

EXHIBIT
"A"

**CITY OF ROUND ROCK AGREEMENT FOR
PROFESSIONAL CONSULTING SERVICES RELATED TO
2024 CITY OF ROUND ROCK PAVEMENT SURVEY
WITH
H2O PARTNERS, INC.**

THE STATE OF TEXAS

THE CITY OF ROUND ROCK

**COUNTY OF WILLIAMSON
COUNTY OF TRAVIS**

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KNOW ALL BY THESE PRESENTS

THIS AGREEMENT for professional consulting services related to the 2024 City of Round Rock Pavement Survey (the "Agreement"), is made on this ____ day of _____, 2024, by and between the CITY OF ROUND ROCK, a Texas home-rule municipal corporation with offices located at 221 East Main Street, Round Rock, Texas 78664-5299 (the "City"), and H2O PARTNERS, INC., located at 260 Addie Roy Road #150, Austin, TX 78746 (the "Consultant").

RECITALS:

WHEREAS, professional services related to the 2024 City of Round Rock Pavement Survey is desired by the City; and

WHEREAS, City has determined that there is a need for the delineated services; and

WHEREAS, City desires to contract with Consultant for these services; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties and obligations hereunder.

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.0 EFFECTIVE DATE, DURATION, AND TERM

A. This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated as provided herein.

B. The term of this Agreement shall be until full and satisfactory completion of the work specified herein is achieved, with an estimated completed date of May 13, 2025.

C. City and the Consultant reserve the right to review the Agreement at any time and may elect to terminate the Agreement with or without cause or may elect to continue.

2.0 SCOPE OF SERVICES

Consultant has issued its proposal for services, such proposal for services being attached hereto as Exhibit "A" titled "Scope of Services," which shall be referred to as the Scope of Services of this Agreement and incorporated herein by reference for all purposes.

Consultant shall satisfactorily provide all services described herein and as set forth in Exhibit "A" according to the schedule set forth agreed upon by the parties. Consultant's undertaking shall be limited to performing services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant shall perform services in accordance with this Agreement in a professional and workmanlike manner pursuant to the Work Schedule attached hereto as Exhibit "B," and incorporated herein by reference for all purposes.

3.0 LIMITATION TO SCOPE OF SERVICES

Consultant's undertaking shall be limited to performing services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant and City agree that the Scope of Services to be performed is enumerated in Exhibit "A," and may only be modified by a written Supplemental Agreement executed by both parties as described in Section 9.0.

4.0 CONTRACT AMOUNT

In consideration for the consulting services Consultant shall be paid on the basis of actual hours worked by employees performing work associated with this Agreement, in accordance with the Fee Schedule attached hereto as Exhibit "C," and incorporated herein by reference for all purposes.

Consultant's total compensation for consulting services hereunder shall not exceed **Two Hundred Thirteen Thousand Six Hundred Ninety-Eight and No/100 Dollars (\$213,698.00)**. This amount represents the absolute limit of City's liability to Consultant hereunder unless same shall be changed by Supplemental Agreement, and City shall pay, strictly within the not-to-exceed sum recited herein, Consultant's fees for work done on behalf of City.

5.0 INVOICE REQUIREMENTS AND TERMS OF PAYMENT

Invoices: To receive payment, Consultant shall prepare and submit detailed invoices to the City, in accordance with the delineation contained herein, for services rendered. Such

invoices for professional services shall track the referenced Scope of Work, and shall detail the services performed, along with documentation for each service performed. Payment to Consultant shall be made on the basis of the invoices submitted by Consultant and approved by the City. Such invoices shall conform to the schedule of services and costs in connection therewith.

Should additional backup material be requested by the City relative to service deliverables, Consultant shall comply promptly. In this regard, should the City determine it necessary, Consultant shall make all records and books relating to this Agreement available to the City for inspection and auditing purposes.

Payment of Invoices: The City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Consultant and to adjust same to meet the requirements of this Agreement. Following approval of an invoice, the City shall endeavor to pay Consultant promptly, but no later than the time period required under the Texas Prompt Payment Act described in Section 8.01 herein. Under no circumstances shall Consultant be entitled to receive interest on payments which are late because of a good faith dispute between Consultant and the City or because of amounts which the City has a right to withhold under this Agreement or state law. The City shall be responsible for any sales, gross receipts or similar taxes applicable to the services, but not for taxes based upon Consultant's net income.

6.0 INSURANCE

Consultant shall meet all City of Round Rock Insurance Requirements set forth at: https://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf Consultant's Certificate of Insurance is attached as Exhibit "D," attached hereto and incorporated herein by reference for all purposes.

7.0 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by the City to Consultant will be made within thirty (30) days of the date the performance of the services under this Agreement are completed, or the date the City receives a correct invoice for the services, whichever is later. Consultant may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by the City in the event:

- (a) There is a bona fide dispute between the City and Consultant, a contractor, subcontractor, or supplier about the service performed that cause the payment to be late; or
- (b) There is a bona fide dispute between Consultant and a subcontractor or between a subcontractor and its supplier about the service performed that causes the payment to be late; or

- (c) The terms of a federal contract, grant, regulation, or statute prevent the City from making a timely payment with federal funds; or
- (d) The invoice is not mailed to the City in strict accordance with any instruction on the purchase order relating to the payment.

8.0 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to purchase the services as determined by the City's budget for the fiscal year in question. The City may affect such termination by giving Consultant a written notice of termination at the end of its then-current fiscal year.

9.0 SUPPLEMENTAL AGREEMENT

The terms of this Agreement may be modified by written Supplemental Agreement hereto, duly authorized by City Council or by the City Manager, if the City determines that there has been a significant change in (1) the scope, complexity, or character of the services to be performed; or (2) the duration of the work. Any such Supplemental Agreement must be executed by both parties within the period specified as the term of this Agreement. Consultant shall not perform any work or incur any additional costs prior to the execution, by both parties, of such Supplemental Agreement. Consultant shall make no claim for extra work done or materials furnished unless and until there is full execution of any Supplemental Agreement, and the City shall not be responsible for actions by Consultant nor for any costs incurred by Consultant relating to additional work not directly authorized by Supplemental Agreement.

10.0 TERMINATION AND DEFAULT

Termination: It is agreed and understood by Consultant that the City or Consultant may terminate this Agreement for the convenience of the City or Consultant, upon thirty (30) days' written notice to Consultant or City, with the understanding that immediately upon receipt of said notice all work being performed under this Agreement shall cease. Consultant shall invoice the City for work satisfactorily completed and shall be compensated in accordance with the terms hereof for work accomplished prior to the receipt of said notice of termination. Consultant shall not be entitled to any lost or anticipated profits for work terminated under this Agreement. Unless otherwise specified in this Agreement, all data, information, and work product related to this Project shall become the property of the City upon termination of this Agreement, and shall be promptly delivered to the City in a reasonably organized form without restriction on future use. Should the City subsequently contract with a new consultant for continuation of service on the Project, Consultant shall cooperate in providing information.

Termination of this Agreement shall extinguish all rights, duties, and obligations of the terminating party and the terminated party to fulfill contractual obligations. Termination under

this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory or which is not performed in compliance with the terms of this Agreement.

Default: Either party may terminate this Agreement, in whole or in part, for default if the Party provides the other Party with written notice of such default and the other fails to satisfactorily cure such default within ten (10) business days of receipt of such notice (or a greater time if agreed upon between the Parties).

If default results in termination of this Agreement, then the City shall give consideration to the actual costs incurred by Consultant in performing the work to the date of default. The cost of the work that is useable to the City, the cost to the City of employing another firm to complete the useable work, and other factors will affect the value to the City of the work performed at the time of default. Neither party shall be entitled to any lost or anticipated profits for work terminated for default hereunder.

The termination of this Agreement for default shall extinguish all rights, duties, and obligations of the terminating Party and the terminated Party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory, or which is not performed in compliance with the terms of this Agreement.

11.0 NON-SOLICITATION

Except as may be otherwise agreed in writing, during the term of this Agreement and for twelve (12) months thereafter, neither the City nor Consultant shall offer employment to or shall employ any person employed then or within the preceding twelve (12) months by the other or any affiliate of the other if such person was involved, directly or indirectly, in the performance of this Agreement. This provision shall not prohibit the hiring of any person who was solicited solely through a newspaper advertisement or other general solicitation.

12.0 INDEPENDENT CONTRACTOR STATUS

Consultant is an independent contractor, and is not the City's employee. Consultant's employees or subcontractors are not the City's employees. This Agreement does not create a partnership, employer-employee, or joint venture relationship. No party has authority to enter into contracts as agent for the other party. Consultant and the City agree to the following rights consistent with an independent contractor relationship:

- (1) Consultant has the right to perform services for others during the term hereof.
- (2) Consultant has the sole right to control and direct the means, manner and method by which it performs its services required by this Agreement.
- (3) Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
- (4) Consultant or its employees or subcontractors shall perform services required hereunder, and the City shall not hire, supervise, or pay assistants to help Consultant.
- (5) Neither Consultant nor its employees or subcontractors shall receive training from the City in skills necessary to perform services required by this Agreement.
- (6) City shall not require Consultant or its employees or subcontractors to devote full time to performing the services required by this Agreement.
- (7) Neither Consultant nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the City.

13.0 CONFIDENTIALITY AND MATERIALS OWNERSHIP

Any and all programs, data, or other materials furnished by the City for use by Consultant in connection with services to be performed under this Agreement, and any and all data and information gathered by Consultant, shall be held in confidence by Consultant as set forth hereunder. Each party agrees to take reasonable measures to preserve the confidentiality of any proprietary or confidential information relative to this Agreement, and to not make any use thereof other than for the performance of this Agreement, provided that no claim may be made for any failure to protect information that occurs more than three (3) years after the end of this Agreement.

The parties recognize and understand that the City is subject to the Texas Public Information Act and its duties run in accordance therewith.

All data relating specifically to the City's business and any other information which reasonably should be understood to be confidential to City is confidential information of City. Consultant's proprietary software, tools, methodologies, techniques, ideas, discoveries, inventions, know-how, and any other information which reasonably should be understood to be confidential to Consultant is confidential information of Consultant. The City's confidential information and Consultant's confidential information is collectively referred to as "Confidential Information." Each party shall use Confidential Information of the other party only in furtherance of the purposes of this Agreement and shall not disclose such Confidential Information to any third party without the other party's prior written consent, which consent shall not be unreasonably withheld. Each party agrees to take reasonable measures to protect the

confidentiality of the other party's Confidential Information and to advise their employees of the confidential nature of the Confidential Information and of the prohibitions herein.

Notwithstanding anything to the contrary contained herein, neither party shall be obligated to treat as confidential any information disclosed by the other party (the "Disclosing Party") which: (1) is rightfully known to the recipient prior to its disclosure by the Disclosing Party; (2) is released by the Disclosing Party to any other person or entity (including governmental agencies) without restriction; (3) is independently developed by the recipient without any reliance on Confidential Information; or (4) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any non-party. Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

Neither the City nor Consultant will be liable to the other for inadvertent or accidental disclosure of Confidential Information if the disclosure occurs notwithstanding the party's exercise of the same level of protection and care that such party customarily uses in safeguarding its own proprietary and confidential information.

Notwithstanding anything to the contrary in this Agreement, the City will own as its sole property all written materials created, developed, gathered, or originally prepared expressly for the City and delivered to the City under the terms of this Agreement (the "Deliverables"); and Consultant shall own any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, or other similar information which may have been discovered, created, developed or derived by Consultant either prior to or as a result of its provision of services under this Agreement (other than Deliverables). Consultant shall have the right to retain copies of the Deliverables and other items for its archives. Consultant's working papers and Consultant's Confidential Information (as described herein) shall belong exclusively to the Consultant. "Working papers" shall mean those documents prepared by Consultant during the course of performing the Project including, without limitation, schedules, analyses, transcriptions, memos, designed and developed data visualization dashboards and working notes that serve as the basis for or to substantiate the Project. In addition, Consultant shall retain sole and exclusive ownership of its know-how, concepts, techniques, methodologies, ideas, templates,

dashboards, code and tools discovered, created or developed by Consultant during the performance of the Project that are of general application and that are not based on City's Confidential Information hereunder (collectively, "Consultant's Building Blocks"). To the extent any Deliverables incorporate Consultant's Building Blocks, Consultant gives City a non-exclusive, non-transferable, royalty-free right to use such Building Blocks solely in connection with the deliverables. Subject to the confidentiality restrictions mentioned above, Consultant may use the deliverables and the Building Blocks for any purpose. Except to the extent required by law or court order, City will not otherwise use, or sublicense or grant any other party any rights to use, copy or otherwise exploit or create derivative works from Consultant's Building Blocks.

City shall have a non-exclusive, non-transferable license to use Consultant's Confidential Information for City's own internal use and only for the purposes for which they are delivered to the extent that they form part of the Deliverables.

14.0 WARRANTIES

Consultant represents that all services performed hereunder shall be performed consistent with generally prevailing professional or industrial standards, and shall be performed in a professional and workmanlike manner. Consultant shall re-perform any work not in compliance with this representation.

15.0 LIMITATION OF LIABILITY

Should any of Consultant's services not conform to the requirements of the City or of this Agreement, then and in that event the City shall give written notification to Consultant; thereafter, (a) Consultant shall either promptly re-perform such services to the City's reasonable satisfaction at no additional charge, or (b) if such deficient services cannot be cured within the cure period set forth herein, then this Agreement may be terminated for default.

In no event will Consultant be liable for any loss, damage, cost or expense attributable to negligence, willful misconduct or misrepresentations by the City, its directors, employees or agents.

Neither party's liability, in contract, tort (including negligence) or any other legal or equitable theory, (a) shall exceed the professional fees paid or due to Consultant pursuant to this Agreement or (b) include any indirect, incidental, special, punitive or consequential damages, even if such party has been advised of the possibility of such damages. Such excluded damages include, without limitation, loss of data, loss of profits and loss of savings of revenue.

16.0 INDEMNIFICATION

Consultant shall save and hold harmless City and its officers and employees from all claims and liabilities due to activities of his/her/itself and his/her/its agents or employees, performed under this Agreement, which are caused by or which result from the negligent error,

omission, or negligent act of Consultant or of any person employed by Consultant or under Consultant's direction or control.

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

17.0 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party may assign any rights or delegate any duties under this Agreement without the other party's prior written approval, which approval shall not be unreasonably withheld.

18.0 LOCAL, STATE, AND FEDERAL TAXES

Consultant shall pay all income taxes, and FICA (Social Security and Medicare taxes) incurred while performing services under this Agreement. The City will not do the following:

- (1) Withhold FICA from Consultant's payments or make FICA payments on its behalf;
- (2) Make state and/or federal unemployment compensation contributions on Consultant's behalf; or
- (3) Withhold state or federal income tax from any of Consultant's payments.

If requested, the City shall provide Consultant with a certificate from the Texas State Comptroller indicating that the City is a non-profit corporation and not subject to State of Texas Sales and Use Tax.

19.0 COMPLIANCE WITH LAWS, CHARTER, AND ORDINANCES

A. Consultant, its consultants, agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Consultant shall further obtain all permits, licenses, trademarks, or copyrights required in the performance of the services contracted for herein, and same shall belong solely to the City at the expiration of the term of this Agreement.

B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of a contract. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

C. In accordance with Chapter 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

D. In accordance with Chapter 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement.

20.0 FINANCIAL INTEREST PROHIBITED

Consultant covenants and represents that Consultant, its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required hereunder.

21.0 DESIGNATION OF REPRESENTATIVES

The City hereby designates the following representative authorized to act on its behalf with regard to this Agreement:

Reuben Ramirez
Project Manager
3400 Sunrise Road
Round Rock, TX 78665
(512) 218-7084
rramirez@roundrocktexas.gov

22.0 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- (1) When delivered personally to recipient's address as stated herein; or

- (2) Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Consultant:

Eric Howard
Vice President
260 Addie Roy Road #150
Austin, TX 78746
(214) 789-9941
sgordon@roadwayassetservices.com

Notice to City:

City Manager, City of Round Rock
221 East Main Street
Round Rock, TX 78664

AND TO:

Stephanie L. Sandre, City Attorney
309 East Main Street
Round Rock, TX 78664

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the City and Consultant.

23.0 APPLICABLE LAW, ENFORCEMENT, AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of Texas.

24.0 EXCLUSIVE AGREEMENT

The terms and conditions of this Agreement, including exhibits, constitute the entire agreement between the parties and supersede all previous communications, representations, and agreements, either written or oral, with respect to the subject matter hereof. The parties expressly agree that, in the event of any conflict between the terms of this Agreement and any other writing, this Agreement shall prevail. No modifications of this Agreement will be binding on any of the parties unless acknowledged in writing by the duly authorized governing body or representative for each party.

25.0 DISPUTE RESOLUTION

The City and Consultant hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

26.0 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion of provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion of provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

27.0 STANDARD OF CARE

Consultant represents that it is specially trained, experienced and competent to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Consultant or designated subconsultants, in a manner acceptable to the City and according to generally accepted business practices.

28.0 GRATUITIES AND BRIBES

City, may by written notice to Consultant, cancel this Agreement without incurring any liability to Consultant if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Consultant or its agents or representatives to any City Officer, employee or elected representative with respect to the performance of this Agreement. In addition, Consultant may be subject to penalties stated in Title 8 of the Texas Penal Code.

29.0 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure an anticipatory repudiation of this Agreement.

30.0 MISCELLANEOUS PROVISIONS

Time is of the Essence. Consultant agrees that time is of the essence and that any failure of Consultant to complete the services for each Phase of this Agreement within the agreed Project schedule may constitute a material breach of the Agreement.

Consultant shall be fully responsible for its delays or for failures to use reasonable efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Consultant's failure to perform in these circumstances, City may withhold, to the extent of such damage, Consultant's payments hereunder without a waiver of any of City's additional legal rights or remedies. City shall render decisions pertaining to Consultant's work promptly to avoid unreasonable delays in the orderly progress of Consultant's work.

Force Majeure. Notwithstanding any other provisions hereof to the contrary, no failure, delay or default in performance of any obligation hereunder shall constitute an event of default or breach of this Agreement, only to the extent that such failure to perform, delay or default arises out of causes beyond control and without the fault or negligence of the party otherwise chargeable with failure, delay or default; including but not limited to acts of God, acts of public enemy, civil war, insurrection, riots, fires, floods, explosion, theft, earthquakes, natural disasters or other casualties, strikes or other labor troubles, which in any way restrict the performance under this Agreement by the parties.

Section Numbers. The section numbers and headings contained herein are provided for convenience only and shall have no substantive effect on construction of this Agreement.

Waiver. No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver of discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, which taken together shall be considered one original. The City agrees to provide Consultant with one fully executed original.

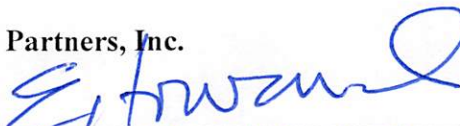
[Signatures on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereafter indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

H2O Partners, Inc.

By: 
Printed Name: ERIC HOWARD
Title: VICE PRESIDENT
Date Signed: 5.31.2024

For City, Attest:

By: _____
Meagan Spinks, City Clerk

For City, Approved as to Form:

By: _____
Stephanie L. Sandre, City Attorney

EXHIBIT A SCOPE OF SERVICES

GENERAL PROJECT OVERVIEW

For the scope of services for this contract the Consultant shall provide professional services for conducting pavement condition surveys on the entire roadway network and implement pavement management software. Consultant will provide services described in further detail as follows:

Task 1: Centerline Identification, Field Set-up, GPS Network Creation & Mobilization

During Project Initiation, CONSULTANT will present the finalized Project Approach, which includes project equipment, software, methodology, schedules, and deliverables. The finalized approach is based on the CITY requirements and decisions that were initiated during the Scoping Meeting. CONSULTANT will request that the CITY provide any existing database, previous inventory of street conditions, road centerlines, Geographic Information System (GIS) layers, and aerial imagery for project use. Project communication protocol, documentation, accounting methodologies, data format, and will be confirmed during the meeting.

CONSULTANT will use the existing centerline data provided by the CITY and create a pavement database based on the centerline layer. This centerline layer should contain the GIS linked segments along with any unique ID's that link each segment to the City / CITY's existing inventory. Each road segment record in the centerline layer will have a corresponding record in the pavement database. CONSULTANT will work with the CITY to maintain the unique identifier of each of the road segments on the CITY road network so that the pavement database will maintain a link to the GIS data.

CONSULTANT will communicate with the CITY to gather required information to define all the distress types and treatment selections. Based on this information, the Pavement Condition Index (PCI) rating and treatment selection criteria will be defined to identify each distress type and its severity, extent, and treatment selection (based on the ASTM-D6433 testing methodology for roads and parking lots). Each collected GIS road segment will be populated with its respective PCI as well as any other derivative indices such as roughness in the form of IRI.

CONSULTANT will provide project management for the duration of the project, including coordinating and attending meetings via web meetings or in person with CITY, data research and collection efforts as required, preparing bi-weekly progress reports, and schedule updates. Bi-weekly progress reports will include the miles collected for the current reporting period as well as cumulative totals. An exhibit displaying the roads

collected and not yet collected will also be included. CONSULTANT will work with the CONSULTANT to review and verify that the data is ready to proceed.

Task 1 Deliverable:

1. The CONSULTANT will attend the project kick-off meeting and perform the initial data reconnaissance of the GIS data to finalize the extent of survey limits and milage.
2. The CONSULTANT will provide the CONSULTANT with a centerline assessment document for review and approval.
3. CONSULTANT will initiate field setup, routing, and GIS integration into the Roadway Asset Collection (RAC) vehicle.

Task 2: Collect Street Network

The CONSULTANT will collect roadway data and images for **782 test miles of CITY roads** using a Roadway Asset Collection (RAC) vehicle or identical equipment from a strategic business partner. The CONSULTANT retains a fleet of 4 RAC vehicles and may lease additional equipment if necessary to meet timeline objectives.

The RAS team consists of a driver and operator who will systematically drive the automated data collection vehicle on the road segment listings provided by the CITY. The CONSULTANT will collect pavement data with two passes on all 392 centerline miles of CITY roadways. CONSULTANT proposes to use its collection vehicle line scan camera with laser illumination and right-of-way cameras to capture pavement and ROW images to be used during the pavement rating process. Unpaved roads will not be surveyed.

CONSULTANT will record imagery for deliverables and to identify all right-of-way (ROW) assets by collecting images at 20-ft maximum intervals with an automated data collection survey vehicle equipped with a Laser Crack Measurement System (LCMS-2) for automated pavement data acquisition, Ladybug 360° camera system for capturing right-of-way imagery and a laser profiler which includes at minimum two-line lasers for capturing roughness and ride data. CONSULTANT will perform data field collection on paved roads using a state-of-the-art Roadway Asset Collection (RAC) vehicle with following systems mounted:

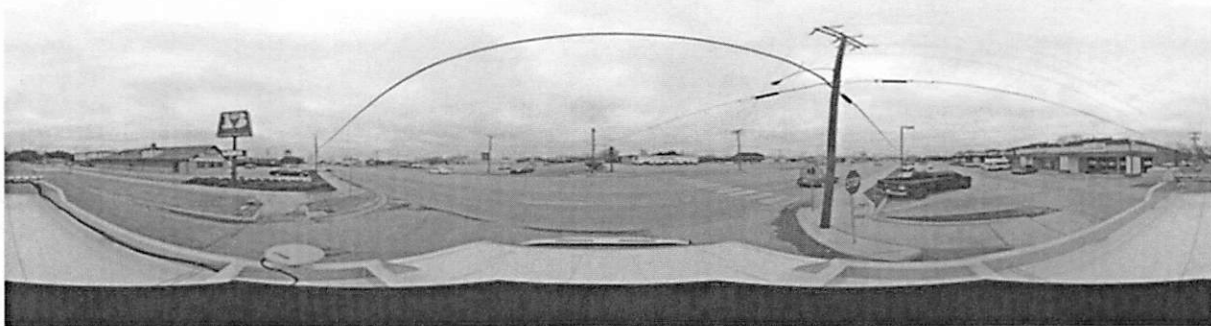
- Right-of-way georeferenced images with Ladybug 5+ camera: Forward, Left, Right, and 360° spherical images.
- LCMS-2 pavement 2D/3D imaging.
- Longitudinal profile with 2-line lasers (left and right wheel paths) Distance measuring instrument (DMI) with an accuracy of +/- 0.1%.
- Differentially corrected GPS (DGPS) with an accuracy of +/- 2 feet.
- Applanix POS/LV 220 to compensate for difficult GPS conditions in urban environments.

The RAC vehicle collects all pavement and ROW images, IMU, DMI and profiler data concurrently.



A RAS automated data collection vehicle

The International Roughness Index (IRI) will be collected using a class 1 road surface profiler. The road surface profiler meets all ASTM E-950 standards for evaluating the smoothness of pavement. RAS will utilize the LCMS-2 and Ladybug imagery to identify all visible distresses. This data will be included in the final pavement layer in GIS prior to software implementation.



Example imagery from Ladybug 360 camera

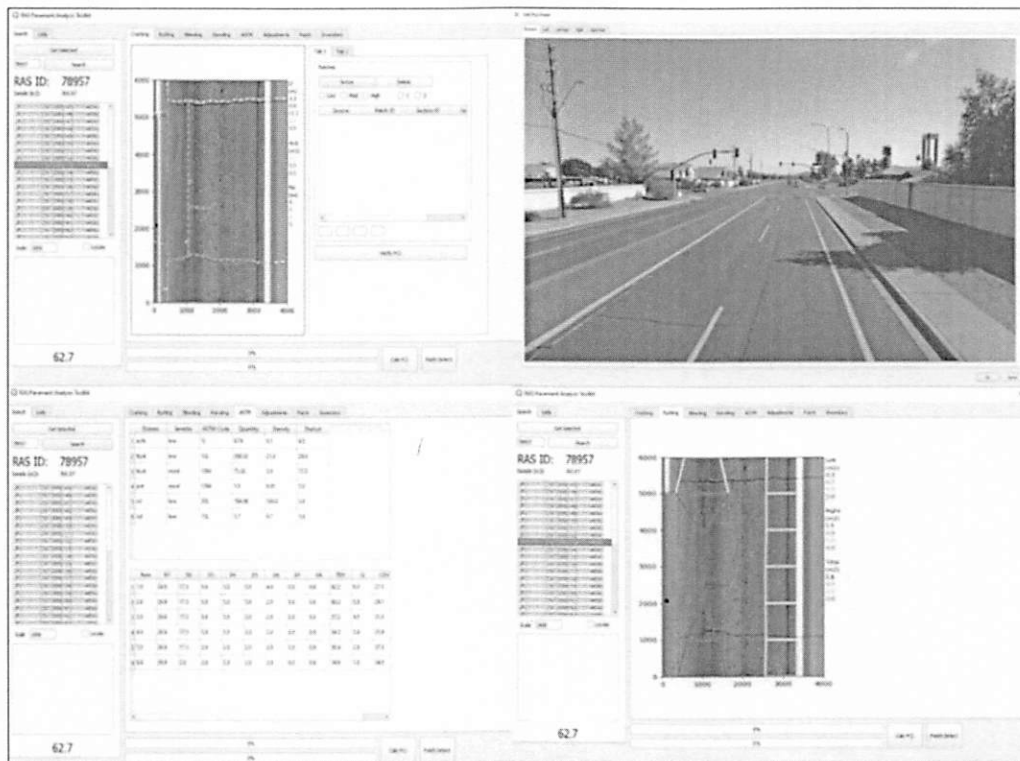
Task 2 Deliverables:

1. CONSULTANT will complete field testing on all roadways tagged for survey, 782 total test miles.

Task 3: Pavement Condition Index - Modified ASTM D6433 AI with 100% rating (PCI)

CONSULTANT will evaluate the PCI survey results in accordance with ASTM D6433. CONSULTANT will provide 100% survey of all CITY maintained lanes driven using CONSULTANT pavement analysis tool, Technical Rating Intelligence Program (RoadTRIP™) to evaluate the pavement condition using automated techniques per the ASTM D6433 pavement distress rating process including the following distresses: alligator cracking, longitudinal cracking, transverse cracking, block cracking, rutting, weathering, raveling, potholes, and patching.

Experienced pavement Consultants will review the resultant output for accuracy and make any corrections that may be needed. The Road TRIP™ software allows the pavement and right of way imagery to be synchronized and the distress data to be displayed geospatially to provide another layer of quality assurance.



Pavement Condition Evaluation within Road TRIP™

Task 3 Deliverables:

1. CONSULTANT will deliver a final GIS file geodatabase containing collected pavement data (containing the Type, Severity and Extent of distresses along the road segment as defined by the ASTM D6433 methodology), distresses, and PCI value.
2. CONSULTANT will deliver all 5 views from the Ladybug imagery and a single view of the LCMS-2 downward pavement imagery.

Task 4: Onsite RAS data reviews/Field Pilot

CONSULTANT will work with the CITY to identify and setup a pilot project area so that some initial sample data can be collected and verified. CONSULTANT will collect data within the pilot project area and review the result with the CITY and acquire approval for full size project implementation.

CONSULTANT will provide a pilot study of approximately 5 to 10 miles of roadway, based on selection by the CITY, to provide a preliminary review of the detailed condition data, PCI scores, IRI scores, and any asset inventory work captured as a part of the final scope of services. CONSULTANT will perform a virtual field evaluation, coordinated to include the CITY, to review the pavement conditions and compare the evaluation and PCI results.

Task 4 Deliverables:

1. CONSULTANT will conduct an on-site field verification of Pilot Roads with CITY staff.
2. CONSULTANT will make necessary adjustments to processing algorithms upon the conclusion of the field verification and apply to the network-level inspections.

Task 5: Budget Optimization Street Selector BOSS™ Annual Update - Gold Level

CONSULTANT will develop, configure and set up the pavement analysis operating parameters within our Budget Optimization Street Selector (**BOSS™**) software. CONSULTANT will configure the maintenance and rehabilitation activities, PCI trigger points, costs, reset PCI values, completed rehabilitation work since the survey, planned work, existing budgets, pavement deterioration curve development/assignment, and inflation priorities. CONSULTANT will assist the OWNER with determining the right treatment (prescription) at the right time by reviewing the County's existing maintenance and rehabilitation strategies and recommending others that may be a good fit.

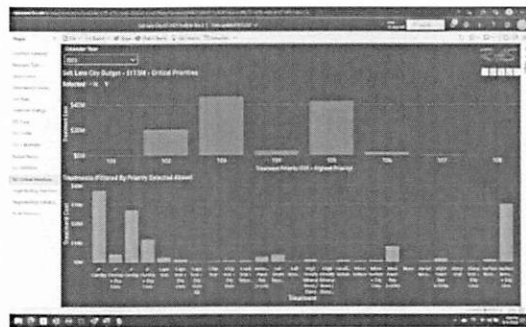
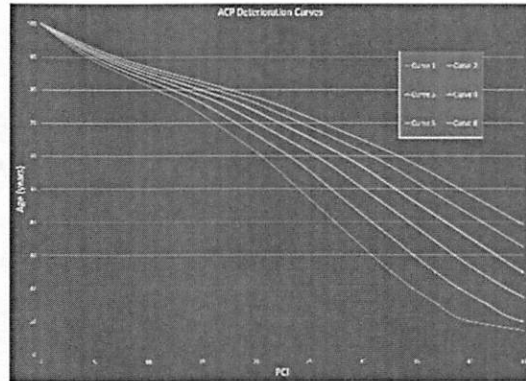
The scope will include running at least 10 profile budget runs to establish the budget model trend and showcasing at least 5 budget scenarios for the 5-year pavement analysis. We propose to provide these services to develop a 5-year maintenance plan that is financially optimized and prioritized to meet the needs of the OWNER.

BOSS™ is a cloud-based application with powerful pavement management algorithms behind it that export the results of the pavement analysis to a user-friendly interface such as Microsoft Power BI (single user log-in supplied by RAS), Excel Spreadsheets, and PowerPoint files. All of the results are integrated with the County's existing GIS and supplied to the County as a File/File Geodatabase for consumption and storage. While the CONSULTANT will define the scenarios to be run with the OWNER, at a minimum the following questions should be answered with the budgetary scenarios:

- **What is the resultant network PCI at my current funding level?**
- **What budget is required to maintain my existing network PCI?**
- **What budget is required to achieve a desired network PCI?**
- **What budget is required to control the growth in backlog?**

The CONSULTANT'S approach to such an analysis involves the following sequences and OWNER engagements during the process includes:

- Maintenance & Rehabilitation Setup** – to ensure the results of the budget model runs meet the OWNER'S expectations, the CONSULTANT will discuss the OWNER'S current Maintenance and Rehabilitation setup within the pavement analysis setup. This will include activity set up, PCI trigger points, and PCI reset scores.
- Deterioration Curves** – forecasting pavement conditions requires a detailed set of pavement deterioration curves for each roadway traffic classification and pavement material type, as designated by the pavement management system. The CONSULTANT will develop the deterioration curves to ensure they reflect realistic degradation rates for the OWNER.
- Financial Optimization & Prioritization** – the CONSULTANT'S BOSS™ analysis uses sound economic logic to prioritize which street candidates are selected throughout the multi-year plan. While most pavement management programs will prioritize by roadway traffic and condition, the BOSS™ analysis takes it a step further and introduces financial optimization into candidate selection through the use of a “Need Year” analysis that identifies each segment’s cost of deferral. Understanding the “Cost of Segment Deferral” allows the analysis to maximize the OWNER'S limited funds in the best manner possible.
- Project development** – the BOSS™ analysis includes stitching segments (block) together to form a project, also known as a “management section”. The CONSULTANT will work with the OWNER to review the initial model results and begin “stitching” segments together to form logical projects that best meet the needs of the OWNER.



Task 5 Deliverables:

1. The final BOSS deliverable is a Microsoft PowerBI Dashboard (single user log-in supplied by RAS) that will be exported to Excel and PowerPoint that contains the results of the pavement analysis and modeling results.
2. The final pavement and analysis results will be delivered as a File Geodatabase that is ready to be consumed within the County's GIS environment.
3. CONSULTANT will deliver a Final Pavement Condition Survey Report for the project including: Executive Summary, Project methodology and pavement data, Current street segment PCI, Budget models and predicted outcome of PCI, Deferred maintenance backlog, Exhibits showing PCI and street segment length and pavement type, and Optimized 5-year maintenance and rehabilitation plan.

Task 6: Pavement Widths

The CONSULTANT will use the images from the Ladybug 360 camera system in conjunction with available aerial imagery to capture the width of pavement for each street segment to compare with the existing database information. CONSULTANT will provide the widths for roads with width changes by noting locations of changes by stations and measuring each section of change, and the addition of lanes or turn lanes.

Task 6 Deliverables:

1. CONSULTANT will deliver (included in the final GIS file geodatabase) pavement width data for each road segment with area calculations.

Task 7: Budget Optimization Street Selector BOSS™ Annual Update - Silver Level
Task 8: Budget Optimization Street Selector BOSS™ Annual Update - Silver Level
 (Year 2 and Year 3 Continuing Software Service)

The CONSULTANT will continue to serve as the CITY'S pavement management consultant through the BOSS software service. For Year 2 and Year 3 of this agreement, CONSULTANT is to provide the CITY with the SILVER PACKAGE level of service.

Pavement Management Subscription Support Services	Silver BOSS
Age Condition Data Review	●
Completed Work Update	●
Planned Work Update	●
Update Unit Rates	●
Refresh Budgets	●
Update Analysis Maps	●
Modify Deterioration Curves	●
Modify Treatment Strategies	●
Modify Street Segment Inventory	●
Update Written Report and Power Bi	●

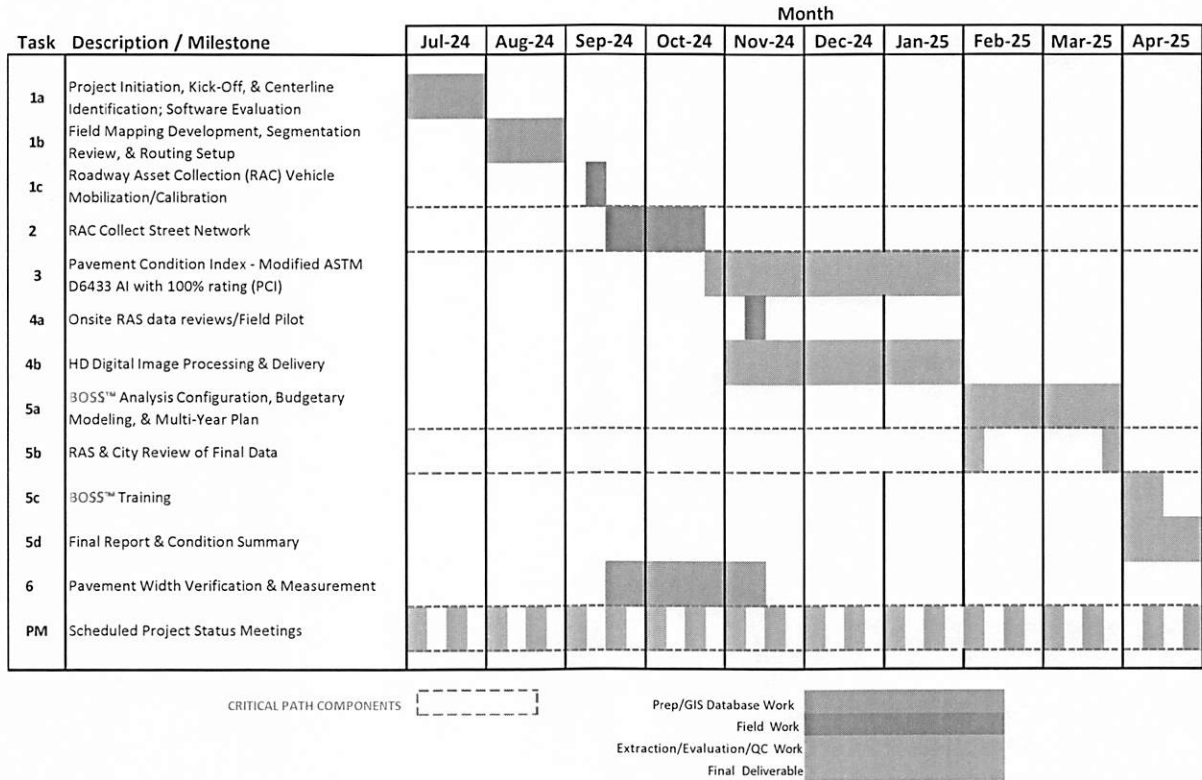
The screenshot displays the BOSS software interface. At the top, there are filters for Corridor, Lane Type, Lane Direction, and Condition. Below this is a data table with columns: DATA ID, Lane Direction, Corridor, Lane Type, Project, Surface Type, Condition, Condition Score, Lane Length (ft), and Avg Lane Width (ft). The table lists several project entries with their respective details. To the right of the table is a map of Austin, Texas, showing various corridors and street segments. Below the map are two charts: a pie chart on the left and a bar chart on the right, both representing data related to lane types and conditions.

Tasks 7 & 8 Deliverables:

1. CONSULTANT will provide continuing software licensing, maintenance, and support to the CITY for Year 2 and Year 3.

EXHIBIT B WORK SCHEDULE

2024 City Of Round Rock Pavement Survey



Note: Year 2 and Year 3 BOSS Silver Package software support and maintenance will be provided beginning at Day 1 of each year from the Notice to Proceed.

**EXHIBIT C
FEE SCHEDULE**

Project Name: 2024 City Of Round Rock Pavement Survey

Task	Total Labor Hours	Total Loaded Labor Cost	Other Direct Costs	Subconsultants	TOTALS
Task 1: Centerline Identification, Field Set-up, GPS Network Creation & Mobilization (lump sum)	0	\$0.00	\$7,450.00	\$0.00	\$7,450.00
Task 2: Collect Street Network (test mile)* (2 pass collection on all roads)	0	\$0.00	\$87,584.00	\$0.00	\$87,584.00
Task 3: Pavement Condition Index - Modified ASTM D6433 AI with 100% rating (PCI) (test mile)*	0	\$0.00	\$31,280.00	\$0.00	\$31,280.00
Task 4: Onsite RAS data reviews/Field Pilot (per day)	0	\$0.00	\$3,000.00	\$0.00	\$3,000.00
Task 5: Budget Optimization Street Selector BOSS™ Annual Update - Gold Level (lump sum) - Year 1	0	\$0.00	\$30,000.00	\$0.00	\$30,000.00
Task 6: Pavement Widths (lane miles)	0	\$0.00	\$9,384.00	\$0.00	\$9,384.00
Task 7: Budget Optimization Street Selector BOSS™ Annual Update - Silver Level (lump sum) - Year 2	0	\$0.00	\$22,500.00	\$0.00	\$22,500.00
Task 8: Budget Optimization Street Selector BOSS™ Annual Update - Silver Level (lump sum) - Year 3	0	\$0.00	\$22,500.00	\$0.00	\$22,500.00
GRAND TOTAL:	0	\$0.00	\$213,698.00	\$0.00	\$213,698.00

Based on 100% coverage of lanes driven*

EXHIBIT D
CERTIFICATE OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/07/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Landmark Risk Management 107 S 1470 East #302 Saint George, UT 84790	CONTACT NAME: Vickie Bohrer		
	PHONE (A/C, No, Ext): (435)656-4586	FAX (A/C, No): (435)673-3621	
E-MAIL ADDRESS: vickie@lmx180.com			
INSURED Roadway Asset Services, LLC 6001 W Parmer Lane, Suite 370-1102 Austin, TX 78727	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Travelers Casualty Insurance Co of America		19038
	INSURER B: Travelers Casualty Insurance Co of America		19046
	INSURER C: Travelers Property Casualty Company of America		19038
	INSURER D: Underwriters at Lloyds of London		15792
	INSURER E: State National Insurance Company Inc.		10665
INSURER F:			

COVERAGES CERTIFICATE NUMBER: 00008927-1184867 REVISION NUMBER: 153

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			680-1W860284	12/18/2023	12/18/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BA-1-W-860407	12/18/2023	12/18/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP1W860616	12/18/2023	12/18/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	UB1W86055A	12/18/2023	12/18/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional/Polluti			ANE5366238.23	09/10/2023	09/10/2024	Per/Aggregate 2,000,000/2,000,000
E	Cyber Liability			HCXCYP-P-5057394	01/26/2024	01/26/2025	Per/Aggregate 2,000,000/2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Round Rock are listed as additional insured.

Written 30 day notice of cancelations will be provided to the City of Round Rock regarding any changes, cancellation, etc.

CERTIFICATE HOLDER

CANCELLATION

The City of Round Rock 3400 Sunrise Rd Round Rock, TX 78665	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE (VLB)