

**PROFESSIONAL SERVICES AGREEMENT
FOR
Pflugerville Annexation Policy Study**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

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

I. DEFINITIONS

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

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

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

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

II. TERM

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

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

III. SCOPE OF SERVICES AND PROJECT SCHEDULE

Consultant agrees to provide the services described in this Article III entitled Scope of Services and Project Schedule in exchange for the compensation described in Article IV. Compensation. Scope of Services and Project Schedule are detailed in Attachment 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 \$95,000.00 as total compensation, to be paid to Consultant as further detailed in Attachment A.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the 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: Jeremy Frazzell
Planning & Development Services Director
P.O Box 589
Pflugerville, Texas 78660

If intended for Consultant, to: Economic & Planning Systems, Inc.
Attn: Mathew Prosser
Principal
730 17th St Ste 630
Denver, CO 80202

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

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

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

City of Pflugerville

Insurance Requirements

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

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

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

Type of Insurance	Amount of Insurance	Provisions
Commercial (Public) Liability to include coverage for: Premises/Operations	General 1,000,000 per occurrence, 2,000,000 general aggregate 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
 Planning & Development Services
 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: N/A 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:

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

XXIV. ENTIRE AGREEMENT

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

XXV. MISCELLANEOUS CITY CODE PROVISIONS

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

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

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

25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt

or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

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

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**

**ECONOMIC & PLANNING
SYSTEMS, INC.**



(Signature)

(Signature)

Printed Name: Sereniah Breland

Printed Name: Matthew Prosser

Title: City Manager

Title: Principal

Date: _____

Date: February 5, 2024

Daniel R. Guimond

(Signature)

Printed Name: Daniel R Guimond

Title: Senior Principal

Date: February 5, 2024

APPROVED AS TO FORM:

Charles E. Zech

City Attorney

DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

Attachment A

Project Understanding

The City of Pflugerville is a growing community of 66,000 residents located in the northern portion of the Austin-Round Rock-Georgetown MSA. Pflugerville and MSA have been growing substantially over the previous two decades and the City continue to expand its boundaries to accommodate growth pressures and preserve economic opportunities for its communities. Despite the growth of its boundaries, the City has also had substantial amount of development that has occurred along its borders in unincorporated Travis County. These unincorporated developments have been funded and are supported using special districts (most commonly Municipal Utility Districts (MUDs). Recent changes to annexation powers made by the State Legislature have curtailed the Pflugerville's ability to unilaterally annex, which has added complications to the City's ability to manage growth in its extra-territorial jurisdiction (ETJ).

Given the growth pressures, the City Council and City Staff want a better understanding of the financial and fiscal impacts of annexation. This proposal was drafted based on input from City staff on the needs of the community. The primary question is when does it make financial sense for the City to annex? To help answer this question, the City is seeking a fiscal impact analysis to evaluate the impacts of annexation of a variety of different types of areas. The analysis will help identify the major drivers of impacts on the City that need to be considered in evaluating annexation requests and the City's own growth plans.

The proposed scope of work (shown below) responds to the state needs of the city staff and other project experience of EPS. We believe there are two main components to the project. The first is a fiscal impact analysis that will estimate the fiscal impacts of a set of 4 to 6 different project types/contexts. The second is development of annexation evaluation criteria and policy for the City that is informed by the quantitative impacts modeled in the fiscal model and incorporates more qualitative/political impacts. The outcome is a decision matrix that will allow staff and elected officials to make informed decisions on future annexation efforts and growth policies.

Scope of Work

The scope of work below lays out the tasks anticipated to be needed to address the project issues.

Task 1: Fiscal Impact Model Development

The first major task is the development of the fiscal impact model.

Task 1.1 - Project Initiation

EPS will review the City budget, financial reports, and other financial and budget documents, identifying the key components of the budget and the fiscal model. EPS will review existing land use plans, existing planned developments (in and outside of the city), and other relevant documents. EPS will then schedule a conference call with the City staff to review the work program, discuss the deliverables, and discuss project timing.

Task 1.2 - Budget Analysis

EPS will analyze the City's annual budget and comprehensive annual financial report (CAFR) to identify the major revenues and expenditures and trends related to them. EPS may need more detailed expenditure data than is available in these public documents. EPS will assess what additional data may be needed to develop the model. The City's Funds that are most directly impacted by development (e.g., General Fund) will be analyzed. These funds will be the focus of the fiscal impact analysis.

Task 1.3 - Expenditures Cost Factors

EPS will categorize expenditures within each relevant fund to identify the major expenditures that have a major impact on the budget and/or are directly impacted by annexation. EPS will develop questions related to major expenditures to provide staff with a better understanding of how these expenditures are paid for and impacted by new development. For expenditures that have a major impact on fiscal balance and are impacted by new development, in-depth case studies will be developed (as opposed to simple per capita type factors) to better align costs with land use. This will likely occur for services such as fire, police, and roadway maintenance costs. Additional data will be needed to analyze the impact of development on these services for which EPS will work with City staff to obtain needed data. EPS will develop an initial approach to estimating costs for these major expenses, which will be reviewed by City staff.

Task 1.4 - Revenue Factors

This task will involve determining the relationships between City revenues by source and new development by land use. EPS will identify the major revenue sources for the City and identify an approach for estimating revenues generated by annexation and development. Real estate market inputs will be developed that are needed to estimate property and sales tax generation. EPS will use city-wide averages within the base line model. These factors will be evaluated by City staff to reach agreement on the approach to estimating and to determine if variable factors can or should be used.

Task 1.5 - Model Construction

EPS will build a baseline fiscal model reflecting the preliminary cost and revenue assumptions related to new development. The model will determine the net fiscal impact by land use type (i.e., single family, multifamily, retail, office, and industrial) for the evaluated funds and based on the context of the development (e.g. within the city, outside the city, existing development, future development, etc.).

Task 1.6 – Existing Fiscal Studies and Models Evaluation

EPS will evaluate previously developed fiscal impact analysis including the Verdunity Fiscal Impact Study and the Aspire Comprehensive Plan fiscal resiliency analysis model to understand the methodology used in those studies and how they are similar or different to EPS's proposed approach. These evaluations will help illustrate the value of a consistent approach to evaluating projects.

Task 1.7 - Staff Work Session and Department Interviews

Throughout the research and model construction, EPS staff will be interacting with City staff. Once EPS develops a preliminary approach to estimate costs and revenues, the firm team will have an in-person meeting with City staff. The meeting will serve to review the fiscal model approach and factors to finalize approach and assumptions. Any needed interviews with specific departments to better understand how to estimate costs will be included. During this trip EPS will also have a strategy session with City staff to

identify a set of 4-6 prototype annexation areas to evaluate with the model. EPS will use the information and ideas gathered in this session to develop a refined approach to assessing fiscal impacts of annexation areas.

Task 1.8 - Finalization of Model

Based on the takeaways from the in-person trip, EPS will finalize the fiscal model. EPS will then develop a recommended approach to evaluation of annexation areas. EPS will also prepare a memorandum for City staff that details how the model was developed and what factors were derived.

Task 2: Annexation Impact Evaluation

The second component of the project will be to assess the fiscal impacts of annexation on the city. EPS will, with staff input, will 6 development prototypes/case studies to understand the impacts of different types of annexation actions the City may consider.

Task 2.1 - High-level Estimates of Development Demand

EPS will review recent employment and housing trends and forecasts to understand the rate of development in the greater Pflugerville area. This analysis will help ground evaluation of any scenarios that include potential future development in realistic build-out timeframes.

Task 2.2 - Estimate of Development Capacity

EPS will work with City staff to develop an estimate of land capacity in the City and its ETJ. The estimated capacity will be used to understand where development is planned, proposed, or possible based on existing conditions. EPS will also compare capacity to estimated demand to determine the number of years of capacity, based on forecasts, the City currently has designated for different types of uses.

Task 2.3 - Fiscal Impact Assessments

EPS will evaluate the 6 development prototypes/case studies to identify the variable impact of different types of annexation including two scenarios evaluating the impacts of annexation exist MUDs. The analysis will consider the on-going operation cost to the city, capital improvement costs, and other financial impacts identified. EPS will document its findings within a concise report that summarizes its methodology, findings of the scenarios, and high-level recommendations for issues that need to be addressed based on the findings.

Sub Task – MUD Evaluations – Two of the six prototypes/case studies will involve areas with existing MUDs. The evaluations will first assess the financial burden/obligations that MUDs in the ETJ have and then focus on potential annexation candidate areas to complete a more detailed analysis. The evaluation will assess the level of debt obligations and timing on retiring debt and the on-going services provided to determine how they overlap with services provided by the city. Beyond this assessment, will be an assessment of the fiscal impact of annexation of the areas with MUDs in terms of services provided by the city.

Task 2.4 - Findings Presentation

EPS will summarize the baseline findings from the fiscal analysis in a succinct slideshow for presentation. EPS will present the findings first to City staff leadership, and then make presentations to the City Council and/or the Planning Commission as desired. The budget estimate below includes a one-person

trip for an in-person presentation. Additional in-person presentations can be completed on a time and materials basis with an estimated cost of \$2,750 per trip/presentation. Virtual presentations will be completed on a time and materials basis with an hourly rate of \$250.

Task 3: Annexation Policy and Decision Matrix

The final task is the development of an annexation policy for the city and a related decision matrix that guides decisions related to annexation request and efforts.

Task 3.1 – Policy Development

EPS will develop a draft Annexation Policy Document. The Annexation Policy Document will include and address the following topics:

- Current Governance and Service Status in the ETJ and Annexation Area(s)
 - Identification and mapping of existing service providers
 - Key governance and service issues to be addressed.
- Legal Standards and Procedures:
 - State law regarding local government reorganization and petitions from removal from ETJ
 - Effects of Voter Approval Requirements on City Annexation Policy
 - Effects of City Denial of Special District Requests
 - Effects of existing and future non-annexation agreements
 - Requirements regarding service provision within existing CCN or expansion of CCN requests
- Growth Policy Objectives and Implications
 - Voluntary Annexations (including existing non-annexation development agreement sites)
 - Special District and/or Public Improvement District formation and strategic use of districts to manage growth including fiscal implications
 - Detachments and Adjustments to City Limits or the ETJ
 - CCN Boundary Adjustments
- Identification and Methods for Evaluation of Key Reorganization Issues
 - Adequacy of municipal services and infrastructure
 - Deficiencies in existing governance
 - Fiscal effects of reorganization on City General Fund
 - Quality of life and environmental justice concerns
 - Equitable provision of services and tax/cost burden
 - Preservation of future growth potential

- Approach and Guidelines for Evaluating Fiscal Impacts of Annexation Projects
 - Responsibility of analysis preparation
 - Methodology for evaluating impacts
- MUD Evaluation and Impacts
 - Acceptable levels of financial obligation and legal risk for annexing MUDs with unretired debt and/or on-going service requirements
 - Fiscal impact approach for areas that have existing MUDs

Task 3.2 – Decision Matrix

Building on the annexation policy, a decision matrix will be developed that will help city staff and elected/appointed officials evaluate annexation decisions. The following criteria are likely to be included but the ultimate list of criteria will be refined through the project.

- Ongoing Operation Fiscal Impacts
- Capital Cost Impacts
- Financial Obligations and Risks
- Impact on Economic Development Opportunities
- Impact on Community and Environmental Health

Task 3.3 – Final Report and Presentation

A final policy report will be drafted that provides direction for annexation and growth efforts in the City. The report will also include the decision matrix and recommendations for application. The study will address the related Aspire Comprehensive Plan action items including:

- 10. Leverage financing and development tools available in the extraterritorial jurisdiction (ETJ) to achieve the City’s vision and goals.
- 10.1. Continue to evaluate and update policies for special districts (MUDs, etc.) that leverage them as partners to support Pflugerville’s fiscal sustainability, achieve revenue capture, and further other planning goals and objectives.
- 10.2. Use available tools, such as nonannexation development agreements.
- 11. Foster development patterns, locations, and annexation choices that improve the City’s fiscal position and efficient service delivery.
- 11.1. Prioritize development in areas that support efficient municipal services deliveries and redirects development from those areas likely to strain service delivery.
- 11.2. Establish and update an ‘Urban Service Boundary’ periodically in determining the appropriateness of proposed annexations to ensure municipal services may be provided without creating an undue strain on the system of services.
- 11.3. Seek policies and strategies to minimize inefficient leapfrog style development.
- 14.7. Conduct fiscal impact analysis with every annexation.

EPS will make a third trip to present the final policy and decision matrix to the city council to close out the project. The trip will be used to gain any final feedback needed to finalize all products of the study.

Proposed Budget

EPS agrees to complete the above work program on a time and materials basis not to exceed \$95,000. The approximate level of effort by task and staff level is shown in **Table 1**.

Table 1. Proposed Project Budget

Description	Principal in Charge Prosser	Senior Advisor Smith	Project Analyst Harguth	Project Analyst TBD	Production	Total
Billing Rate	\$250	\$340	\$175	\$150	\$100	
Labor						
Task 1: Fiscal Impact Model Development						
Task 1.1 - Project Initiation	4	4	4	0	0	\$3,060
Task 1.2 - Budget Analysis	2	0	8	8	0	\$3,100
Task 1.3 - Expenditures Cost Factors	4	0	8	4	0	\$3,000
Task 1.4 - Revenue Factors	4	0	8	4	0	\$3,000
Task 1.5 - Model Construction	4	0	20	16	0	\$6,900
Task 1.6 - Existing Fiscal Studies and Models Evaluation	8	0	8	8	0	\$4,600
Task 1.7 - Staff Work Session and Department Interviews	16	0	16	4	0	\$7,400
Task 1.8 - Finalization of Model	<u>8</u>	<u>2</u>	<u>8</u>	<u>2</u>	<u>4</u>	<u>\$4,780</u>
Subtotal	50	6	80	46	4	\$35,840
Task 2: Annexation Impact Evaluation						
Task 2.1 - High-level Estimates of Development Demand	4	0	8	16	0	\$4,800
Task 2.2 - Estimate of Development Capacity	2	0	8	16	0	\$4,300
Task 2.3 - Fiscal Impact Assessment	16	4	4	20	0	\$9,060
Task 2.4 - Findings Presentation	<u>4</u>	<u>2</u>	<u>8</u>	<u>4</u>	<u>4</u>	<u>\$4,080</u>
Subtotal	26	6	28	56	4	\$22,240
Task 3: Annexation Policy and Decision Matrix						
Task 3.1 - Policy Development	20	16	20	6	0	\$14,840
Task 3.2 - Decision Matrix	12	4	8	0	0	\$5,760
Task 3.3 - Final Report and Presentation	<u>18</u>	<u>4</u>	<u>16</u>	<u>4</u>	<u>8</u>	<u>\$10,060</u>
Subtotal	50	24	44	10	8	\$30,660
Total Labor	126	36	152	112	16	\$88,740
Direct Expenses						
Travel (3, 2-pers on trips)						\$4,500
Data						<u>\$1,760</u>
Total Direct Expenses						\$6,260
Total Cost						\$95,000

Source: Economic & Planning Systems

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