is not in compliance with approved construction documents.
 - 3.4.1.3. Issue Non-Compliance Reports to CMAR if non-conforming work is not brought into compliance or if plan of action to bring work into compliance is not conducted in a timely manner.
 - 3.4.1.4. Inspect and observe the materials and equipment being incorporated into the work, according to furnished submittal data, to assure that they are handled, stored, and installed in accordance with the Contract Documents and specifications. Report to the City Project Manager regarding these activities.
 - 3.4.1.5. Provide inspections that meet the required Building Inspections noted as Special Inspections, as required by the City's Building Official and adopted Building Code to ensure the project requirements for construction are satisfied and the project can receive Certificate of Occupancy. This may also include inspecting and observing electrical and instrumentation installation utilizing personnel specifically trained in those disciplines.
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- 3.4.2. Identify, record, and notify Design Consultant of any problems or failures to meet performance requirements in a timely manner to minimize delay in the progress of the project, make recommendation(s) for appropriate solution to the City Project Manager and Design Consultant.
 - 3.4.3. Prepare and maintain daily progress log or daily construction reports, photographs, records and track quantities installed that day utilizing the City's Project Management system.
 - 3.4.4. Ensure CMAR reviews and approves daily reports and quantities.
 - 3.4.5. Verify CMAR has obtained necessary permits and is maintaining any Traffic Control, public notification and Storm Water Pollution Prevention Plans, facilities, equipment, or arrangements in accordance with contract documents.
 - 3.4.6. Attend and participate in progress meetings.
 - 3.4.7. Create contacts for your record for: names, addresses, telephone numbers and email of all CMAR team contractors, subcontractors, sub consultants and major suppliers of material and equipment; store in City's Project Management system.
 - 3.4.8. Immediately notify the City Project Manager and Design Consultant in the event of an on-site accident. Record and note conditions, activities, and witnesses to the event.
 - 3.4.9. Maintain Resolution Log and respond to citizen complaints in the City's Project Management system.
 - 3.4.10. Consult with City Project Manager and Design Consultant in advance of scheduled major work operations, tests, inspections or start of important phases of project. Schedule pre-activity meetings, document and ensure plan of action identified is maintained and serves to reduce the impact of construction to City operations and is planned and executed accordingly.
- 3.5. Pay Applications
- 3.5.1. Pay applications will be generated by the City's Project Management system based on quantities approved in the daily reports. Review, verify and enter quantities provided by contractor for all work in compliance with contract documents.
 - 3.5.1.1. Review work conducted daily on daily inspection reports and material installed measurements submitted by CMAR contractor; verify work conducted and bid item quantities via the City's Project Management system; meet monthly to review pay estimate and quantities with CMAR contractor.
 - 3.5.1.2. Review progress pay application with Design Consultant for approval or revision prior to submittal to City. Collect certified payroll for compliance with Davis Bacon requirements and upload to the City's Project Management system for City review.
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- 3.5.1.3. Finalize pay application with signatures from CMAR Contractor, Design Consultant and City Project Manager certifying quantities and amounts via the City's Project Management system.
 - 3.5.1.4. Notify City Project Manager when all electronic signatures are completed in the City's Project Management system for invoice processing.
 - 3.5.1.5. Track and record requests for rain or other delays with potential to add to Contract Time in Daily Reports in the City's Project Management system via Daily Reports.
 - 3.5.2. Upon completion of the work, prepare a final progress payment including a balancing change order zeroing out all unused quantities utilizing the City's Project Management system. Identify and add additional quantities and make any approved changes to the Contract Time.
 - 3.5.2.1. Review and coordinate with Design Consultant to provide recommendation for Substantial Completion or Final Acceptance. (See Close-out Section)
- 3.6. Document Control
 - 3.6.1. Utilize the City's Project Management system to: receive, route, track and log all CMAR Contractor communications, Submittals, Change Orders, RFIs, Pay Applications and Citizen Complaint/Resolution Log; communicate with CMAR Contractor the status of submittal reviews; review submittal and RFI log in the City's Project Management system to ensure timely responses; notify City Project Manager, CMAR Contractor, and Design Consultant of time critical issues.
 - 3.6.1.1. Respond to RFIs when such response does not require the Design Consultant's opinion or expertise or direction from City.
 - 3.6.1.2. Assemble and maintain notes, comments, sketches, and supportive data relative to the Project to facilitate the revision of drawings to conform to the final as-built conditions. Review CMAR Contractor's record keeping periodically to ensure completeness, timeliness, and progress.
- 3.7. Change Order Reviews
 - 3.7.1. Prepare and issue Request for Proposals in a timely manner via the City's Project Management system. Review RFP and CMAR contractor proposal for additional work with City Project Manager and Design Consultant for approval. Ensure the status of RFP and Responses from Contractor, City and Design Consultant are uploaded/logged and tracked in the City's Project Management system. Assume no more than eight (8) Request for Proposals will be issued.

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- 3.7.2. Provide recommendation on technical matters as an advocate for the City. Evaluate CMAR Contractor's response/proposal for merit, cost, time, accuracy, and price practicality. Negotiate with CMAR Contractor on City's behalf if required.
- 3.7.3. Prepare Change Order and documentation including signatures of CMAR Contractor, EOR, and Construction Manager for delivery to City. Assume no more than eight (8) Change Order will be prepared.

3.8. Construction Materials Testing Coordination and Laboratory Results

It is understood that the City has retained a separate construction materials testing service contract with Others to provide construction materials testing laboratory services for this project. CMCI's responsibilities include the following:

- 3.8.1. Coordinate testing laboratory activities with Contractor's activities. Review test reports for compliance with Contract Documents. Log, track and retain test reports in the City's Project Management system. Review results with Contractor. Monitor any corrective action and re-testing for compliance. Maintain compliance with City's specifications.
 - 3.8.1.1. Review lab test reports and log any failures.
 - 3.8.1.2. Review Invoicing from Laboratory and ensure correct invoicing to the project and to daily activities.

3.9. Plant Startup & Commissioning Support

Ardurra's Subconsultant, JHE will support startup and commissioning specialty services to develop startup and commissioning procedures for the CMAR Contractor and Contractor will implement the testing procedures.

- 3.9.1. Technical Review Support by Ardurra
 - 3.9.1.1. Provide technical reviews of the draft startup and commissioning plan and provide comments. Attend four (4) draft plan review meetings with the City, start-up and commissioning specialty consultant, design consultant, CMAR to discuss comments and finalize the plant. Engineer's technical specialist will attend these meetings. Assume each meeting will be about four hours in duration.
 - 3.9.1.2. Attend pre-startup and construction coordination meetings with the City, start-up and commissioning specialty consultant, design consultant, CMAR to plan pre-startup and commissioning activities and provide inputs, including six (6) in-person meetings and six (6) virtual meetings. Engineer's technical specialist will attend these meetings. Assume the in-person meetings will generally be about four hours each in duration and the virtual meetings will be about two hours each in duration.

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- 3.9.1.3. Attend up to 12 virtual coordination meetings during startup and commissioning period to coordinate with the City, start-up and commissioning specialty consultant, design consultant, CMAR to discuss field issues and solutions. Engineer's technical specialist will attend these meetings. These meetings will be about two hours each in length.
- 3.9.2. Field Support by Ardurra
 - 3.9.2.1. Review and verify equipment and process start-up plan submittals.
 - 3.9.2.2. Monitor final list of items to be completed or corrected prior to pre-startup and commissioning and prior to completion of the startup and commissioning period.
 - 3.9.2.3. Verify that tests of equipment and subsystems, systems start-ups, operation and maintenance, and training are conducted per the Contract Documents.
 - 3.9.2.4. Verify documentation including copies of all tests, inspections, and system startup data and deliver to the City.
- 3.9.3. Commissioning and Start-up Coordination Meetings
 - 3.9.3.1. JHE will attend the Project Kickoff Meeting with the City, Ardurra, Design Consultant, and CMAR Contractor. During the Kickoff Meeting, JHE will provide an overview of the Commissioning and Start-Up (C&SU) and Construction Inspection process. Assumption: One four-hour meeting attended in-person, including travel time.
 - 3.9.3.2. JHE will attend routine Internal Coordination Meetings with Ardurra to receive updates, provide feedback, and discuss progress. Assumption: One one-hour meeting/month during 44-month construction phase.
 - 3.9.3.3. JHE will attend routine Construction Progress Meetings with the City, Ardurra, Design Consultant, and CMAR Contractor to receive updates, provide feedback, and discuss progress with the project stakeholders. Assumption: One four-hour meeting/month during 44-month construction phase attended in-person, including travel time.
 - 3.9.3.4. JHE will attend a Partnering Workshop with Ardurra to ensure a seamless transition between JHE's services and the Construction Manager's services. Assumption: One four-hour meeting attended in-person, including travel time.
- 3.9.4. Pre-Commissioning
 - 3.9.4.1. JHE will update Commissioning and Start-Up (C&SU) Plan developed in Dec. 2022 to incorporate final changes to the IFB set and feedback from the CMAR Contractor.

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- 3.9.4.2. JHE will develop Functional and Performance Test Packages using Contract Documents and Equipment Submittals. Develop detailed Functional and Performance Test Packages for each system identified during the Establishment of Systems and System Boundaries. Each Functional and Performance Test Package will include the approach and objectives of testing, start-up sequencing, detailed step-by-step procedures and forms, prerequisite testing requirements, and any other information necessary to complete Physical Checkout, Field Testing, Instrumentation Field Testing, Functional Testing, and Instrumentation Functional Testing and prepare for Start-Up and Acceptance Testing for each system using the Contract Documents, equipment submittals, and manufacturers' Operations & Maintenance (O&M) manuals. Assumption: 56 individual Functional and Performance Test Packages as identified in the Commissioning and Start-Up Plan, dated Dec. 2022, during the Design Phase of the Project.
- 3.9.4.3. Develop Acceptance Testing Plan
 - Generate Preliminary Acceptance Testing Plan. JHE will develop the Preliminary Acceptance Testing Plan, including the approach and objectives of the Start-Up Transition Period and Acceptance Test, detailed step-by-step procedures and forms, prerequisite testing requirements, and any other information necessary to complete the Start-Up Transition Period and Acceptance Test.
 - Generate Final Acceptance Testing Plan. JHE will update the Acceptance Testing Plan as the Project approaches construction completion to incorporate any modifications to the project scope and/or schedule.
- 3.9.5. Commissioning Oversight and Coordination
 - 3.9.5.1. Commissioning Oversight. JHE will mobilize to the Project site to oversee the Contractor's implementation of the Functional and Performance Test Packages.
 - 3.9.5.2. Extended Duration Testing Support
 - JHE will mobilize to the vendors' facilities to support the Vendor Witnessed Factory Tests, which will be completed by the Contractor. [Assumption: Six tests, one for each packaged control system, with each test having a duration of five 10-hour days]
 - JHE will mobilize to the PCSI's facility to support the Witnessed Factory Test, which will be completed by the Contractor. [Assumption: Five 10-hour days]

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- JHE will mobilize to the Project site to support the 3-day Clean Water Test, which will be completed by the Contractor. [Assumption: Three 10-hour days]
- JHE will mobilize to the Project site to support Seeding, which will be completed by the Contractor and the City. [Assumption: Two 10-hour days]
- JHE will mobilize to the Project site to support Functional Demonstration Testing, which will be completed by the Contractor and the City. [Assumption: Five 10-hour days]
- JHE will mobilize to the Project site to support the 30-day Liquids Train and Solids Train Operational Tests/Site Acceptance Tests, which will be completed by the Contractor and the City. [Assumption: Two tests, one for Liquids Train and one for Solids Train, and 22 8-hour working days to support each test]

3.9.6. Commissioning Coordination

3.9.6.1. Commissioning Coordination Meetings. JHE will attend the Contractor's Commissioning Coordination Meetings to receive updates, provide feedback, and discuss progress to date as it pertains to commissioning, start-up, training, and turnover. [Assumption: One meeting to occur monthly for 6 months, bimonthly for 4 months, and weekly from 2 months before testing of the first process/mechanical area through the end of commissioning and startup, totaling 64 meetings. JHE's Commissioning Manager will attend all meetings in person (3-hour duration including travel time for 14 meetings and 1-hour duration for 50 meetings assuming already on site), and JHE's Deputy Project Manager will attend all meetings virtually.

3.9.6.2. Training Coordination. JHE will review the Contractor's training plan submittals to ensure they meet the specification requirements and assist in scheduling training sessions in accordance with the City's preferences and contractual requirements.

3.9.6.3. Turnover Coordination. JHE will provide coordination and oversight of the turnover process, including ensuring asset management information, warranty information, spare parts, final O&M manuals, and all required training sessions have been provided to the City and all required testing has been completed prior to the City's acceptance of any portion of the Project.

3.9.7. Operations Support. JHE will provide a minimum TCEQ Grade C licensed Wastewater Operator to assist in the Process Startup aspects of the Commissioning and Startup Phase. The Licensed Operator will engage on the Project approximately 2 months prior to Seeding and support testing through

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the 30-Day Operational Test/Site Acceptance Test conducted on the Solids Train, anticipated to be 5 months of total support.

3.10. Project Completion and Close out

- 3.10.1. Provide list of deliverables for substantial completion walk through/inspection. Schedule and conduct project walk through upon receipt of CMAR Contractor's notification of substantial completion. Include City Project Manager, Design Consultant and others as directed. Prepare a list of non-conforming work based on visual inspections via the City's Project Management system. Record and monitor CMAR contractor's corrective efforts and schedule. Schedule final completion inspection for any remaining corrections.
- 3.10.2. Coordinate and obtain Design Consultant's signature and seal on Substantial Completion certificate and Final Completion and Acceptance certificate via the City's Project Management system. Ensure all documents required for the City's acceptance of the project are obtained and submitted in a timely fashion for the prompt completion of the project.
- 3.10.3. Review and compile any Operation and Maintenance documents required from the CMAR Contractor – forward to Design Consultant for review. Ensure CMAR Contractor's closeout documents are uploaded to the City's Project Management system. Coordinate any training required for City staff to operate any equipment. Review for completeness and accuracy, including affidavits of final payment, final pay estimates, as built records, redlines and drawings. Once received, notify the Design Consultant and City Project Manager when completed, upload to the City's Project Management system.
 - 3.10.3.1. Upon completion of close out items, provide recommendation for City's Substantial Completion/Final Acceptance certificate.
 - 3.10.3.2. Provide indexed project files, redline plans, and as built or record drawings to City via the City's Project Management system.
- 3.10.4. Conduct Project Close-Out Meeting.
- 3.10.5. Prepare and recommend final payment application. Prepare job record logs transmittals, and correspondence reports in an organized file for delivery to City.
- 3.10.6. Consult with City on any potential Warranty items requiring repair or replacement.

3.11. 12-Month Contractor Warranty Period Support

- 3.11.1. Provide ongoing support to lingering or problematic issues with equipment and/or failure of CMAR Contractor to resolve in an appropriate time period. Coordinate list of warranty issues with plant as noted by City, Plant Operator, and Design Consultants.

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- 3.11.2. Schedule, arrange and coordinate a One Year Walk-through of the project to review status of the work 60 days prior to expiration of the One Year Maintenance period.
- 3.11.3. Provide staff to conduct and participate in the warranty inspections.
- 3.11.4. Oversee repairs for non-conforming work with CMAR contractor.
- 3.11.5. Submit final report on completed warranty repairs via the City's Project Management program system.

4. ADDITIONAL SERVICES

4.1. Extended Warranty Period Support for Additional 12 Months

Consult with the City on a monthly basis, for a period not to exceed 12 months, to review outstanding issues, problems with plant and related matters, and advise on possible solutions and actions to be undertaken by the City. A total of 186 hours is included in the budget for use.

4.2. Allowance for Building Mechanical including HVAC and Plumbing Inspection

Perform Building Mechanical inspection during construction and startup and commissioning. 136 hours are included in the proposal to cover various buildings in the project.

ASSUMPTIONS AND OTHER SERVICE TASKS

Other service tasks will be negotiated with the City as needed, including additional studies and investigation as required to support recommended solution and/or as required to address system which may become affected as a result of the proposed work but not originally envisioned or as added by the City. Other services will be authorized by the City in writing for an additional fee as agreed upon by the City and the Engineer. The following assumptions are made in development of the construction management and inspection scope of work:

1. Materials Testing by Others.
2. Building Special Inspections as required by the contract documents by Others.
3. Factory witness testing by Others.
4. Analytical laboratory testing during startup and commissioning is not included in the Scope of Services.
5. Testing chemicals during startup and commissioning is not included in the Scope of Services.
6. System Operation and Maintenance manual not included in the Scope of Services.
7. Hard copies of record drawings and specifications not included in the Scope of Services.
8. Software licenses needed for review of construction documents not included in the Scope of Services.

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9. Budget tracking and management of program costs, coordination with federal funding agencies to prepare and submit necessary documentation to assist with project reimbursement and project closeout documents will be handled by City's OR.
10. Public Outreach assistance/support to provide project status reports, project schedule, and other supporting documents for City to use and post on the city website will be handled by City's OR.
11. Field office and trailer for use by Ardurra/JHE team shall be provided by CMAR Contractor.
12. All documentation generated or requested to be reviewed will be in digital format.
13. Testing, adjusting, and balancing (TAB) for HVAC system and assembly of testing procedures/reports by others.
14. Electrical testing and assembly of testing procedures by Others.
15. Vibration testing and assembly of testing procedures by Others.
16. Instrumentation and control testing and assembly of testing procedures to be used by Process Control System Supplier (PCSS) by Others.
17. Supply, installation, operation, and/or commissioning of temporary systems and piping by Others.

Schedule

The services described in this Scope of Work Services are based on the project schedule provided by the City. The project will start in April 2023 and construction will be completed in October 2026. Any changes to the duration or phasing of this construction project may require modifications to this contract.

Exhibit B Level of Effort

TABLE A-1
Summary of Services and Fees

TASK NO.	TASK DESCRIPTION	AMOUNT
1	Project Management and Coordination	\$247,238.00
2	CMAR Preconstruction Coordination	\$583,544.00
3	Construction Management and Inspection	\$7,842,256.00
4	Additional Service Tasks	\$65,157.00
TOTAL		\$8,738,195.00

Exhibit B / Level of Effort

**TABLE A-2
HOURLY LABOR RATES**

LABOR CATEGORY	Hourly Rate
Project Principal/ Project Director	\$300
Sr. Tech Specialist	\$300
Senior Project Engineer	\$245
Project Engineer	\$180
EIT	\$155
Senior Construction Manager	\$185
Senior Construction Inspector	\$155
Construction Inspector	\$145
Specialty Inspector	\$185
Document Control and Management	\$135
CAD Designer	\$165
CAD Technician	\$120
Word Processor	\$120
Contract Admin	\$100

**EXHIBIT B
LEVEL OF EFFORT**

**EXHIBIT B
City of Pflugerville Wilbarger Creek regional Wastewater Treatment Facility Phase 1
Construction Management and Inspection Services
Level of Efforts Fee Estimate**

			Ardurra Estimated Man-hours										Subconsultants								
Position	Project Principal	Technical Specialist	Technical Director	Sr. Project Engineer	Project Engineer	Sr. Construction Manager	Sr. Construction Inspector	Construction Inspector	Document Control	Specialty Inspector	Word Processor/Project Admin	Contract Admin	Ardurra - Total Hours (Hrs)	Ardurra Subtotal Labor Cost (\$)	Technology Charge (\$)	Total Cost (\$)	JHE (\$)	Ardurra Sub Markup (8%) (\$)	Total Cost (Ardurra + Subs) (\$)		
Rate	\$ 300.00	\$ 300.00	\$ 300.00	\$ 245.00	\$ 180.00	\$ 185.00	\$ 155.00	\$ 145.00	\$ 135.00	\$ 185.00	\$ 120.00	\$ 100.00									
Task	Subtask	Task Description																			
1. PROJECT MANAGEMENT AND COORDINATION																					
	1.1	Project Management and Coordination with City	40		120	120	80				24	24	408	\$ 97,080.00	\$ 3,468.00	\$ 100,548.00		\$ -	\$ 100,548.00		
	1.2	Project Coordination with Internal Team Members	40		120	120	80				24	24	408	\$ 97,080.00	\$ 3,468.00	\$ 100,548.00		\$ -	\$ 100,548.00		
	1.3	Monthly Invoices & Reports	8		60	60					42	42	212	\$ 44,340.00	\$ 1,802.00	\$ 46,142.00		\$ -	\$ 46,142.00		
1. PROJECT MANAGEMENT AND COORDINATION			88	0	300	300	160	0	0	0	90	90	1028	\$ 238,500.00	\$ 8,738.00	\$ 247,238.00	\$0.00	\$ -	\$ 247,238.00		
2. CMAR PRECONSTRUCTION COORDINATION																					
	2.1	CMAR Coordination Meetings		300	300	240			136				1112	\$ 282,320.00	\$ 9,452.00	\$ 291,772.00		\$ -	\$ 291,772.00		
	2.2	Construction Procurement Plan Coordination and Review		300	300	240			136				1112	\$ 282,320.00	\$ 9,452.00	\$ 291,772.00		\$ -	\$ 291,772.00		
2. CMAR PRECONSTRUCTION COORDINATION			0	600	600	480	0	272	0	0	0	0	2224	\$ 564,640.00	\$ 18,904.00	\$ 583,544.00	\$0.00	\$ -	\$ 583,544.00		
3. CONSTRUCTION MANAGEMENT AND INSPECTION																					
	3.1	Preconstruction Meeting		12	12			48	48				132	\$ 25,140.00	\$ 1,122.00	\$ 26,262.00		\$ -	\$ 26,262.00		
	3.2	Construction Administration and Management Services/Meetings	12	192	192	240	240	2684	450	450	1664		6124	\$ 1,076,980.00	\$ 52,054.00	\$ 1,129,034.00		\$ -	\$ 1,129,034.00		
	3.3	Funding Source Compliance				352	352						704	\$ 149,600.00	\$ 5,984.00	\$ 155,584.00		\$ -	\$ 155,584.00		
	3.4	Construction Inspection Services						2650	5400	3840			11890	\$ 1,884,050.00	\$ 101,065.00	\$ 1,985,115.00	\$798,765.00	\$ 63,901.20	\$ 2,847,781.20		
	3.5	Pay Application						168	84				252	\$ 44,100.00	\$ 2,142.00	\$ 46,242.00		\$ -	\$ 46,242.00		
	3.6	Document Control						168					3768	\$ 517,080.00	\$ 32,028.00	\$ 549,108.00		\$ -	\$ 549,108.00		
	3.7	Change Order Reviews		84	84	84		84					336	\$ 86,520.00	\$ 2,856.00	\$ 89,376.00		\$ -	\$ 89,376.00		
	3.8	Construction Materials Testing						336	340				676	\$ 114,860.00	\$ 5,746.00	\$ 120,606.00		\$ -	\$ 120,606.00		
	3.9	Start-up and Commissioning Support		52	140	208	288	960	480	240			2368	\$ 447,200.00	\$ 20,128.00	\$ 467,328.00	\$1,935,913.64	\$ 154,873.09	\$ 2,558,114.73		
	3.10	Project Completion and Close-out			24	40		300	190	150	240	520	1464	\$ 252,300.00	\$ 12,444.00	\$ 264,744.00		\$ -	\$ 264,744.00		
	3.11	12-Month Warranty Period Support		24	24			192			24		264	\$ 53,160.00	\$ 2,244.00	\$ 55,404.00		\$ -	\$ 55,404.00		
3. CONSTRUCTION MANAGEMENT AND INSPECTION			12	364	476	924	880	7590	6992	4680	5540	520	0	0	27,978	\$ 4,650,990.00	\$ 237,813.00	\$ 4,888,803.00	\$2,734,678.64	\$ 218,774.29	\$ 7,842,256.00
4. ADDITIONAL SERVICE TASKS																					
	4.1	Extended Warranty Period Support for Additional 12 Months	6	12	12			144					186	\$ 37,260.00	\$ 1,581.00	\$ 38,841.00		\$ -	\$ 38,841.00		
	4.2	Allowance for Building Mechanical and HVAC Inspection									136		136	\$ 25,160.00	\$ 1,156.00	\$ 26,316.00		\$ -	\$ 26,316.00		
4. ADDITIONAL SERVICE TASKS			6	12	12	0	0	144	0	0	12	136	0	0	322	\$ 62,420.00	\$ 2,737.00	\$ 65,157.00	\$0.00	\$ -	\$ 65,157.00
TOTAL			106	976	1388	1704	1040	8006	6992	4680	5824	656	90	90	31,552	\$ 5,516,550	\$ 268,192	\$ 5,784,742	\$ 2,734,679	\$ 218,774	\$ 8,738,195

Wilbarger Creek Regional Wastewater Treatment Facility - Phase I
Construction Phase Services - Commissioning & Startup and Construction Inspection
Level of Effort Estimate - Labor Cost
SubConsultant JHE Engineers

		Project Manager/ Project Principal	Deputy Project Manager	C&SU Manager	Engineering & Construction Inspection Coordinator	Licensed Operator	Admin Assistant	Total Labor Hours	Subtotal / Task	
		Jeff Haasch, PE, PMP	Olivia Beck, PE	Matt Hladik	Kirkland Fordham	TBD	Mackenzie Phillips			
		\$ 247.50	\$ 201.93	\$ 191.28	\$ 154.50	\$ 185.00	\$ 103.00			
TASK I: COMMISSIONING AND START-UP										
1.1	Project Management and Administration									\$ 427,636.24
1.1.1	Project Kickoff Meeting	4	4	4	4	-	-	16	\$ 3,180.84	
1.1.2	Internal Coordination Meetings	44	44	44	-	-	-	132	\$ 28,191.24	
1.1.3	Client Progress Meetings	176	176	88	-	-	-	440	\$ 95,932.32	
1.1.4	Monthly Reporting and Project Administration	330	-	-	-	-	2,092	2422	\$ 297,151.00	
1.1.5	Partnering Workshop with Construction Manager	4	4	4	4	-	-	16	\$ 3,180.84	
1.2	Pre-Commissioning									\$ 456,694.92
1.2.1	Update Commissioning and Start-Up (C&SU) Plan	10	40	80	-	-	-	130	\$ 25,854.60	
1.2.2	Develop Functional and Performance Test Packages using Contract Documents and Equipment Submittals	236	468	1,374	-	-	-	2,077	\$ 415,569.12	
1.2.3	Develop Acceptance Testing Plan	7	14	56	-	-	-	77	\$ 15,271.20	
1.3	Commissioning Oversight and Coordination									\$ 981,472.28
1.3.1	Commissioning Oversight	228	552	1,420	-	-	-	2,200	\$ 439,512.96	
1.3.2	Extended Duration Testing Support	180	272	802	-	-	-	1,254	\$ 252,881.52	
1.3.3	Commissioning Coordination	24	108	312	-	-	-	444	\$ 87,427.80	
1.3.4	Operations Support	-	-	-	-	1,090	-	1,090	\$ 201,650.00	
Task I Subtotal		1,243	1,682	4,184	8	1,090	2,092	10,298	\$1,865,803.44	

**Wilbarger Creek Regional Wastewater Treatment Facility - Phase I
Construction Phase Services - Commissioning & Startup and Construction Inspection
Level of Effort Estimate - Labor Cost
SubConsultant JHE Engineers**

	Project Manager/ Project Principal	Deputy Project Manager	C&SU Manager	Engineering & Construction Inspection Coordinator	Licensed Operator	Admin Assistant	Total Labor Hours	Subtotal / Task
	Jeff Haasch, PE, PMP	Olivia Beck, PE	Matt Hladik	Kirkland Fordham	TBD	Mackenzie Phillips		
	\$ 247.50	\$ 201.93	\$ 191.28	\$ 154.50	\$ 185.00	\$ 103.00		
TASK II: CONSTRUCTION INSPECTION SERVICES								
2.1	Construction Inspection and Oversight	-	-	-	5,170	-	-	5,170 \$ 798,765.00
	Task II Subtotal	-	-	-	5,170	-	-	5,170 \$ 798,765.00
Labor Cost Subtotal								
	Total Hours / Labor Cost Subtotal	1,243	1,682	4,184	5,178	1,090	2,092	15,468 \$2,664,568.44

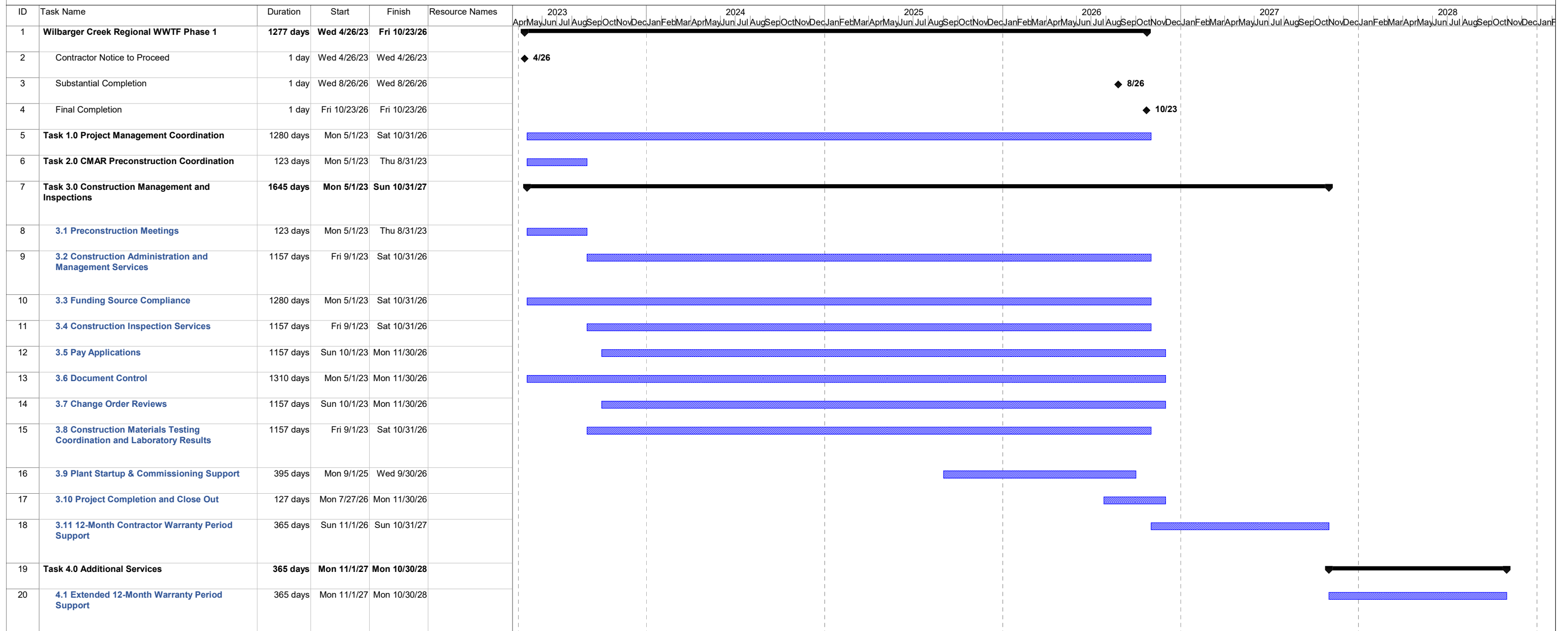
Billable Labor Cost	\$ 2,664,568.44
Reimbursable Expenses	\$ 70,110.20
Total	\$ 2,734,678.64

**Wilbarger Creek Regional Wastewater Treatment Facility - Phase I
Construction Phase Services - Commissioning & Startup and Construction Inspection
Level of Effort Estimate - Other Direct Costs
SubConsultant JHE Engineers**

Travel Expenses and Other Direct Costs (ODCs) Assumptions:		
Out of Town Trip Duration	5	days
Airfare	\$ 750.00	/trip
Rental Car	\$ 500.00	/trip
ME&I	\$ 69.00	/day
Rental Car Fuel	\$ 80.00	/trip
Lodging	\$ 154.00	/day
Parking	\$ 13.00	/day
Total Cost	\$ 2,676.00	/trip
Mileage Reimbursement Rate (assumes 2023 rate)	\$ 0.655	per mile
Employee	Round Trip Mileage	Cost/Trip
Jeff Haasch, PE, PMP	90	\$ 58.95
Olivia Beck, PE	85	\$ 55.68
Matt Hladik	35	\$ 22.93
Kirkland Fordham	45	\$ 29.48
Licensed Operator (assume 25 mile radius)	50	\$ 32.75
Admin Assistant (assume 25 mile radius)	50	\$ 32.75

Task	Item	Number of Trips By Position						ODC Subtotal by Task
		Jeff Haasch, PE, PMP	Olivia Beck, PE	Matt Hladik	Kirkland Fordham	Licensed Operator	Admin Assistant	
		# Trips	# Trips	# Trips	# Trips	# Trips	# Trips	
I	Commissioning and Start-Up	98	161	361	-	109	262	\$ 36,139.63
I	Factory Testing (WFT & VWFT)	7	-	-	-	-	-	\$ 18,732.00
II	Construction Inspection Services	-	-	-	517	-	-	\$ 15,238.58
Total ODCs								\$ 70,110.20

EXHIBIT C
SCHEDULE
WILBARGER CREEK REGIONAL WWTF PHASE 1
CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES



Date: Thu 4/13/23

Task		Summary		External Milestone		Inactive Milestone		Duration-only		Start-only		External Milestone	
Split		Project Summary		Inactive Task		Inactive Summary		Manual Summary Rollup		Finish-only		Progress	
Milestone		External Tasks		Inactive Milestone		Manual Task		Manual Summary		External Tasks		Deadline	