

AGREEMENT FOR PROFESSIONAL SERVICES

This is an agreement ("Agreement") by and between the City of Wimberley, Texas ("Owner"), and Alan Plummer Associates, Inc. ("Engineer"), entered into the 9th day of September 2013, whereby Engineer agrees to perform professional services and Owner agrees to pay for the services as provided herein.

ARTICLE I -- PROJECT, SCOPE OF SERVICES AND TIME FOR PERFORMANCE

1.01 Project. The Project is the Wimberley, Texas Wastewater System Improvement Project, to be located on property identified by the City in Hays County, Texas.

1.02 Preconstruction Services. It is understood and agreed that, unless this Agreement is amended as provided in Section 1.03, the Engineer will be providing only the pre-construction phase professional services described in the proposal attached hereto as Exhibit "A" and incorporated herein (the "Proposal"). Engineer shall not commence a Service described in the Proposal until and unless Owner provides Engineer with written authorization to proceed with such Services.

1.03 Construction Phase Services. If at any time after the execution of this Agreement the Owner desires the Engineer to provide construction administration or other construction-phase services, Owner will request the Engineer to provide a proposal for such services and the parties will negotiate in good faith to reach a written amendment to this Agreement identifying the services to be performed and the compensation for such services. The provisions of this Agreement, including those set forth in Article VI, shall apply to the construction phase services. It is understood and agreed that the compensation proposed by Engineer for the performance of such services shall be fair and reasonable and in keeping with compensation customarily charged by Engineer, and by other engineers practicing in the area of Austin, Texas, for similar types of services.

1.04 Scope of Services. Engineer will provide the services required to be performed under this Agreement ("Services") in accordance with the requirements of this Agreement. Engineer shall be responsible for the Services performed by its employees, principals, subconsultants, and other persons with whom it contracts to provide Services in connection with this Agreement, and all such Services shall be deemed to be Engineer's Services under the terms of this Agreement.

1.05 Time for Performance. Engineer will commence the performance of Services promptly after receiving a written notice to proceed from City. Within ten (10) days after the execution of this Agreement, Engineer will provide Owner with a schedule for the performance of the Services, for approval by the Owner. Engineer, with Owner's approval, may modify the schedule from time to time, but the schedule shall not be modified to extend the time for performance past any deadlines established by the Owner for the completion of the Services, or any portion of the Services, unless Owner expressly agrees to the extension in writing. If no time frame is established for a specific Service, then such service shall be completed in an orderly and timely manner so as not to delay the progress of the Project and Owner's payment or reimbursement from the Texas Water Development Board ("TWDB").

1.06 Deadlines. As of the date hereof, Engineer shall comply with the timeframes set

forth in the attached Scope of Services. In addition to the foregoing, Engineer shall be required to provide its services in accordance with any deadlines established by the Texas Water Development Board in connection with its funding of the Project. It is understood that Owner may modify or establish new deadlines from time to time with the concurrence and cooperation of Engineer.

1.07. Subconsultant Agreements. All agreements between Engineer and Subconsultants for the performance of Services in connection with this Agreement shall be in writing, and shall set out and conform to the provisions and requirements of this Agreement that are applicable to such persons or Services.

ARTICLE II – ENGINEER’S RESPONSIBILITIES

2.01 The Engineer will serve as the Owner's professional consultant in those phases of the Project to which this Agreement applies, and will consult and advise the Owner during the performance of the Engineer's Services. Engineer shall designate a representative to act as the contact person on behalf of the Engineer.

2.02. Engineer understands that funding for this Project is being provided, in whole or in part, through a grant or loan from the TWDB. IT IS THE OBLIGATION OF ENGINEER TO BECOME FAMILIAR WITH THE PROGRAM REQUIREMENTS FOR THE TWDB GRANT OR LOAN (“TWDB PROGRAM”) AS THEY APPLY TO THIS PROJECT AND THE ENGINEERING AND OTHER PROFESSIONAL SERVICES TO BE PROVIDED UNDER THIS AGREEMENT, AND TO COMPLY WITH THE SAME IN THE PERFORMANCE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, COMPLIANCE WITH ANY DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS FOR THE SOLICITATION OF SUBCONSULTANTS IF REQUIRED BY THE TWDB.

2.03. Upon receipt of authorization to commence Services, Engineer shall meet with Owner for the purpose of determining the nature of the Project, and Owner’s needs. Engineer, and any necessary subconsultants, shall meet with Owner at regular intervals established by the Engineer and the Owner for the purpose of updating Owner on the status of the Services and any issues that have arisen in connection with the Project. The Engineer agrees to record in writing the major proceedings of each Project conference and submit them to the Owner within seven (7) days of the date of the conference.

2.04. The Engineer will retain subconsultants approved by the Owner who are qualified and experienced and have all required licenses and/or accreditations to perform the Services. Such subconsultants must be selected by Engineer in accordance with any requirements of the TWDB Program. Subconsultants who have been approved by Owner may not be replaced except with the written authorization of Owner. Engineer must select replacement subconsultants in accordance with any TWDB Program requirements. The Engineer’s employees and the Engineer’s associated subconsultants to be utilized in the Project for the performance of professional services are identified in Exhibit “B” to this Agreement. If geotechnical laboratory services are provided for the Project through this AGREEMENT, either by the Engineer or its subconsultant(s), these services shall be performed by a laboratory accredited in soils or geotechnical testing, as appropriate, by the American Association of Laboratory Accreditation or by the American Association of State Highway and Transportation Officials.

2.05. The Engineer and Engineer's employees, principals and subconsultants shall perform their services in accordance with the terms of this Agreement and in a good and competent manner, with the professional skill and care ordinarily provided by engineering firms and the same types of subconsultants practicing in the area of Austin, Texas on similar types of projects. Such services shall be performed in accordance with any time frames established pursuant to this Agreement, or if no time frame is established for a specific Service, then such services shall be completed in an orderly and timely manner so as not to delay the progress of the Project, Owner's payment or reimbursement from the Texas Water Development Board ("TWDB").

2.06. The Engineer and/or its subconsultants, as appropriate, as part of the basic services, will make presentations on at least a monthly basis to Owner's City Council and at public meetings and to other bodies as required by the Owner, and will meet with applicable regulatory bodies as necessary to perform its Services under this Agreement, and with the TWDB as required by that body for administration of the funding of this Project.

2.07. Engineer's Services shall be performed in compliance with all applicable laws and any TWDB Program requirements. The Engineer shall incorporate into the design for the Project, all applicable standards, specifications, guidelines and regulations of governmental entities having jurisdiction over such matters. The Engineer shall not knowingly specify, request or approve for use any asbestos containing materials or lead-based paint without the Owner's written approval.

2.08. The Engineer shall prepare and submit at the appropriate times all applications, drawings, specifications and other documents in the name of the Owner to utility companies and providers and governmental authorities having jurisdiction over the Project and shall assist in efforts to obtain all approvals and all development and building permits necessary to complete the Project in accordance with the Production Schedule described in Section IV. Development and permitting fees may be paid for in one of the following methods as mutually agreed:

1. Paid by Engineer and billed to Owner as a reimbursable, if such cost is included in the budget identified in Paragraph 6.05 or
2. At Owner's discretion, provide Owner with ten (10) days prior notice of the cost and party to whom payment is due and Owner will provide a check for payment.

2.09. As part of the Engineer's basic services to be performed under this Agreement, the Engineer shall assist Owner in establishing estimates for the cost of the construction of the Project ("Fixed Construction Budget") and, if requested by Owner, the overall cost of the Project ("Project Budget") with sufficient contingencies to allow for escalation in construction costs and Project unknowns, and that are sufficiently reliable to permit Owner to seek financing for the Project through the TWDB based on such Budgets. The Fixed Construction Budget shall be established by the Owner and shall be adjusted only by written approval of the Owner.

The Fixed Construction Budget shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Engineer. The Fixed Construction Budget shall include the cost at current market rates of labor and materials furnished by the Owner and materials and equipment designed, specified or specially provided for by the Engineer, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions. The Fixed Construction Budget shall not include the compensation of the Engineer or the Engineer's subconsultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the Owner.

It is the obligation of the Engineer to design the Project to be constructible within the limits of the Fixed Construction Budget. To accommodate the Fixed Construction Budget, the Engineer shall determine what materials, equipment, component systems and types of construction are to be included in the Agreement Documents, may make reasonable adjustments in the scope of the Project, and may include in the Bid Documents alternative bids.

If the Fixed Construction Budget is exceeded by the lowest bona fide bid or proposal, the Owner shall either (1) give written approval of an increase in such fixed limit, (2) authorize rebidding of the Project within a reasonable time, (3) abandon the Project or terminate this Agreement, or (4) cooperate in revising the Project scope and quality as required to reduce the construction cost. In the case of (4), the Engineer, without additional charge, shall modify the Drawings and Specifications as necessary to comply with the Fixed Construction Budget and the requirements of the TWDB. Engineer shall use its best efforts to complete such modifications as soon as possible after the date the bids are opened, but in no event later than thirty (30) days after such date, unless an alternate time is agreed upon by Engineer and Owner in writing.

Should the Engineer prepare documents for alternative bids as a means to keep the Project cost within the Fixed Construction Budget of the Agreement, compensation shall remain at the established fee amount set out in the Proposal, irrespective of the outcome of bids.

If Owner requires rebidding of the Project, Engineer shall furnish the required services for the rebidding within a reasonable period of time after it has received direction to do so by the Owner, and all services of the Engineer in connection with the rebidding shall be performed and paid for by Engineer at its sole cost and expense.

2.10 Engineer understands that funding for this Project is being provided, in whole or in part, through a grant or loan from the TWDB. IT IS THE OBLIGATION OF ENGINEER TO BECOME FAMILIAR WITH THE PROGRAM REQUIREMENTS FOR THE TWDB GRANT OR LOAN AS THEY APPLY TO THIS PROJECT AND THE ENGINEERING AND OTHER PROFESSIONAL SERVICES TO BE PROVIDED UNDER THIS AGREEMENT, AND TO COMPLY WITH THE SAME IN THE PERFORMANCE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, COMPLIANCE WITH ANY DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS FOR THE SOLICITATION OF SUBCONSULTANTS IF REQUIRED BY THE TWDB.

ARTICLE III – OWNER'S RESPONSIBILITIES

3.01 The Owner will:

- a. Provide full information as to their requirements for the Project.

- b. Designate a representative to act on behalf of Owner in connection with this Project, provided however, it is understood that certain decisions, including those affecting the scope of services and a change in costs, may require City Council approval.
- c. Assist Engineer by placing at its disposal available reports and other data relevant to the development of the Project.
- d. Assist Engineer in gaining entry to public and private property as may be required by the Engineer in the performance of their services under this Agreement.
- f. Review submissions and render decisions pertaining thereto within a reasonable time so as not to unreasonably delay the services of the Engineer. The time for review shall include the time period required to take any proposed action to City Council for approval and authorization.

**ARTICLE IV—
PRELIMINARY SERVICES AND ENGINEERING PHASE SERVICES**

4.01 Phase A: Preliminary Services-Stakeholder Meetings.

The Engineer shall perform the Phase A: Preliminary Phase services as described below and in Exhibit A after issuance by Owner of the Notice to Proceed for such Services:

- a. Attend preliminary conferences with Owner and other interested or involved persons approved by Owner regarding the alternatives for the Project. Report progress of this phase to the Owner relative to approved schedule at intervals not exceeding fourteen (14) days.
- b. Review existing plans, maps, records, traffic (vehicular and pedestrian), water and wastewater studies, planning studies, zoning, land use, other utility, population, and other available information relevant to the development of the Project. Provide for surveys, geotechnical investigations, and environmental reports as required by this Agreement.
- c. Prepare, conduct and document studies, analyses and reports of the Project alternatives in sufficient detail to clearly indicate the problems involved and reasonable solutions available to the Owner. Such studies, analyses and reports may include but not necessarily be limited to: preliminary layouts, maps, exhibits, sketches, construction materials and methods evaluations, schedules, utility coordination plans, design criteria, environmental reviews, and other investigations pertinent to the evaluation of the Project alternatives.
- d. Collect all pertinent information concerning proposed roadway/street improvements in the project area, including the potential for additional right-of-way being acquired. For all public streets and roadways that will be impacted, obtain information concerning the most recent paving works (full reconstruction, partial reconstruction, overlay, seal coat, etc.) on the street/roadway.

- e. Prepare preliminary Project schedule and estimate of the probable Project construction costs for all alternative solutions. The Engineer shall apply reasonable consideration and knowledge to the preliminary cost estimate development.
- f. Conduct preliminary field surveys and determine site constraints and special permitting requirements.
- g. Evaluate Project easement requirements, both permanent and temporary construction.
- h. Evaluate alternative materials and construction methods.
- i. Prepare recommendations for the number of Project construction contracts to be bid.
- j. The Engineer shall, upon conclusion of their reviews, investigations, and preliminary evaluations, present their findings, recommendations, cost estimates, alternate routes, recommendations for construction and a design and construction schedule for the recommended Project to Owner for its review and comment.

4.02 Phase B: Design and Bidding Documents Preparation

If authorized by the Owner to proceed with this Phase, the Engineer shall:

- a. Attend and/or arrange for conferences, at periodic intervals not to exceed fourteen (14) days, with the Owner for the purposes of explaining completed design activities and review of schedule for completing of remaining activities.
- b. Conduct or otherwise acquire, upon receipt of Owner's written authorization, the necessary field surveys, soils, additional analysis and peripheral investigations which, in the opinion of the Engineer, may be required for the proper execution of the design of the Project.
- c. Locate and provide for geotechnical test boring sites, if such borings are required, and review the results of such tests.
- d. Provide for field surveys, which may include photogrammetry, and perform related office computations and drafting for the purpose of collecting information required for design. Such surveys shall include horizontal and vertical control adequately documented on the final plans. Horizontal control for facilities shall be on the Texas State Grid Coordinate System carried to second-order accuracy to permit actual construction staking to third order accuracy. The vertical control shall be based on the U.S. Geological Survey (USGS) datum and BM's shall be established not more than 1000 feet apart at accuracy of 0.01 feet. Visible topographic features shall be tied to the Project centerlines(s) and shall include, but not necessarily be limited to, existing property or lease lines, property or lease corners, utilities and appurtenances, roadways, structure, railroad structures, trees over eight inches in diameter, and other features within the limits of construction and twenty-five (25)

feet beyond. Project control must be complete and staked in the field at the time of advertisement for bid so that construction staking can be accomplished immediately thereafter.

- e. Prepare detailed specifications (utilizing the Owner's standards) and prepare Project construction contract drawings, at approved horizontal and vertical scales in electronic format and hard copy as required by the Owner. The drawings shall, at minimum, include plan views, sections and details clearly defining and describing the intent of the improvements, limits of work and storage areas, sequencing requirements, access routes, environmental-protection requirements, and contractor staging and storage areas.
- f. Prepare cost estimates of authorized Project construction, and review and evaluate such costs estimates at intervals agreed upon by Owner and Engineer, and prior to going out for bids. If such estimated cost exceeds the Fixed Construction Budget as established herein as adjusted by the Owner from time to time, the Engineer shall consult with the Owner so that revisions can be made to the Project scope to reduce the Project cost as required to stay within approved or authorized cost limitations. The Engineer shall then make such revisions to the Project design and construction documents at no additional cost to the Owner.
- g. Provide Owner with copies of draft Bidding Documents (consisting of plans, details and the Project Manual) and, one (1) set of final design criteria and calculations of principal elements of final design as required by Owner.
- h. Assist Owner in obtaining any required Site Development Permit, Building Permit, and other required regulating agency permits/approvals.
- i. Obtain Owners' approval of the Project bidding documents and provide for duplication of sets of final Project bidding documents for distribution to contractors when authorized by Owner to do so. Engineer shall also provide five (5) half size sets, and one electronic version in AutoCAD 12 DWG format, or other format acceptable to Owner, of the Project Construction drawings.
- j. Assist the Owner in the advertisement of the Project for construction bids.
- k. Attend and conduct pre-bid conference to provide clarification and interpretation of the Project bid documents to bidders.
- l. Prepare and issue all addenda required to clarify the Project bid documents.
- m. Maintain a record of bidding document issuance and receipt of same.
- n. Attend the Owner's opening of Project bids, review bids and furnish to the Owner a recommendation regarding the award of the contract(s), within five (5) working days following bid opening. Should the as-bid construction cost of the Project (or component thereof) be greater than the Fixed Construction Budget (or appropriate portion thereof) Owner shall have the rights provided by this Agreement.

- o. Prepare an environmental report for the recommended Project alternatives with consideration given to air, noise, and water quality, historical features, vegetation (including applicable City ordinances), and endangered species.
- p. Prepare a geotechnical report for the recommended Project alternatives which includes but may not be limited to: delineating geological sensitive areas, soils formation, and information necessary to estimate cost of contractor's trench safety provisions.

ARTICLE V -- CONSTRUCTION PHASE AND WARRANTY PERIOD SERVICES

5.01 If Owner and Engineer enter into an amendment to this Agreement for Engineer to provide Construction Phase services, and Warranty Period Services, Engineer shall perform the Services as described below and in the amendment.

A. Construction Phase Services

a. Engineer shall consult with Owner and act as its representative in interacting with the Contractor in performing construction administration and warranty period services.

b. Engineer shall make periodic site visits to the site to observe as an experienced and qualified design professional, the progress and quality of the executed work of contractor and his subcontractors, and to determine if such work is proceeding in general accordance with the Agreement documents. Daily on-site inspection is not included in the scope of services.

c. Engineer shall keep Owner informed of the progress of the work, shall endeavor to guard Owner against defects and deficiencies in such work, and may disapprove or reject work failing to conform with the agreement documents.

d. Engineer shall review and approve shop drawings and samples, the results of tests and inspections, and other data which each contractor is required to provide.

e. Engineer shall determine the acceptability of substitute materials and equipment proposed by contractor, and receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by contractor in accordance with the agreement documents.

f. Engineer shall issue all instructions of Owner to contractor as well as interpretations and clarifications of the agreement documents pertaining to the performance of the work.

g. Based upon Engineer's periodic on-site observations and as an experienced and qualified design professional, and upon his review of applications of payment and the accompanying data and schedules, Engineer shall review the amounts owing to the contractor and recommend in writing payments to contractor in such amounts. The recommendation of payment by Engineer shall constitute a recommendation by Engineer to Owner based upon Engineer's review of the progress of the work and that quality of such work is in accordance with the agreement documents as Engineer has observed.

h. Upon notification from contractor that the Project is substantially complete, Engineer shall conduct a site visit to determine if the Project is substantially complete. Engineer shall prepare a checklist of items which shall be completed prior to final acceptance.

i. Upon notification by contractor that the items designated for completion have been completed, Engineer shall conduct a final site visit of the Project area to verify final completion.

j. Engineer shall not be responsible for the work of the contractor or any of his subcontractors, except this provision shall not alter the Engineer's duties to Owner arising from the performance of Engineer's obligations.

k. Engineer shall conduct one site visit during the warranty period and shall report to Owner as to the continued acceptability of the work.

l. Engineer shall not execute change orders on behalf of Owner or otherwise alter the financial scope of the Project without the authorization of Owner.

5.02 Warranty Period Services.

Engineer shall provide assistance to the Owner with any problems with the Project, including defects or deficiencies in design, materials or workmanship during the one-year period following substantial completion of the construction of the Project. The scope of assistance from Engineer shall include, but not be limited to, the following: (i) notifying the contractor of deficiencies or failures in labor or materials and requesting corrective action; (ii) preparing correspondence and other written data as necessary to document, clarify, and resolve discrepancies; and (iii) meeting with the Owner at the Project site when requested in order to evaluate problems and assist in resolution. In addition, the Engineer shall accomplish an on-site review of the Project, accompanied by its consultants, as necessary, approximately one month before the end of the one-year warranty period, and prepare a list for the Owner and the contractor of items needing correction, repair or replacement. The Engineer will review the contractor's corrective work and after determining that the deficiencies have been corrected, shall notify the Owner of this in writing. These actions will not relieve the Engineer from performing any other obligation under the terms of this Agreement.

ARTICLE VI- BASIC SERVICES AND COMPENSATION FOR BASIC SERVICES

6.01. All of the services described in Articles I through V and in Exhibit "A" are Basic Services. Owner agrees to pay Engineer for all professional services rendered under this Agreement, subject to the terms and provisions of this Agreement. Engineer shall be paid for such Services as provided in Exhibit "A", and if applicable, any amendment for Construction and Warranty Period Services, together with reimbursable expenses as provided in this Agreement. Such amounts shall be compensation for the Basic Services required under this Agreement.

6.02. The amounts shown in Exhibit A as compensation for Basic Services are Not-to-Exceed Amounts. Engineer shall not be entitled to payment for amounts greater than those shown unless Owner has agreed to pay such amounts in an amendment to this Agreement.

6.03. Owner is exempt from the payment of certain sales and use taxes under applicable law. Engineer will obtain a Certificate of Exemption, and will not charge or pass through to Owner taxes for which Owner is exempt, and Owner shall not be responsible for the payment of any such taxes.

6.04. Engineer shall be entitled to reimbursable expenses, in addition to the compensation described in Section 6.01, for costs incurred by Engineer that are necessary, reasonable, and directly related to the provision of the Services. No mark-up may be charged on Reimbursable expenses, including reimbursable expenses that are Services for subconsultants. The allowable reimbursable expenses are expenses for travel, lodging, food, document reproduction and long distance phone calls.

6.05 The estimated cost of reimbursable expenses for the preconstruction Services is five thousand (\$5,000) dollars. Engineer shall notify Owner if it appears that this budget for reimbursable expenses will be exceeded, when approximately 75% of this amount has been expended, and the parties will endeavor to agree on any increased amount to be budgeted and expended for reimbursable expenses.

ARTICLE VII- ADDITIONAL SERVICES AND COMPENSATION FOR ADDITIONAL SERVICES

7.01 Any Services not within the scope of the Basic Services and identified in any amendment to this Agreement as Additional Services shall be performed by Engineer as Additional Services in accordance with the terms of this Agreement. All provisions of this Agreement regarding performance by Engineer shall apply to the provision of Additional Services.

7.02 Before the Engineer may perform any Additional Services or incur additional costs beyond what is specified in this Agreement as compensation for Basic Services, both parties must execute a written amendment to this Agreement that specifies the Additional Services to be performed and the cost for such Additional Services. In the event the Owner requests the Engineer to perform services that are Additional Services, or if Engineer believes that Additional Services are needed for the Project, Engineer shall notify the Owner in writing that the services are Additional Services, shall describe the services, and provide the Owner with a proposal for the cost of performing such Additional Services. **Any provision in this Agreement to the contrary notwithstanding, the Owner shall not be responsible to the Engineer for payment for any Additional Services that are not described in a written and signed amendment to this Agreement as provided herein.**

7.03 Engineer will be compensated for Additional Services, and reimbursed for reimbursable expenses, in accordance with the terms of the amendment to this Agreement as provided in Section 8.

ARTICLE VIII -PAYMENTS

8.01. On or before the 30th day of each month, the Engineer shall prepare and submit to the Owner for approval or modification, a statement showing as completely as practicable, the

Services performed by the Engineer for the prior month, and the amount owed by Owner for compensation based on the Engineer's estimate of the percentage of completion as approved by the Owner, up to and including the last day of the preceding month, and based on the percentage of the total cost of compensation allocated to the Phase of the services performed, as shown below. Engineer shall provide documentation to support the amounts shown in the invoice. Reimbursable Expenses shall be itemized separately from fees for services and identified as such. Owner shall have the right to require additional documentation determined by Owner to be necessary to support or evaluate the invoice.

8.02 Owner shall promptly notify Engineer if Owner disputes any payment requests or specific items invoiced, and may withhold payment of disputed items until such dispute is resolved. Undisputed payments shall be due within thirty (30) days after the date Owner receives the invoice, subject to the provisions of this Agreement and applicable law. Undisputed payments not paid when due shall incur interest at the rate and in accordance with the provisions of Chapter 2251 of the Texas Government Code, and such interest shall be compensation in full to Engineer for any injury incurred through such delay.

8.03 Engineer shall pay subconsultants for their Services in accordance with the terms of the subconsultant agreements promptly after receiving payment for such Services from Owner.

8.04 The Owner may withhold, amend, or nullify any request for payment by the Engineer under conditions that include those described below:

- (1) Failure of the Engineer to follow the approved schedule and meet all time requirements for its services under this Agreement.
- (2) Owner's receipt of notice that, despite payment to Engineer for services rendered by subconsultants, Engineer has not paid subconsultants promptly for services invoiced to and paid by Owner to Engineer after Engineer's receipt of payment from Owner.
- (3) Engineer's failure to perform services as required by this Agreement.
- (4) Failure of the Engineer to provide updated drawings and Contractor's Agreement documents to the Owner within thirty (30) calendar days after Contractor's Agreement documents have been provided to the Engineer by the Contractor upon substantial or final completion of the Project.
- (5) Any other material breach of this Agreement by Engineer.

ARTICLE IX - DECLARATIONS

9.01 Engineer declares that the information provided to the Owner pursuant to the Agreement will be accurate and correct, as an experienced and qualified professional engineer, reflecting the current standard, procedures, and performances of the industry for this Project. Engineer declares that the surveying, design, preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel and the performance of other services pursuant to this Agreement will be performed pursuant to the requirements and standards set out in this Agreement.

ARTICLE X -INDEMNIFICATION

10.1 To the maximum extent permitted by applicable law, the Engineer indemnifies, AND will defend and hold Owner, its elected officials, officers and employees, harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may arise out of or be occasioned or caused by the negligent acts or omissions of Engineer, or any agent, officer, director, representative, employee, consultant, or subconsultant of Engineer, or any of their respective officers, agents, employees, directors, and representatives while in the exercise of performance of the Services or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of Owner, its officers or employees. In the event Owner and Engineer are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available under Texas law and without waiving any defenses of the parties under Texas law. These obligations shall survive completion and/or termination of this Agreement.

Engineer or Owner shall promptly advise the other party, in writing, of any claim or demand against the Owner or Engineer known to Owner or Engineer respectively, related to or arising out of Engineer's or Owner's activities under this Agreement.

These provisions 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.

ARTICLE XI - INSURANCE

11.01 Engineer shall procure and maintain at its sole cost and expense for the duration of the Agreement and any longer period provided below the insurance indicated in this Article XI:

- (1) Workers' Compensation and Employers' Liability Insurance Coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401) and (1) minimum policy limits for Employers Liability Insurance of \$10,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,00 bodily injury by disease each employee. The Engineer's policy must be issued by an insurer licensed or approved to do business in the State of Texas and include these endorsements in favor of the Owner:
 - (a) Waiver of Subrogation, form WC 420304, or equivalent.
 - (b) Thirty (30) day Notice of Cancellation, form WC 420601, or equivalent.
- (2) Commercial General Liability Insurance with a minimum combined bodily injury and property damage per occurrence limit of \$600,000 for coverages A&B. The policy must contain the following provisions:

- (a) Blanket contractual liability coverage for liability assumed under this Agreement and all contracts relative to this project.
- (3) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles (i) with a minimum combined single limit of \$600,000 per accident for bodily injury and property damage, or (ii) \$250,000 bodily injury per person, \$600,000 bodily injury per occurrence and at least \$100,000 property damage liability. The policy shall contain the following endorsements in favor of the Owner.
- (a) Waiver of Subrogation endorsement TE 2046A, or equivalent.
 - (b) 30 day Notice of cancellation endorsement TE 0202A, or equivalent.
 - (c) Additional Insured endorsement TE 9901B, or equivalent.
- (4) Engineer's Professional Liability Insurance to pay on behalf of the assured all sums which the assured becomes legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, map, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The policy must provide for a thirty (30) day notice of cancellation in favor of the Owner. The minimum limit is \$1,000,000.

11.02 General Requirements

- (1) The Engineer must provide the Owner with a Certificate of Insurance before the Agreement is executed, as verification of coverage required herein. The Engineer shall not commence services until the required insurance has been obtained and until such insurance has been reviewed and approved by the Owner. Approval of insurance by the Owner does not relieve or decrease the liability of the Engineer hereunder and must not be construed to be a limitation of liability on the part of the Engineer.
- (2) Applicable to all insurance policies: If coverage is underwritten on a claims-made basis, the retroactive date must be coincident with or prior to the date of this Agreement and the certificate of insurance must state that the coverage is claims made and the retroactive date. The Engineer shall maintain continuous coverage for the duration of this Agreement and for not less than twenty-four (24) months following substantial completion of the Project. Coverage, including any renewals, must have the same retroactive date as the original policy applicable to the Project. The Engineer shall, on at least an annual basis, provide the Owner with a certificate of insurance as evidence of such insurance.
- (3) The Engineer's insurance coverage must be written by companies licensed or approved to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of A+VII

or better. The Owner will accept workers' compensation coverage written by the Texas Workers Compensation Insurance Fund.

- (4) The "other" insurance clause will not apply to the Owner where the Owner is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the Owner and the Engineer, be considered primary coverage as applicable.
- (5) If insurance policies (other than Professional Liability Insurance) are not written for amounts specified above, the Engineer shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it must follow the form of the primary coverage.
- (6) The Owner shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

ARTICLE XII - NON-ASSIGNMENT CLAUSE

12.01 Engineer shall not assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the Owner, except to the extent that any assignment, subletting or transfer is mandated by law. Unless specifically stated to the contrary, in any written consent to an assignment, no agreement will release or discharge the assignor from any duty or responsibility under this agreement. Nothing contained in this paragraph shall prevent the Engineer from employing such independent associates and consultants as the Engineer may deem appropriate to assist in the performance of services hereunder.

12.02 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Owner and Engineer, and all duties and responsibilities undertaken pursuant to this agreement will be for the sole and exclusive benefit of the Owner and Engineer and not for the benefit of any other party.

ARTICLE XIII – OTHER TERMS

13.01 Termination. This Agreement may be terminated by the Owner at any time and for any reason as long as advance written notice is provided to the Engineer at least 30 days before the intended termination date. The advance 30 day written notice shall include the effective termination date of the Agreement. In the event of termination by the Owner for its convenience, the Owner will pay Engineer for any and all work completed and reimbursable expenses incurred to the date of termination performed in accordance with the terms of this Agreement. No other amounts will be payable to the Engineer due to the termination. Payment will be due within thirty (30) days after the date of termination.

The Owner shall have the right to terminate this Agreement for cause after giving Engineer written notice of default, and ten (10) days opportunity to cure such default.

13.02 Dispute Resolution. In the event of a claim or dispute arising out of this Agreement, the party alleging the claim agrees to provide the other party with at least ten day's written notice of the dispute and opportunity to cure before proceeding with remedies. If a claim or dispute arises under or in connection with this Agreement, the parties agree to negotiate in good faith in an attempt to resolve the matter expeditiously. If they are not able to resolve the matter through negotiation, the parties agree to mediate the dispute in good faith before filing suit for damages, and the cost of such mediation shall be shared equally between Owner and Engineer.

13.03 Governing Law. This Agreement has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in the City of Wimberley, Texas, and venue shall lie in courts of competent jurisdiction in Hays County, Texas.

13.04 Notices. All notices, requests or other communications required or permitted by this Agreement shall be in writing, and shall be sent by (i) facsimile or email, with the original delivered concurrently by hand or overnight courier or by mail, (ii) by overnight courier or hand delivery, or (iii) by certified mail, postage prepaid, return receipt requested, and addressed to the parties at the following addresses:

Owner:

City of Wimberley

Engineer:

Alan Plummer Associates, Inc.

Attn: Don Ferguson

City Administrator

Phone:

Fax:

Email:

Attn: Mr. Stephen J. Coonan, P.E.

Phone: (512) 452-5905

Fax: (512) 452-2325

Email: scoonan@apaienv.com

Addresses and phone numbers for notices required under this Agreement may be modified as needed by giving notice as required in this section.

13.05 Survival. The indemnity and warranty provisions of this Agreement shall survive termination or completion of this Agreement. Any provision of this Agreement which by its terms is performable or which may be performed after termination or completion of this Agreement shall survive termination or completion.

13.06 Independent Consultant/Engineer. The parties agree that Engineer shall be deemed to be an independent consultant/engineer and not an agent or employee of the Owner with respect to its acts or omissions hereunder. The parties agree that the services and activities performed under this Agreement are not and shall not be construed as a joint venture between the

parties.

13.07 Confidential Work. Any reports, information, project evaluation, project designs, data, or other documentation developed by Engineer hereunder given to or prepared by or assembled by the Engineer will not be made available to any individual or organization by the Engineer without prior written approval of the Owner.

13.08 Ownership and Use of Documents. All designs, drawings, specifications, documents, and other work products of the Engineer for the Services, whether in hard copy or in electronic form, are instruments of service for the Services, whether the Services are completed or not. All such items, including plans, drawings, photos, designs, studies, specifications, computer programs, schedules, technical reports, or other work products which are to be delivered under this Agreement, and which are to be paid for by the Owner, are subject to the rights of the Owner provided in this Agreement.

If an item produced by the Engineer is copyrightable, the Engineer may copyright it, subject to the rights of the Owner. The Engineer grants the Owner the royalty-free, non-exclusive and irrevocable license to reproduce, publish, modify and use such items and to authorize others to do so. The Engineer shall include in its subconsultant contracts appropriate provisions to achieve the purpose of this Section.

It is understood that the Engineer does not represent such items to be suitable for reuse on any other project or for any other purpose(s). If the Owner reuses such items without the Engineer's specific written verification or adaptation, such reuse will be at the risk of the Owner, without liability to the Engineer. Any such verification or adaptation by the Engineer requested by the Owner may entitle the Engineer to further compensation at rates to be agreed upon between the Owner and the Engineer.

Should the Engineer be terminated under this Agreement, the Owner may continue the Project, and Engineer shall provide Owner with copies of the Drawings, Specifications, or other documents within fourteen (14) calendar days after the termination notice. Copies will be in the format designated by the Owner. The Owner may have these documents completed, corrected, revised or added to by another design professional in accordance with rules and regulations of the Texas Board of Engineers.

13.09 No Oral Modification/Complete Agreement. This Agreement and any exhibits hereto constitute the entire agreement between the Owner and Engineer and supersede all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or cancelled by a written instrument duly executed by both parties.

13.09 Waiver. No waiver by either party hereto of any term or condition of this agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

13.10 Remedies. The rights and remedies of the Owner provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law or at equity including the right of specific performance and offset. Payment made to Engineer by the Owner shall not denote acceptance of the work. In the event of a default by the Owner hereunder, the Engineer shall provide Owner with at least ten (10) days notice and opportunity to cure. The

Engineer shall have all rights and remedies provided by law. The parties agree to mediate any dispute in good faith prior to filing suit, and the costs of such mediation shall be shared equally between Owner and Engineer.

13.11 Exhibits. All exhibits attached to this Agreement are incorporated by reference and expressly made part of this Agreement as if copied verbatim.

13.12 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or inability to enforce shall not affect any provision thereof, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

13.13 Successors and assigns bound. The Owner and Engineer and their respective successors and permitted assigns are hereby bound to the terms and conditions of this Agreement.

13.14 Signatures warranted. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the Owner and Engineer, respectively.

Executed on the dates set forth below to be effective as of the date first set forth above.

Owner

Engineer



Attn: Don Ferguson
City Administrator
City of Wimberley

Phone: (512) 847-0025
Fax: (512) 847-0422
Email: dferguson@cityofwimberley.com

Date: 9/9/13
6:42 p.m.



Attn: Mr. Stephen J. Coonan, P.E.
Alan Plummer Associates, Inc.

Phone: (512) 452-5905
Fax: (512) 452-2325
Email: scoonan@apaienv.com

Date: 9/9/13

EXHIBIT A

WORK ORDER/PROPOSAL SCOPE OF
SERVICES AND COMPENSATION

CITY OF WIMBERLEY, TEXAS
WASTEWATER SYSTEM IMPROVEMENT PROJECT

This scope of work for the City of Wimberley, TX Wastewater System Improvement Project is based upon the information submitted in the application for funding submitted to the Texas Water Development Board by the City on October 29, 2012, and amended January 24, 2013. The scope also includes additional financing and public involvement services as discussed with City staff. It is anticipated that the project will include the construction of a sewer collection system in the central Wimberley area, as identified on Figure 1, as well as expansion of the existing treatment facility and associated effluent irrigation areas. For purposes of this scope, the project will be essentially that defined as Alternative 4 in the Preliminary Engineering Report, Addendum 2, prepared by Alan Plummer and Associates and dated October 2012. If there are significant changes in the scope of the project from that contained in the above-referenced report, it is understood that this scope and fee will be adjusted accordingly through a Contract Amendment. The scope of Planning, Design, and Construction Management Phase Engineering Services for the Wimberley, Texas Wastewater System Improvement Project includes the following tasks:

Task 1 - Project Coordination

- A. Engineer and key subconsultants, as required, will attend preliminary conferences with the City, Texas Water Development Board (TWDB) personnel and other interested parties regarding the Project.
- B. Engineer will assist the City in the preparation of applications and supporting documents for government grants, loans, or advances in connection with the Project.

Task 2- Public Involvement/Citizens' Advisory Committee

- A. The Engineer and key subconsultants (Laura Rahn Public Relations and Raftelis Financial Consultants) will work directly with a Stakeholder Committee, appointed by the City, to identify community concerns regarding the project, solutions to address those concerns and incorporate those solutions into a Preliminary Engineering Feasibility Report prepared by the engineer.
- B. It is anticipated that this effort will require a total of eight (8) meetings with the Stakeholder Committee across a period of approximately nine (9) weeks and shall be completed no later than Friday, November 22, 2013. In addition, the Engineer and subconsultants will prepare the information necessary to facilitate these meetings. This process will be led and facilitated by Laura Rahn Public Relations. The scope of services for Laura Rahn Public Services is attached as Attachment I. It is anticipated that Raftelis Financial Consultants will participate in three (3) of the meetings to review financial information for the Stakeholder Committee. The Engineer's

Representatives will be present at each meeting. The Stakeholder Committee will be responsible to provide feedback representative of community concerns on the engineering and financial alternatives presented during the stakeholder meetings.

Task 3 – Conduct Engineering Alternative Evaluations to Support the Stakeholder Process

- A. Based on the results of the Stakeholder Committee process, Engineer and subconsultants will prepare a Preliminary Engineering Feasibility report, which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the requirements developed in the process, considerations involved, and those alternate solutions available to the City.
- B. Upon completion of the initial process, the Engineer and subconsultants will meet with the City Council and provide a presentation of the results of the Stakeholder Committee process.
- C. Engineer will review and update the existing Environmental Assessments and Impact Statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

Task 4 -Surveying and Land Acquisition Assistance

- A. The Engineer will determine the necessity for acquisition of rights-of-entry for properties for purposes of surveying. Based on readily available data, Engineer will furnish necessary information such as name and address of property owners, legal descriptions of parcels, and map of parcels with designation of areas to be surveyed to the City. The City will be responsible for obtaining the necessary rights-of-entry.
- B. The Engineer will determine the necessity for acquisition of any additional real property/easements/right-of-way for the City's potential Wastewater Collection System and Treatment Plant Project(s) and, if applicable, furnish information such as name and address of property owners, legal descriptions of parcels to be acquired and map of entire tracts with designation of part to be acquired to the City.
- C. Engineer will prepare property surveys, detailed descriptions of sites, maps, or drawings as required to support the acquisition of land and easement rights. The Engineer will coordinate preparation of an appraisal by a qualified appraiser to be paid for by the City, of the value of real property and/or easements needed for the wastewater facilities and determine the availability of title, easements, and rights-of-way needed to implement the project. The costs for title reports and policies are not included.
- D. Engineer will provide field surveys to collect information required for planning and design and complete related office computations and drafting.
- E. Engineer will provide field surveys and office computations for construction control staking, including the one-time staking of bench marks and horizontal control references for the Contractor's construction stake-out. If the Contractor damages or removes any bench marks or reference points, re-staking will be billed to the Contractor.

Task 5 — Design

- A. Engineer will prepare detailed construction plans, specifications and contract documents for the construction authorized by the City Council as a result of the Stakeholder Committee process. This scope is based on preparing no more than two sets of project documents - one for the wastewater collection system, and one for the treatment and irrigation facilities. Plans will be submitted to the City for review and approval by the City at the 60%, 90%, and 100% completion milestones. Plans will be prepared in accordance with typical engineering practice.
- B. At the 60%, 90%, and 100% milestones, the Engineer will prepare updated opinions of probable construction cost for the authorized construction.
- C. Engineer will furnish the City with a table of contents for the proposed Contract Specifications as part of the 60% submittal. The 90% submittal will include technical specifications and contract documents for City review and approval. Final specifications will be submitted with the 100% submittal. Contract documents will be in accordance with Texas Commission on Environmental Quality (TCEQ) and TWDB requirements.
- D. At the 100% milestone, the Engineer will furnish the City with complete sets of plans and specifications for submittal by the City to TWDB for approval.
- E. Prior to completion of Final Design, Engineer and subconsultants will attempt to contact each property owner/potential user to determine potential connection points for sewer service and to review issues associated with the connection. Only one attempt will be made to obtain this information. This information will be archived and included in the final construction plans.
- F. Prior to construction, the Engineer and subconsultants will prepare for, and present, a public workshop to discuss the proposed project. This will include an identification of the proposed construction, potential impacts during construction, and the construction schedule.

Task 6 – Bid Phase Services

- A. Engineer will furnish the City with approved contract documents including Notices to Bidders and Proposal forms.
- B. Engineer will assist the City in the advertisement of the project for Bids. The City will be responsible for all costs associated with advertising in newspapers or other publications.
- C. Engineer will attend the bid opening and tabulate the bid proposal, analyze the responsiveness of the bidder(s) and make recommendations for awarding contract(s) for construction to the lowest responsive bidder(s). This scope is based on preparing no more than two sets of bid documents - one for the wastewater collection system, and one for the treatment and disposal facilities.
- D. Engineer will prepare and coordinate approval of formal Contract Documents and coordinate issuance of Notice to Proceed from the TWDB.

Task 7 – Permitting

- A. The Engineer will furnish and submit, on behalf of the City, the engineering data necessary for applications for the following permits by local, State and Federal authorities (as distinguished from detailed applications and supporting documents for government grants-in-aid, or for planning advances):
 - TxDOT right-of-way use permit
 - TCEQ Texas Pollution Discharge Elimination Permit for the wastewater plant
- B. The Engineer will also prepare and submit, on behalf of the City, the engineering data and other information as required by the TCEQ for Texas Pollution Discharge Elimination (TPDES), including discharge permits and Storm Water Pollution Prevention Plans (SWP3) as required.
- C. The Engineer will also prepare and submit, on behalf of the City, the engineering data and other information as required by the TCEQ for a Chapter 210 Reuse Notification.
- C. Although a permit is not required for the wastewater collection system, the Engineer will submit plans, specifications, and a design report for the collection system to TCEQ for review and approval.
- D. The Engineer will coordinate with the TCEQ concerning the review of the permit application. It is anticipated that this will take no more than three (3) meetings.
- E. Participating in administrative hearing, or responding to issues resulting from legal challenges or public protests of the proposed treatment facility permit, is not included in the basic services. A Contract Amendment will be requested if these services are required, upon approval of scope by the City.

Task 8 -Geotechnical Engineering

- A. Engineer will retain a subconsultant to perform geotechnical investigations such as auger borings, core borings, soil tests, or other subsurface explorations and laboratory testing and inspecting of samples or materials relevant to design. The boring locations and number of borings required will be based on the alternative approved as a result of the Citizens' Advisory Committee process. This work is expected to include a total of fifteen borings and associated materials testing.

Task 9 – Financial Analysis

- A. Review and update/revise previous financial analysis prior to the Stakeholder Committee meetings.
- B. Revise financial analysis during the course of the Stakeholder Committee meetings should parameters change.
- C. Provide technical memorandum to be included in engineering report highlighting financial feasibility results of recommended approach.
- D. After adoption of the recommended plan by the City Council, update analysis as cost estimates change.
- E. Preparation of Impact Fee Study

Task 10 - Construction Phase Services

This scope is based on the following construction phase services. It is anticipated that Engineer will make necessary visits and review construction at intervals sufficient to ensure general compliance with contract requirements. This scope does not include Resident Project Representative services on a full-time basis. The work of a Resident Project Representative, if requested, will be authorized by the (City) Owner under a Contract Amendment.

- A. Engineer will consult with and advise the City during construction; issue instructions to the contractor requested by the City; and prepare, negotiate, process and issue routine change orders with the City's approval. Preparation of alternate designs or non-routine contract change orders that are necessary due to no fault of the Engineer will be authorized under a Contract Amendment upon approval of the City and TWDB.
- B. Engineer and subconsultants will review samples, catalog data schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data, which the contractor submits. The Engineer will review for conformance with the design concept, all shop drawings and other submittals as required by the Contract Documents to be furnished by contractors. Based on the review, Engineer will approve the submittals, as appropriate.
- C. Engineer will obtain and review monthly and final estimates for payments to contractors, and furnish any recommended payments to contractors or suppliers to the City and assemble written guarantees which may be required by the Contract Documents.
- D. Engineer will attend monthly progress meetings with the City, Contractor(s), and TWDB during construction.
- E. Engineer will conduct, in the company of the City, a final walk-through of the project for compliance with the Contract Documents and submit recommendations concerning project status of the City's final payment to the contractor. Prior to submission of recommendation for final payment on each contract, the Engineer will submit certificate of substantial completion of work done under that contract to the City, TWDB and others as required.

Task 11 – Post Construction Services

- A. Engineer will revise the Contract Drawings (unless redrawing is required) from as-built drawings submitted by the Contractor, to reflect any changes in the work from the design drawings. These Record Drawings will be based on the Contractor's submitted information. The Engineer will provide the City with one set of reproducible records drawings, one set of PDF scans, and two sets of prints. Such drawings will be based on the Resident Project Representative's construction data and the construction records provided by the contractor during the construction.
- B. Engineer will coordinate approval and issuance of the Certificate of Completion from TWDB and others as required.
- C. Engineer will conduct, within one month of its expiration, in the company of the City, a warranty inspection of the project for compliance with the Contract Documents and submit recommendations concerning project warranty issues to the City, TWDB and others as required.

- D. Eleven months after the date of Substantial Completion for each Contract, the Engineer will advise the City in writing whether the Work meets the project performance standards, as defined in the Contract Documents approved by the City and TWDB.
- E. The Engineer will assist in training operating personnel and coordinate the preparation of curricula and training materials for operating personnel.

Task 11 - O&M Manual

- A. Engineer will prepare an operation and maintenance manual that meets applicable TWDB guidelines for submission to the City before construction of the project is 90% complete.
- B. The Engineer will review the first year's operation of the Project and revise the operations and maintenance manual for the Project as necessary to accommodate actual operational requirements and expenses.

COMPENSATION

Portions of the above Tasks are not included in the initial funding request to TWDB, and will be funded as part of the project construction loan. The breakdown of fee by tasks is as follows:

| | |
|---|-------------------------|
| Task 1 -Project Coordination | \$20,000 |
| Task 2 -Public Involvement/Citizens' Advisory Committee | \$63,500 |
| (Laura Rahn Public Relations \$37,500 included in \$63,500) | |
| (Raftelis Financial Consultants \$16,000, included in \$63,500) | |
| (Alan Plummer Associates \$10,000, included in \$63,500) | |
| Task 3 – Engineering Alternative Evaluation | |
| Environmental Assessment | \$15,000 |
| Engineering Assessment | \$15,000 |
| Task 4 – Surveying and Land Acquisition Assistance (NTE) | \$55,000 |
| Task 5 – Design | \$215,582 |
| Task 6 – Bid Phase Services | \$10,000 |
| Task 7 – Permitting | \$35,000 |
| Task 8 – Geotechnical Engineering | \$37,500 |
| Task 10 - Financial Analysis/Impact Fee Study | \$22,500 |
| Reimbursable Allowance | \$5,000 |
| Professional Services Total: | <u><u>\$494,082</u></u> |

Task 11 – Construction Phase Services

Note: Construction phase services are not included in the initial SRF Loan, and may be authorized by a Contract Amendment based on mutually-agreed scope of services.

Task 10 - Post-Construction Services

Note: Post-construction services are not included in the initial SRF Loan, and may be authorized by a Contract Amendment based on mutually-agreed scope of services.

Task 11 – O&M Manual

Note: Preparation of the O&M manuals are not included in the initial SRF Loan, and may be authorized by a Contract Amendment based on mutually-agreed scope of services.

Scope of Work – Facilitation for Stakeholder Process Wimberley WW Project

Sept. 9, 2013

The Facilitation Process is designed to enable participants to examine their positions with a fresh eye so they can reach agreement through consensus on a set of recommendations related to a wastewater treatment system.

Our facilitation approach will be a Guided Discussion to build consensus around recommendations for a successful treatment system. The Stakeholder Group will comprise no more than 7 members.

LRPR will facilitate a series of 8 meetings over 9 weeks. Each meeting will last approximately 2 hours.

Tasks that are carried out for each meeting:

- Plan meetings - schedule meetings, invite participants
- Prepare meeting materials - meeting agenda, handouts, flip charts, facilitation materials, PowerPoint and visual displays
- Attend meetings - SCS facilitates meeting; ACS take notes
- Meeting Follow Up - transcribe meeting notes, distribute to group members
- Project Management - coordinate with team

Tasks that are carried out one time:

- Compile final recommendations and relevant information for delivery to City Staff/Council

LRPR will aim to cover the following topics in each meeting, though some timing adjustments may be needed as the Stakeholder Process unfolds.

Meeting 1

LRPR will explain the purpose of the Stakeholder Process in relation to the proposed project, as outlined in the charge from City Council.

1. Describe the final deliverable
2. Lead a discussion of ground rules for the Stakeholder process, which include:
 - a. Communications
 - 1) Treat each other with respect
 - 2) Listen to all points of view
 - 3) Canvass Stakeholders about confidentiality of the process
 - a) Communications between members outside meetings
 - b) Communication with media
 - b. Consensus – defined by Stakeholder Group
 - c. Roles of participants
 - 1) Are Group Members speaking for themselves or an organization?

- 2) Can alternates attend?
- 3) Are absences tracked?
- 4) Are observers allowed to attend?
3. Explain how meeting agendas, resource materials and meeting notes will be used to share information
4. Alan Plummer Associates briefly introduces the wastewater project
 - a. History
 - b. Current system
 - c. Issues to be addressed by new system

Meeting 2

LRPR will lead a discussion to identify the issues at stake. The discussion will explore relevant feelings, concerns, emotions and perceptions about issues related to a new wastewater treatment system.

Potential issues may include environmental, economic and social impacts of a new system.

Concerns may center on how wastewater is treated, stored and/or discharged; and on the costs of a new system.

Meeting 3

LRPR will lead discussion to identify underlying values and interests beneath the concerns.

- Goals of individual Group Members are explored
- Consequences and impacts of various goals are discussed
- Identify ideal options
- Identify possible alternatives to address goals

LRPR will lead discussion to identify criteria for prioritizing alternatives

- Assess how the criteria meet the goals
- Assess the relative importance of each criterion
- Prioritize criteria; determine whether criteria are weighted

Meeting 4

Alan Plummer Associates presents options for a wastewater project.

1. Collection system
 - a. Conventional
 - b. Low pressure
 - c. Vacuum
2. Treatment/Disposal
 - a. Aqua Texas
 - b. Existing facility – to be expanded and retrofitted

- i. Discharge vs no discharge
- ii. On-site irrigation
- c. Other options

LRPR leads a discussion on how the options meet the criteria discussed in previous meeting.

Meeting 5

Raffelis presents options for the financial aspects of a wastewater system.

- Taxes vs impact fees vs operational costs)
 - Who pays?
 - How much?

LRPR leads a discussion on how the options meet the criteria discussed in previous meetings.

Meeting 6

LRPR will lead a discussion to identify areas where interests overlap.

Overlapping interests are discovered through prioritizing options, based on previously identified criteria.

Meeting 7

LRPR will lead a discussion to seek preliminary consensus on recommendations for 3 key aspects of a system.

1. Collection system
2. Treatment/Disposal
3. Financials (taxes vs impact fees vs operational costs)

Meeting 8

LRPR will lead a discussion to seek consensus on recommendations for 3 key aspects of a wastewater system.

1. Collection system
2. Treatment/Disposal
3. Financials (taxes vs impact fees vs operational costs)

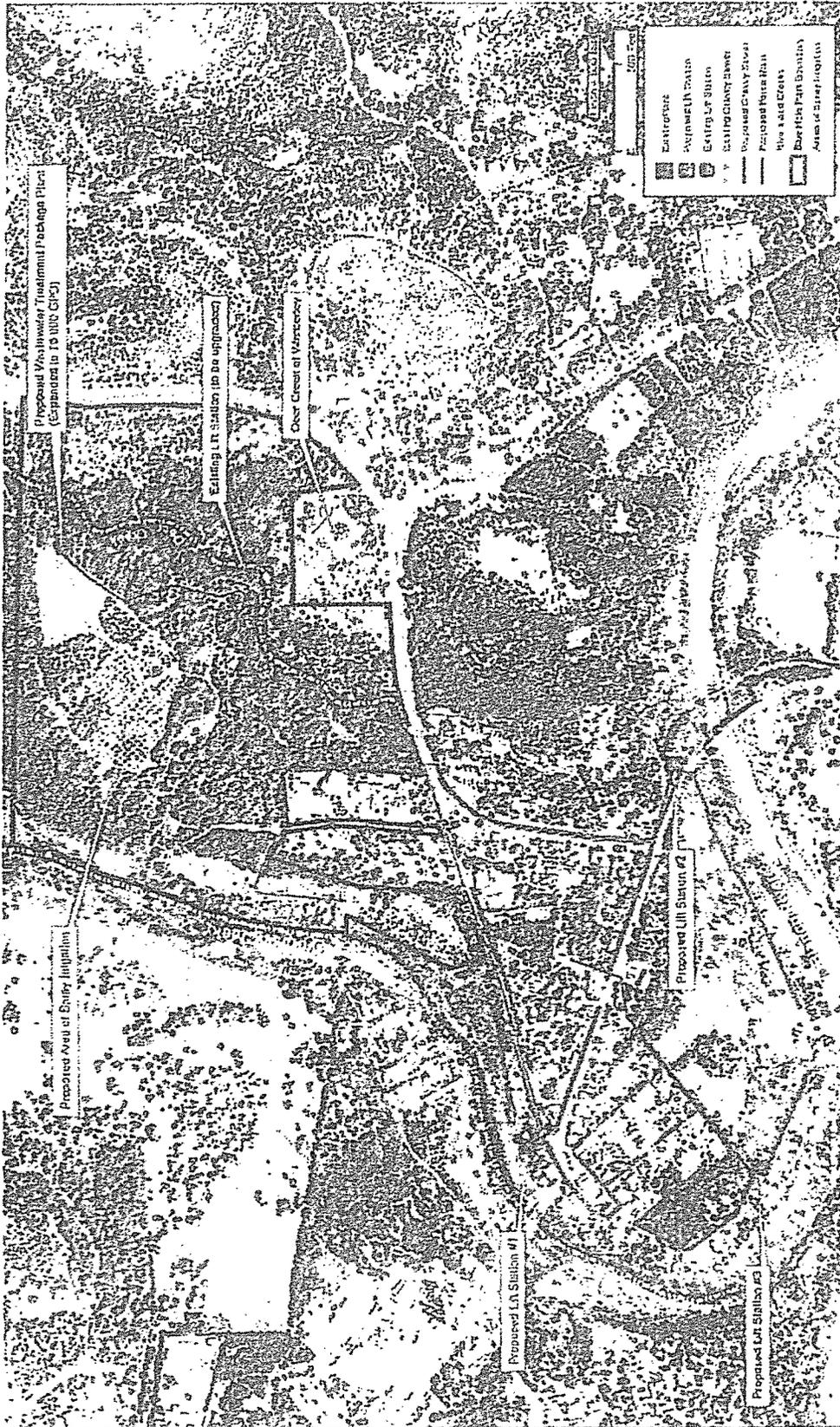


FIGURE 1

EXHIBIT B

Alan Plummer Associates, Inc. Personnel

Stephen J. Coonan, P.E.
Erin Wiesehan, P.E.
Cynthia Syvarth
Josh Frisinger, P.E.
Jeff Caffey, P.E.
Rex Hunt, P.E.
Janet Sims
Jason Voight
Rose Murphy

Project Consultants

Laura Raun Public Relations
Raftelis Financial Services
Macia & Associates, Inc.
HVJ Engineering, Inc.

FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES

This is the First Amendment to an agreement ("Agreement") dated September 13, 2013, by and between the City of Wimberley, Texas ("Owner"), and Alan Plummer Associates, Inc. ("Engineer"), whereby Engineer agreed to perform professional services and Owner agreed to pay for the services as provided therein, and entered into the 9th day of July, 2015.

1. Article VII – Additional Services and Compensation for Additional Services, is hereby amended as follows:

“7.04 Additional Technical Support Services. Engineer will provide Owner additional technical assistance in relation to SOAH Docket No. 582-15-3337 / TCEQ Docket No. 2015-0482-MWD. Engineer will provide such services only as directed by Owner and its legal counsel. Owner shall compensate Engineer for such services in an amount not to exceed \$35,000, which Engineer will invoice monthly on a cost basis. Notwithstanding anything to the contrary in this Agreement, Owner shall fund the Additional Technical Support Services solely from city funds not received through a TWDB grant or loan, except as otherwise authorized by the TWDB.”

2. Effect of Amendment. The Agreement, as hereby amended, is hereby ratified and confirmed and shall continue in full force and effect. All representations, warranties, indemnifications, covenants and obligations contained in the Agreement shall apply to the terms provided for in this Amendment unless specifically modified by this Amendment.

3. Miscellaneous. This First Amendment to the Development Agreement contains the parties' entire agreement regarding the subject matter covered herein, and supersedes all prior correspondence, negotiations, and agreements, if any, whether oral or written, between the parties concerning such subject matter.

Executed on the dates set forth below to be effective as of the date first set forth above.

Owner

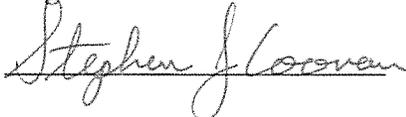


Attn: Don Ferguson
City Administrator

Phone: (512) 847-0025
Fax: (512) 847-0422
Email: dferguson@cityofwimberley.com

Date: 7/9/15

Engineer



Attn: Mr. Stephen J. Coonan, P.E.
Alan Plummer Associates, Inc.

Phone: (512) 452-5905
Fax: (512) 452-2325
Email: scoonan@apainv.com

Date: 7/9/15

SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES

This is the Second Amendment to an agreement ("Agreement") dated September 13, 2013, by and between the City of Wimberley, Texas ("Owner"), and Alan Plummer Associates, Inc. ("Engineer"), whereby Engineer agreed to perform professional services and Owner agreed to pay for the services as provided therein, and entered into the 28th day of June, 2016.

1. Article VII – Additional Services and Compensation for Additional Services, is hereby amended to add the following:

“7.05 Additional Design Services. Engineer will provide Owner additional design services as follows: (a) the plant will be moved to a different location within the Park, requiring additional piping and site improvements, as well as coordination with TxDOT; (b) the City will include the customer service connections and decommissioning of the existing septic tanks into the construction contract; (c) provide enhanced treatment of the wastewater prior to either discharge or reuse. Specifically, the treatment plant will be designed to remove both phosphorus and nitrogen; (d) use UV disinfection instead of chlorination; (e) double the amount of storage provided; (e) reconfigure the collection system to eliminate two of the lift stations, which will require additional gravity mains. Owner shall compensate Engineer for such additional design services in an amount not to exceed \$68,415.”

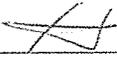
2. Effect of Amendment. The Agreement, as hereby amended, is hereby ratified and confirmed and shall continue in full force and effect. All representations, warranties, indemnifications, covenants and obligations contained in the Agreement shall apply to the terms provided for in this Amendment unless specifically modified by this Amendment.

3. Miscellaneous. This Second Amendment to the Agreement for Professional Services contains the parties' entire agreement regarding the subject matter covered herein, and supersedes all prior correspondence, negotiations, and agreements, if any, whether oral or written, between the parties concerning such subject matter.

[Remainder of page intentionally left blank]

Executed on the dates set forth below to be effective as of the date first set forth above.

Owner



Attn: Herschel "Mac" McCullough
Mayor

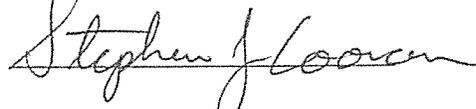
Phone: (512) 847-0025

Fax: (512) 847-0422

Email: dferguson@cityofwimberley.com

Date: 6/28/16

Engineer



Attn: Mr. Stephen J. Coonan, P.E.
Alan Plummer Associates, Inc.

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