

**CITY OF PFLUGERVILLE
CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES**

FIRM: _____
ADDRESS: _____
PROJECT: _____

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES (“Contract”) is made and entered into on this the ____ day of _____, 2010 by and between the CITY OF PFLUGERVILLE, a Texas home-rule municipal corporation, whose offices are located at 100 East Main Street, Pflugerville, Texas 78660, (hereinafter referred to as “City”), and Engineer/Architect, and such Contract is for the purpose of contracting for professional engineering or architectural services.

RECITALS:

WHEREAS, V.T.C.A., Government Code §2254.002(2)(A)(vii) under Subchapter A entitled “Professional Services Procurement Act” provides for the procurement by municipalities of services of professional Engineers/Architects; and

WHEREAS, City and Engineer/Architect desire to contract for such professional Engineering/Architectural Services; and

WHEREAS, City and Engineer/Architect wish to document their agreement concerning the requirements and respective obligations of the parties;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable considerations, and the covenants and agreements hereinafter contained to be kept and performed by the respective parties hereto, it is agreed as follows:

CONTRACT DOCUMENTS

The Contract Documents consist of this Contract and any exhibits attached hereto (which exhibits are hereby incorporated into and made a part of this Contract) and all Supplemental Contracts (as defined herein in Article 13) which are subsequently issued. These form the entire contract, and all are as fully a part of this Contract as if attached to this Contract or repeated herein.

ARTICLE 1 CITY SERVICES

City shall perform or provide services as identified in Exhibit A entitled “City Services.”

ARTICLE 2 ENGINEERING / ARCHITECTURAL SERVICES

Engineer/Architect shall perform Engineer/Architectural Services as identified in Exhibit B entitled “Engineer/Architectural Services”

Engineer/Architect shall perform the Engineer/Architectural Services in accordance with the Work Schedule as identified in Exhibit C entitled “Work Schedule.” Such Work Schedule shall contain a complete schedule so that the Engineer/Architectural Services under this Contract may be accomplished within the specified time and at the specified cost. The Work Schedule shall provide specific work sequences and definite review times by City and Engineer/Architect of all Engineer/Architectural Services. Should the review times or Engineer/Architectural Services take longer than shown on the Work Schedule, through no fault of Engineer/Architect, Engineer/Architect may submit a timely written request for additional time, which shall be subject to the approval of the City Manager.

ARTICLE 3 CONTRACT TERM

(1) Term. The Engineer/Architect is expected to complete the Engineer/Architectural Services described herein in accordance with the above described Work Schedule. If Engineer/Architect does not perform the Engineer/Architectural Services in accordance with the Work Schedule, then City shall have the right to terminate this Contract as set forth below in Article 20. So long as the City elects not to terminate this Contract, it shall continue from day to day until such time as the Engineering/Architectural Services are completed. Any Engineer/Architectural Services performed or costs incurred after the date of termination shall not be eligible for reimbursement. Engineer/Architect shall notify City in writing as soon as possible if he/she/it determines, or reasonably anticipates, that the Engineering/Architectural Services will not be completed in accordance with the Work Schedule.

(2) Work Schedule. Engineer/Architect acknowledges that the Work Schedule is of critical importance, and agrees to undertake all necessary efforts to expedite the performance of Engineering/Architectural Services required herein so that construction of the project will be

commenced and completed as scheduled. In this regard, and subject to adjustments in the Work Schedule as provided in Article 2 herein, Engineer/Architect shall proceed with sufficient qualified personnel and consultants necessary to fully and timely accomplish all Engineering/Architectural Services required under this Contract in a professional manner.

(3) Notice to Proceed. After execution of this Contract, Engineer/Architect shall not proceed with Engineering/Architectural Services until authorized in writing by City to proceed as provided in Article 7.

ARTICLE 4
COMPENSATION

City shall pay and Engineer/Architect agrees to accept the amount shown below as full compensation for the Engineering/Architectural Services performed and to be performed under this Contract.

The amount payable under this Contract, without modification of the Contract as provided herein, is the sum of _____ Dollars (\$_____) as shown in Exhibit D. The lump sum amount payable shall be revised equitably only by written Supplemental Contract in the event of a change in Engineering/Architectural Services as authorized by City.

Engineer/Architect shall prepare and submit to City monthly progress reports in sufficient detail to support the progress of the Engineering/Architectural Services and to support invoices requesting monthly payment. Any preferred format of City for such monthly progress reports shall be identified in Exhibit B. Satisfactory progress of Engineering/Architectural Services shall be an absolute condition of payment.

The fee herein referenced may be adjusted for additional Engineering/Architectural Services requested and performed only if approved by written Supplemental Contract.

ARTICLE 5
METHOD OF PAYMENT

Payments to Engineer/Architect shall be made while Engineering/Architectural Services are in progress. Engineer/Architect shall prepare and submit to City, not more frequently than once per month, a progress report as referenced in Article 4 above. Such progress report shall state the percentage of completion of Engineering/Architectural Services accomplished during that billing period and to date. Simultaneous with submission of such progress report, Engineer/Architect shall prepare and submit one (1) original and one (1) copy of a certified invoice in a form acceptable to City. This submittal shall also include a progress assessment report in a form acceptable to City.

Progress payments shall be made in proportion to the percentage of completion of Engineering/Architectural Services identified in Exhibit D. Progress payments shall be made by City based upon Engineering / Architectural Services actually provided and performed. Upon timely receipt and approval of each statement, City shall make a good faith effort to pay the

amount which is due and payable within thirty (30) days. City reserves the right to withhold payment pending verification of satisfactory Engineering/Architectural Services performed. Engineer/Architect has the responsibility to submit proof to City, adequate and sufficient in its determination, that tasks were completed.

The certified statements shall show the total amount earned to the date of submission and shall show the amount due and payable as of the date of the current statement. Final payment does not relieve Engineer/Architect of the responsibility of correcting any errors and/or omissions resulting from his/her/its negligence.

ARTICLE 6
PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Engineer/Architect will be made within thirty (30) days of the day on which the performance of Engineering/Architectural Services was complete, or within thirty (30) days of the day on which City receives a correct invoice for Engineering/Architectural Services, whichever is later. Engineer/Architect may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply in the event:

- A. There is a bona fide dispute between City and Engineer/Architect concerning the supplies, materials, or equipment delivered or the Engineering/Architectural Services performed that causes the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Engineer/Architect and a subcontractor or between a subcontractor and its supplier concerning supplies, materials, or equipment delivered or the Engineering/Architectural Services performed which causes the payment to be late; or
- D. The invoice is not mailed to City in strict accordance with instructions, if any, on the purchase order, or this Contract or other such contractual agreement.

City shall document to Engineer/Architect the issues related to disputed invoices within ten (10) calendar days of receipt of such invoice. Any non-disputed invoices shall be considered correct and payable per the terms of Chapter 2251, V.T.C.A., Texas Government Code.

ARTICLE 7
NOTICE TO PROCEED

The Engineer/Architect shall not proceed with any task listed on Exhibit B until the City has issued a written Notice to Proceed regarding such task. The City shall not be responsible for work performed or costs incurred by Engineer/Architect related to any task for which a Notice to Proceed has not been issued.

ARTICLE 8

PROJECT TEAM

City's Designated Representative for purposes of this Contract is as follows:

Pflugerville, Texas 78660
Telephone Number (512)
Fax Number (512)
Email Address

City's Designated Representative shall be authorized to act on City's behalf with respect to this Contract. City or City's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by Engineer/Architect in order to avoid unreasonable delay in the orderly and sequential progress of Engineering/Architectural Services.

Engineer/Architect's Designated Representative for purposes of this Contract is as follows:

Telephone Number
Fax Number
Email Address

ARTICLE 9
PROGRESS EVALUATION

Engineer/Architect shall, from time to time during the progress of the Engineering / Architectural Services, confer with City at City's election. Engineer/Architect shall prepare and present such information as may be pertinent and necessary, or as may be requested by City, in order for City to evaluate features of the Engineering / Architectural Services. At the request of City or Engineer/Architect, conferences shall be provided at Engineer/Architect's office, the City offices, or at other locations designated by City. When requested by City, such conferences shall also include evaluation of the Engineering/Architectural Services.

Should City determine that the progress in Engineering/Architectural Services does not satisfy the Work Schedule, then City shall review the Work Schedule with Engineer/Architect to determine corrective action required.

Engineer/Architect shall promptly advise City in writing of events which have or may have a significant impact upon the progress of the Engineering/Architectural Services, including but not limited to the following:

- (1) Problems, delays, or adverse conditions which may materially affect the ability to meet the objectives of the Work Schedule, or preclude the attainment of project Engineering / Architectural Services units by established time periods; and such disclosure shall be accompanied by statement of actions taken or contemplated, and City assistance needed to resolve the situation, if any; and
- (2) Favorable developments or events which enable meeting the Work Schedule goals sooner than anticipated.

ARTICLE 10 **SUSPENSION**

Should City desire to suspend the Engineering/Architectural Services, but not to terminate this Contract, then such suspension may be effected by City giving Engineer/Architect thirty (30) calendar days verbal notification followed by written confirmation to that effect. Such thirty-day notice may be waived in writing by agreement and signature of both parties. The Engineering/Architectural Services may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from City to resume the Engineering/Architectural Services. Such sixty-day notice may be waived in writing by agreement and signature of both parties. If this Contract is suspended for more than thirty (30) days, Engineer/Architect shall have the option of terminating this Contract.

If City suspends the Engineering/Architectural Services, the contract period as determined in Article 3, and the Work Schedule, shall be extended for a time period equal to the suspension period.

City assumes no liability for Engineering/Architectural Services performed or costs incurred prior to the date authorized by City for Engineer/Architect to begin Engineering/Architectural Services, and/or during periods when Engineering/Architectural Services are suspended, and/or subsequent to the contract completion date.

ARTICLE 11 **ADDITIONAL ENGINEERING / ARCHITECTURAL SERVICES**

If Engineer/Architect forms a reasonable opinion that any work he/she/it has been directed to perform is beyond the scope of this Contract and as such constitutes extra work, he/she/it shall promptly notify City in writing. In the event City finds that such work does constitute extra work and exceeds the maximum amount payable, City shall so advise Engineer/Architect and a written Supplemental Contract will be executed between the parties as provided in Article 13. Engineer/Architect shall not perform any proposed additional work nor incur any additional costs prior to the execution, by both parties, of a written Supplemental Contract. City shall not be responsible for actions by Engineer/Architect nor for any costs

incurred by Engineer/Architect relating to additional work not directly associated with the performance of the Engineering/Architectural Services authorized in this Contract or any amendments thereto.

ARTICLE 12
CHANGES IN ENGINEERING / ARCHITECTURAL SERVICES

If City deems it necessary to request changes to previously satisfactorily completed Engineering/Architectural Services or parts thereof which involve changes to the original Engineering/Architectural Services or character of Engineering/Architectural Services under this Contract, then Engineer/Architect shall make such revisions as requested and as directed by City. Such revisions shall be considered as additional Engineering/Architectural Services and paid for as specified under Article 11.

Engineer/Architect shall make revisions to Engineering/Architectural Services authorized hereunder as are necessary to correct errors appearing therein, when required to do so by City. No additional compensation shall be due for such Engineering/Architectural Services.

ARTICLE 13
SUPPLEMENTAL CONTRACTS

The terms of this Contract may be modified by written Supplemental Contract if City determines that there has been a significant change in (1) the scope, complexity or character of the Engineering/Architectural Services, or (2) the duration of the Engineering/Architectural Services. Any such Supplemental Contract must be duly authorized by the City. Engineer/Architect shall not proceed until the Supplemental Contract has been executed. Additional compensation, if appropriate, shall be identified as provided in Article 4.

It is understood and agreed by and between both parties that Engineer/Architect shall make no claim for extra work done or materials furnished until the City authorizes full execution of the written Supplemental Contract and authorization to proceed. City reserves the right to withhold payment pending verification of satisfactory Engineering/Architectural Services performed.

ARTICLE 14
USE OF DOCUMENTS

All documents, including but not limited to drawings, specifications and data or programs stored electronically, (hereinafter referred to as "Instruments of Service") prepared by Engineer/Architect and its subcontractors are related exclusively to the Engineering/Architectural Services described in this Contract and are intended to be used with respect to this Project. However, it is expressly understood and agreed by and between the parties hereto that all of Engineer/Architect's designs under this Contract (including but not limited to tracings, drawings, estimates, specifications, investigations, studies and other documents, completed or partially completed), shall be the property of City to be thereafter used in any lawful manner as City elects. Any such subsequent use made of documents by City shall be at City's sole risk and

without liability to Engineer/Architect, and, to the extent permitted by law, City shall indemnify, defend and hold harmless Engineer/Architect from all claims, damages, losses and expenses, including but not limited to attorneys fees, resulting therefrom.

By execution of this Contract and in confirmation of the fee for Engineering/ Architectural Services to be paid under this Contract, Engineer/Architect hereby conveys, transfers and assigns to City all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Project designs and work product developed under this Contract. Copies may be retained by Engineer/Architect. Engineer/Architect shall be liable to City for any loss or damage to any such documents while they are in the possession of or while being worked upon by Engineer/Architect or anyone connected with Engineer/Architect, including agents, employees, Engineer/Architects or subcontractors. All documents so lost or damaged shall be replaced or restored by Engineer/Architect without cost to City.

Upon execution of this Contract, Engineer/Architect grants to City permission to reproduce Engineer/Architect's work and documents for purposes of constructing, using and maintaining the Project, provided that City shall comply with its obligations, including prompt payment of all sums when due, under this Contract. Engineer/Architect shall obtain similar permission from Engineer/Architect's subcontractors consistent with this Contract. If and upon the date Engineer/Architect is adjudged in default of this Contract, City is permitted to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the work and documents for the purposes of completing, using and maintaining the Project.

City shall not assign, delegate, sublicense, pledge or otherwise transfer any permission granted herein to another party without the prior written contract of Engineer/Architect. However, City shall be permitted to authorize the contractor, subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is permitted. Any unauthorized use of the Instruments of Service shall be at City's sole risk and without liability to Engineer/Architect and its Engineer/Architects.

Prior to Engineer/Architect providing to City any Instruments of Service in electronic form or City providing to Engineer/Architect any electronic data for incorporation into the Instruments of Service, City and Engineer/Architect shall by separate written contract set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations not otherwise provided in this Contract. Any electronic files are provided by Engineer/Architect for the convenience of City, and use of them is at City's sole risk. In the case of any defects in electronic files or any discrepancies between them and any hardcopy of the same documents prepared by Engineer/Architect, the hardcopy shall prevail. Only printed copies of documents conveyed by Engineer/Architect shall be relied upon.

Engineer/Architect shall have no liability for changes made to the drawings by other Engineer/Architects subsequent to the completion of the Project. Any such change shall be

sealed by the Engineer/Architect making that change and shall be appropriately marked to reflect what was changed or modified.

ARTICLE 15
PERSONNEL, EQUIPMENT AND MATERIAL

Engineer/Architect shall furnish and maintain, at its own expense, quarters for the performance of all Engineering/Architectural Services, and adequate and sufficient personnel and equipment to perform the Engineering/Architectural Services as required. All employees of Engineer/Architect shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Engineer/Architect who, in the opinion of City, is incompetent or whose conduct becomes detrimental to the Engineering/Architectural Services shall immediately be removed from association with the project when so instructed by City. Engineer/Architect certifies that it presently has adequate qualified personnel in its employment for performance of the Engineering/Architectural Services required under this Contract, or will obtain such personnel from sources other than City. Engineer/Architect may not change the Project Manager without prior written consent of City.

ARTICLE 16
SUBCONTRACTING

Engineer/Architect shall not assign, subcontract or transfer any portion of the Engineering/Architectural Services under this Contract without prior written approval from City. All subcontracts shall include the provisions required in this Contract and shall be approved as to form, in writing, by City prior to Engineering/Architectural Services being performed under the subcontract. No subcontract shall relieve Engineer/Architect of any responsibilities under this Contract.

ARTICLE 17
EVALUATION OF ENGINEERING / ARCHITECTURAL SERVICES

City, or any authorized representatives of it, shall have the right at all reasonable times to review or otherwise evaluate the Engineering/Architectural Services performed or being performed hereunder and the premises on which it is being performed. If any review or evaluation is made on the premises of Engineer/Architect or a subcontractor, then Engineer/Architect shall provide and require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of City or other representatives in the performance of their duties.

ARTICLE 18
SUBMISSION OF REPORTS

All applicable study reports shall be submitted in preliminary form for approval by City before any final report is issued. City's comments on Engineer/Architect's preliminary reports shall be addressed in any final report.

ARTICLE 19
VIOLATION OF CONTRACT TERMS/BREACH OF CONTRACT

Violation of contract terms or breach of contract by Engineer/Architect shall be grounds for termination of this Contract, and any increased costs arising from Engineer/Architect's default, breach of contract, or violation of contract terms shall be paid by Engineer/Architect.

ARTICLE 20
TERMINATION

This Contract may be terminated as set forth below.

- (1) By mutual agreement and consent, in writing, of both parties.
- (2) By City, by notice in writing to Engineer/Architect, as a consequence of failure by Engineer/Architect to perform the Engineering/Architectural Services set forth herein in a satisfactory manner.
- (3) By either party, upon the failure of the other party to fulfill its obligations as set forth herein.
- (4) By City, for reasons of its own and not subject to the mutual consent of Engineer/Architect, upon not less than thirty (30) days' written notice to Engineer/Architect.
- (5) By satisfactory completion of all Engineering/Architectural Services and obligations described herein.

Should City terminate this Contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to Engineer/Architect. In determining the value of the Engineering/Architectural Services performed by Engineer/Architect prior to termination, City shall be the sole judge. Compensation for Engineering/Architectural Services at termination will be based on a percentage of the Engineering/Architectural Services completed at that time. Should City terminate this Contract under Subsection (4) immediately above, then the amount charged during the thirty-day notice period shall not exceed the amount charged during the preceding thirty (30) days.

If Engineer/Architect defaults in the performance of this Contract or if City terminates this Contract for fault on the part of Engineer/Architect, then City shall give consideration to the actual costs incurred by Engineer/Architect in performing the Engineering/Architectural Services to the date of default, the amount of Engineering/Architectural Services required which was satisfactorily completed to date of default, the value of the Engineering / Architectural Services which are usable to City, the cost to City of employing another firm to complete the Engineering/Architectural Services required and the time required to do so, and other factors which affect the value to City of the Engineering/Architectural Services performed at the time of default.

The termination of this Contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of City and Engineer/Architect under this Contract, except the obligations set forth herein in Article 21 entitled "Compliance with Laws." If the termination of this Contract is due to the failure of Engineer/Architect to fulfill his/her/its contractual obligations, then City may take over the project and prosecute the Engineering/Architectural Services to completion. In such case, Engineer/Architect shall be liable to City for any additional and reasonable costs incurred by City.

Engineer/Architect shall be responsible for the settlement of all contractual and administrative issues arising out of any procurements made by Engineer/Architect in support of the Engineering/Architectural Services under this Contract.

ARTICLE 21

COMPLIANCE WITH LAWS

(1) Compliance. Engineer/Architect shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Contract, including without limitation, minimum/maximum salary and wage statutes and regulations, and licensing laws and regulations. Engineer/Architect shall furnish City with satisfactory proof of his/her/its compliance.

Engineer/Architect shall further obtain all permits and licenses required in the performance of the Engineering/Architectural Services contracted for herein.

(2) Taxes. Engineer/Architect will pay all taxes, if any, required by law arising by virtue of the Engineering/Architectural Services performed hereunder. City is qualified for exemption pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act.

ARTICLE 22

INDEMNIFICATION

Engineer/Architect shall save and hold harmless City and its elected officials, officers and employees from all claims and liabilities due to activities of his/her/itself and his/her/its agents or employees, performed under this Contract, including negligent or intentional acts or omissions, intellectual property infringement, or failure to pay a subcontractor or supplier of the Engineer/ Architect, its employees, agents and/or assigns. The acts may include personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Engineer/Architect's activities under this Agreement, including any negligent or intentional acts or omissions by Engineer/Architect , any agent, officer, director, representative, employee, consultant or subcontractor of Engineer/Architect, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement.

Engineer/Architect shall also save and hold City harmless from any and all expenses, including but not limited to reasonable attorneys fees which may be incurred by City in litigation or otherwise defending claims or liabilities which may be imposed on City as a result of such negligent activities by Engineer/Architect, its agents, or employees.

ARTICLE 23
ENGINEER/ARCHITECT'S RESPONSIBILITIES

Engineer/Architect shall be responsible for the accuracy of his/her/its Engineering/Architectural Services and shall promptly make necessary revisions or corrections to its work product resulting from errors, omissions, or negligent acts, and same shall be done without compensation. City shall determine Engineer/Architect's responsibilities for all questions arising from design errors and/or omissions. Engineer/Architect shall not be relieved of responsibility for subsequent correction of any such errors or omissions in its work product, or for clarification of any ambiguities until after the construction phase of the project has been completed.

ARTICLE 24
ENGINEER'S SEAL

The responsible Engineer shall sign, seal and date all appropriate engineering submissions to City in accordance with the Texas Engineering Practice Act and the rules of the State Board of Registration for Professional Engineers.

ARTICLE 25
NON-COLLUSION, FINANCIAL INTEREST PROHIBITED

(1) Non-collusion. Engineer/Architect warrants that he/she/it has not employed or retained any company or persons, other than a bona fide employee working solely for Engineer/Architect, to solicit or secure this Contract, and that he/she/it has not paid or agreed to pay any company or Engineer/Architect any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City reserves and shall have the right to annul this Contract without liability or, in its discretion and at its sole election, to deduct from the contract price or compensation, or to otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

(2) Financial Interest Prohibited. Engineer/Architect covenants and represents that Engineer/Architect, his/her/its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the project.

ARTICLE 26
INSURANCE

(1) Insurance. Engineer/Architect, at Engineer/Architect's sole cost, shall purchase and maintain during the entire term while this Contract is in effect professional liability insurance

coverage in the minimum amount of One Million Dollars per claim from a company authorized to do insurance business in Texas and otherwise acceptable to City. Engineer/Architect shall also notify City, within twenty-four (24) hours of receipt, of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.

(2) Subconsultant Insurance. Without limiting any of the other obligations or liabilities of Engineer/Architect, Engineer/Architect shall require each subconsultant performing work under this Contract to maintain during the term of this Contract, at the subconsultant's own expense, the same stipulated minimum insurance required in Article 26, Section (1) above, including the required provisions and additional policy conditions as shown below in Article 26, Section (3).

Engineer/Architect shall obtain and monitor the certificates of insurance from each subconsultant in order to assure compliance with the insurance requirements. Engineer/Architect must retain the certificates of insurance for the duration of this Contract, and shall have the responsibility of enforcing these insurance requirements among its subconsultants. City shall be entitled, upon request and without expense, to receive copies of these certificates of insurance.

(3) Insurance Policy Endorsements. Each insurance policy shall include the following conditions by endorsement to the policy:

- (a) Each policy shall require that thirty (30) days prior to the expiration, cancellation, non-renewal or reduction in limits by endorsement a notice thereof shall be given to City by certified mail to:

City Manager, City of Pflugerville
P.O. Box 589
Pflugerville, Texas 78691

- (b) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by City, to any such future coverage, or to City's Self-Insured Retentions of whatever nature.

(4) Cost of Insurance. The cost of all insurance required herein to be secured and maintained by Engineer/Architect shall be borne solely by Engineer/Architect, with certificates of insurance evidencing such minimum coverage in force to be filed with City. Such Certificates of Insurance are evidenced as Exhibit E herein entitled "Certificates of Insurance."

ARTICLE 27 **COPYRIGHTS**

City shall have the royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any reports developed by Engineer/Architect for governmental purposes.

ARTICLE 28
SUCCESSORS AND ASSIGNS

This Contract shall be binding upon and inure to the benefit of the parties hereto, their successors, lawful assigns, and legal representatives. Engineer/Architect may not assign, sublet or transfer any interest in this Contract, in whole or in part, by operation of law or otherwise, without obtaining the prior written consent of City.

ARTICLE 29
SEVERABILITY

In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE 30
PRIOR AGREEMENTS SUPERSEDED

This Contract constitutes the sole agreement of the parties hereto, and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein. This Contract may only be amended or supplemented by mutual agreement of the parties hereto in writing.

ARTICLE 31
ENGINEER/ARCHITECT'S ACCOUNTING RECORDS

Records pertaining to the project, and records of accounts between City and Engineer/Architect, shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives at mutually convenient times. The City reserves the right to review all records it deems relevant which are related to this Contract.

ARTICLE 32
NOTICES

All notices to either party by the other required under this Contract shall be personally delivered or mailed to such party at the following respective addresses:

City:

City of Pflugerville
Attention: City Manager

P.O. Box 589
100 East Main Street
Pflugerville, TX 78691

and to:

Floyd Akers
City Attorney
P.O. Box 679
1611 E. Pfennig
Pflugerville, TX 78691-0679

Engineer/Architect:

ARTICLE 33 **GENERAL PROVISIONS**

(1) Time is of the Essence. Engineer/Architect understands and agrees that time is of the essence and that any failure of Engineer/Architect to complete the Engineering / Architectural Services for each phase of this Contract within the agreed Work Schedule may constitute a material breach of this Contract. Engineer/Architect shall be fully responsible for his/her/its delays or for failures to use his/her/its reasonable efforts in accordance with the terms of this Contract and the Engineer/Architect's standard of performance as defined herein. Where damage is caused to City due to Engineer/Architect's negligent failure to perform City may accordingly withhold, to the extent of such damage, Engineer/Architect's payments hereunder without waiver of any of City's additional legal rights or remedies.

(2) Force Majeure. Neither City nor Engineer/Architect shall be deemed in violation of this Contract if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

(3) Enforcement and Venue. This Contract shall be enforceable in Pflugerville, Travis County, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Travis County, Texas. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

(4) Standard of Performance. The standard of care for all professional Engineering/Architectural services, consulting and related services performed or furnished by Engineer/Architect and its employees under this Contract will be the care and skill ordinarily used by members of Engineer/Architect's profession practicing under the same or similar circumstances at the same time and in the same locality. Excepting Articles 25 and 34 herein, Engineer/Architect makes no warranties, express or implied, under this Contract or otherwise, in connection with the Engineering/Architectural Services.

(5) Opinion of Probable Cost. Any opinions of probable project cost or probable construction cost provided by Engineer/Architect are made on the basis of information available to Engineer/Architect and on the basis of Engineer/Architect's experience and qualifications and represents its judgment as an experienced and qualified professional Engineer/Architect. However, since Engineer/Architect has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s') methods of determining prices, or over competitive bidding or market conditions, Engineer/Architect does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost Engineer/Architect prepares.

(6) Opinions and Determinations. Where the terms of this Contract provide for action to be based upon opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

(7) Representations and Warranties by ENGINEER/ARCHITECT. If ENGINEER/ARCHITECT is a corporation, partnership or a limited liability company, ENGINEER/ARCHITECT 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, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of ENGINEER/ARCHITECT has been duly authorized to act for and bind ENGINEER/ARCHITECT.

(8) Franchise Tax Certification. A corporate or limited liability company ENGINEER/ARCHITECT 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.

(9) Eligibility Certification. ENGINEER/ARCHITECT certifies that the individual or business entity named in the Agreement is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

(10) Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*,

ENGINEER/ARCHITECT agrees that any payments owing to ENGINEER/ARCHITECT under the Agreement may be applied directly toward any debt or delinquency that ENGINEER/ARCHITECT 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.

(11) Texas Family Code Child Support Certification. ENGINEER/ARCHITECT certifies that no partner or officer of the partnership/corporation is delinquent in child support obligations and therefore ENGINEER/ARCHITECT is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

(12) Funding. 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.

ARTICLE 34
SIGNATORY WARRANTY

The undersigned signatory for Engineer/Architect hereby represents and warrants that the signatory is an officer of the organization for which he/she has executed this Contract and that he/she has full and complete authority to enter into this Contract on behalf of the firm. The above-stated representations and warranties are made for the purpose of inducing City to enter into this Contract.

IN WITNESS WHEREOF, the City of Pflugerville has caused this Contract to be signed in its corporate name by its duly authorized City Manager or Mayor, as has Engineer/Architect, signing by and through its duly authorized representative(s), thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions hereof.

CITY OF PFLUGERVILLE, TEXAS

APPROVED AS TO FORM:

By: _____
Brandon Wade, City Manager

Floyd Akers, City Attorney

ATTEST:

By: _____
Karen Thompson, City Secretary

(NAME OF FIRM)

By: _____

Signature of Principal

Printed Name: _____

LIST OF EXHIBITS ATTACHED

- | | |
|---------------|--------------------------------------|
| (1) Exhibit A | City Services |
| (2) Exhibit B | Engineering / Architectural Services |
| (3) Exhibit C | Work Schedule |
| (4) Exhibit D | Fee Schedule |
| (5) Exhibit E | Certificates of Insurance |