

**EXHIBIT
"A"**



**CITY OF ROUND ROCK
CONTRACT FOR ENGINEERING SERVICES**

FIRM: K. FRIESE & ASSOCIATES, INC. ("Engineer")
ADDRESS: 1120 S. Capital of Texas Highway, CityView 2, Suite 100, Austin, TX 78746
PROJECT: McNutt Creek C9

THE STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

THIS CONTRACT FOR ENGINEERING SERVICES ("Contract") is made and entered into on this the ___ day of _____, 2013 by and between the CITY OF ROUND ROCK, a Texas home-rule municipal corporation, whose offices are located at 221 East Main Street, Round Rock, Texas 78664-5299, (hereinafter referred to as "City"), and Engineer, and such Contract is for the purpose of contracting for professional engineering services.

RECITALS:

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

WHEREAS, City and Engineer desire to contract for such professional engineering services; and

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

NOW, THEREFORE, WITNESSETH:

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

CONTRACT DOCUMENTS

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

ARTICLE 1 **CITY SERVICES**

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

ARTICLE 2 **ENGINEERING SERVICES**

Engineer shall perform Engineering Services as identified in Exhibit B entitled "Engineering Services."

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

ARTICLE 3 **CONTRACT TERM**

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

(2) **Work Schedule.** Engineer acknowledges that the Work Schedule is of critical importance, and agrees to undertake all necessary efforts to expedite the performance of Engineering Services required herein so that construction of the project will be commenced and completed as scheduled. In this regard, and subject to adjustments in the Work Schedule as provided in Article 2 herein, Engineer shall proceed with sufficient qualified personnel and consultants necessary to fully and timely accomplish all Engineering Services required under this Contract in a professional manner.

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

ARTICLE 4
COMPENSATION

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

The amount payable under this Contract, without modification of the Contract as provided herein, is the sum of Two Hundred Thirty-Three Thousand Two Hundred Nineteen and No/100 Dollars (\$233,219.00) as shown in Exhibit D. The lump sum amount payable shall be revised equitably only by written Supplemental Contract in the event of a change in Engineering Services as authorized by City.

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

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

ARTICLE 5
METHOD OF PAYMENT

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

Progress payments shall be made in proportion to the percentage of completion of Engineering Services identified in Exhibit D. Progress payments shall be made by City based upon Engineering Services actually provided and performed. Upon timely receipt and approval of each statement, City shall make a good faith effort to pay the amount which is due and payable within thirty (30) days. City reserves the right to withhold payment pending verification of satisfactory Engineering Services performed. Engineer has the responsibility to submit proof to City, adequate and sufficient in its determination, that tasks were completed.

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

ARTICLE 6
PROMPT PAYMENT POLICY

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

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

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

ARTICLE 7
NOTICE TO PROCEED

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

ARTICLE 8
PROJECT TEAM

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

Eddie Zapata
Project Manager
2008 Enterprise Drive
Round Rock, TX 78664
Telephone Number (512) 218-6605
Fax Number (512) 218-5563
Email Address ezapata@roundrocktexas.gov

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

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

Dale P. Murphy, PE
Vice President
1120 S. Capital of Texas Highway
CityView 2, Suite 100
Austin, TX 78746
Telephone Number (512) 338-1704
Fax Number (512) 388-1784
Email Address dnmurphy@kfriese.com

ARTICLE 9 **PROGRESS EVALUATION**

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

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

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

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

ARTICLE 10
SUSPENSION

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

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

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

ARTICLE 11
ADDITIONAL ENGINEERING SERVICES

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

ARTICLE 12
CHANGES IN ENGINEERING SERVICES

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

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

ARTICLE 13
SUPPLEMENTAL CONTRACTS

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

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

ARTICLE 14
USE OF DOCUMENTS

All documents, including but not limited to drawings, specifications and data or programs stored electronically, (hereinafter referred to as "Instruments of Service") prepared by Engineer and its subcontractors are related exclusively to the services described in this Contract and are intended to be used with respect to this Project. However, it is expressly understood and agreed by and between the parties hereto that all of Engineer's designs under this Contract (including but not limited to tracings, drawings, estimates, specifications, investigations, studies and other documents, completed or partially completed), shall be the property of City to be thereafter used in any lawful manner as City elects. Any such subsequent use made of documents by City shall be at City's sole risk and without liability to Engineer, and, to the extent permitted by law, City shall indemnify, defend and hold harmless Engineer from all claims, damages, losses and expenses, including but not limited to attorneys fees, resulting therefrom.

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

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

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

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

Engineer shall have no liability for changes made to the drawings by other engineers subsequent to the completion of the Project. Any such change shall be sealed by the engineer making that change and shall be appropriately marked to reflect what was changed or modified.

ARTICLE 15 **PERSONNEL, EQUIPMENT AND MATERIAL**

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

ARTICLE 16 **SUBCONTRACTING**

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

ARTICLE 17
EVALUATION OF ENGINEERING SERVICES

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

ARTICLE 18
SUBMISSION OF REPORTS

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

ARTICLE 19
VIOLATION OF CONTRACT TERMS/BREACH OF CONTRACT

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

ARTICLE 20
TERMINATION

This Contract may be terminated as set forth below.

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

Should City terminate this Contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to Engineer. In determining the value of the Engineering Services performed by Engineer prior to termination, City shall be the sole judge. Compensation for Engineering Services at termination will be based on a percentage of the Engineering

Services completed at that time. Should City terminate this Contract under Subsection (4) immediately above, then the amount charged during the thirty-day notice period shall not exceed the amount charged during the preceding thirty (30) days.

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

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

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

ARTICLE 21 **COMPLIANCE WITH LAWS**

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

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

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

ARTICLE 22 **INDEMNIFICATION**

Engineer 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 Contract, which are caused by or which result from the negligent error, omission, or negligent act of Engineer or of any person employed by Engineer or under Engineer's direction or control.

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

ARTICLE 23
ENGINEER'S RESPONSIBILITIES

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

ARTICLE 24
ENGINEER'S SEAL

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

ARTICLE 25
NON-COLLUSION, FINANCIAL INTEREST PROHIBITED

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

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

ARTICLE 26
INSURANCE

(1) **Insurance.** Engineer, at Engineer's sole cost, shall purchase and maintain during the entire term while this Contract is in effect professional liability insurance coverage in the minimum amount of One Million Dollars per claim from a company authorized to do insurance business in Texas and

otherwise acceptable to City. Engineer shall also notify City, within twenty-four (24) hours of receipt, of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.

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

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

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

- (a) Engineer shall notify City thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, and such notice thereof shall be given to City by certified mail to:

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

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

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

ARTICLE 27 **COPYRIGHTS**

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

ARTICLE 28
SUCCESSORS AND ASSIGNS

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

ARTICLE 29
SEVERABILITY

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

ARTICLE 30
PRIOR AGREEMENTS SUPERSEDED

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

ARTICLE 31
ENGINEER'S ACCOUNTING RECORDS

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

ARTICLE 32
NOTICES

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

City:

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

and to:

Stephan L. Sheets
City Attorney
309 East Main Street
Round Rock, TX 78664

Engineer:

Dale P. Murphy, PE
Vice President
1120 S. Capital of Texas Highway
CityView 2, Suite 100
Austin, TX 78746

ARTICLE 33
GENERAL PROVISIONS

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

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

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

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

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

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

ARTICLE 34
SIGNATORY WARRANTY

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

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

CITY OF ROUND ROCK, TEXAS

APPROVED AS TO FORM:

By: _____
Alan McGraw, Mayor

Stephan L. Sheets, City Attorney

ATTEST:

By: _____
Sara L. White, City Clerk

K. FRIESE & ASSOCIATES, INC.

By: _____
Signature of Principal
Printed Name: _____

EXHIBIT A

City Services

The City will provide to the Engineer under this agreement the following items/information/assistance:

1. City will provide to K Friese & Associates, Inc. (KFA) all data in City's possession relating to KFA's services on the Project. KFA will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the City.
2. City will provide design flows for the proposed wastewater main.
3. City will give prompt notice to KFA whenever City observes or becomes aware of any development that affects the scope or timing of KFA's services.
4. The City shall examine information submitted by KFA and render in writing or otherwise provide comments and decisions in a timely manner.
5. The City will facilitate communications with other jurisdictional agencies in the event KFA is unable to facilitate communication independently.
6. In the event KFA is unable to obtain right-of-entries through typical efforts, the City will provide assistance in obtaining right-of-entry for properties as necessary for KFA to complete the design phase of the project.
7. The City will provide Title Reports for properties with proposed easements.
8. The City will obtain all permanent utility, access, and temporary construction easements. KFA will provide metes and bounds documents for the proposed easements.
9. The City will pay all permitting fees.
10. The City will provide construction inspection and materials testing during the construction phase.

EXHIBIT B

Engineering Services

PROJECT UNDERSTANDING

The City of Round Rock is extending wastewater service within the McNutt Creek basin to the north. K Friese & Associates, Inc. (KFA) has been assigned Segment C9, which is proposed as approximately 6,300 linear feet of 24-inch diameter gravity wastewater pipe under the City's current Capital Improvements Program. This segment runs from just north of CR 112 to the north side of University Boulevard. The preliminary alignment shown in the City's CIP, indicates that the main will be routed around the east side of Upper Brushy Creek WCID's Dam 16. The proposed crossing of University Boulevard will be accomplished via a jack and bore installation.

On the downstream side, Segment C9 will tie to proposed Segment C3 which is being designed by Kasberg, Patrick & Associates, LP (KPA). KFA will coordinate with KPA on the design of the interface between these two segments.

SCOPE OF SERVICES

Task 1 - Surveying

1. Inland Geodetics will establish primary control and perform a design topographic survey, including a 1-foot topographic survey within a 100-foot wide corridor along the project alignment, record evidence of existing utilities, and the location of geotechnical bore holes. Inland will prepare metes and bounds descriptions for permanent wastewater easements and temporary construction easements along the project route for easement acquisition by the City of Round Rock. Easements for 3 properties have been assumed for budgeting purposes. Inland will coordinate obtaining rights-of-entry for the design team. See Inland's attached proposal for detailed services to be provided.

Task 2 - Project Management

1. Project Management & Administration – This task includes routine communication with the City; managing subconsultants, manpower, budgets, and schedules; invoicing; and other activities associated with managing the project.
2. Project Meetings and Status Reports – KFA will attend monthly status meetings with the City to review progress and upcoming work. We have budgeted for seven meetings during the Preliminary Engineering and Design Phases, including meeting preparation and recording of minutes. KFA will also submit monthly status reports to the City documenting progress, budget, and schedule.

Task 3 - Preliminary Engineering

1. Geotechnical Engineering Services - Raba Kistner will conduct a geologic assessment consisting of site reconnaissance, geologic literature review, and a review of nearby boring data to determine general geologic conditions and suitability of proposed construction methods. A field investigation will be performed and will include borings at approximately 1,000-foot intervals along the project route, installation of 2 piezometers, and laboratory testing. Laboratory testing will be performed from soil/limestone specimens. An engineering report will be prepared documenting the findings of the geologic assessment and geotechnical investigation. See Raba's attached proposal for detailed services to be provided.
2. Environmental Services - Cox/McLain Environmental Consulting (CMEC) will prepare an Environmental Technical Memorandum and an Archeological Survey Report for the proposed project. See CMEC's attached proposal for detailed services to be provided.
3. Right-of-Entry / Property Owner Coordination - KFA will assist Inland in obtaining rights-of-entry for the project as necessary and will coordinate with property owners during the preliminary engineering and design phases regarding the proposed alignments, easement layouts, and access points.
4. Utility Research & Coordination - KFA will coordinate with utility companies to identify the location of existing utilities along each route. Additionally, KFA will coordinate with CP&Y, Inc. regarding the proposed location of a 36-inch diameter water line in University Boulevard.
5. Upper Brushy Creek WCID Coordination - For work in and around the Upper Brushy Creek WCID Dam No. 16, KFA will coordinate with the WCID regarding the proposed alignment and design impacts related to working within the inundation easement of the facility.
6. Route Analysis - KFA will evaluate alignments through private property with input from property owners and the City of Round Rock to determine the final routing. USACE permitting, Upper Brushy Creek WCID input, cultural resource sites, and endangered species site impacts will also be evaluated in determining the final route.
7. Finalize Alignment & 30% Plans - Once the final alignment has been determined, KFA will prepare 30% plans showing the proposed alignment and easements for the wastewater main. The plans and an updated cost estimate will be submitted to the City for review and comment prior to proceeding with final design efforts.

Task 4 - Design Phase Services

1. Plan Preparation - For purposes of this proposal, it is assumed that the interceptor will be approximately 6,300 linear feet long. Once the horizontal alignment has been finalized during the preliminary engineering phase, KFA will develop plans, contract documents, and technical specifications for the project. Construction plans will include notes, plan and profile sheets, erosion and

sedimentation controls, tree protection, storm water pollution prevention plan (SWPPP), and traffic control.

2. Technical Specifications - Technical specifications per the City's standards will be prepared for the project and KFA will coordinate with the City of Round Rock to incorporate front end and contract documents.
3. 60%, 90%, and Final Submittal Preparation - Deliverables during the design phase will be as follows:
 - a. KFA will provide 60% and 90%, submittals to the City of Round Rock for review and comment. Submittals will include 5 sets of 22x34 size drawings and contract documents and technical specifications as they are developed. Each submittal will also include an updated project cost estimate.
 - b. The final submittal will include one 22x34 set of reproducible construction plans and a complete set of contract documents and technical specifications. KFA will also provide an electronic copy of the plans in PDF and AutoCAD formats to the City.
4. Construction Cost Estimates - Estimates of construction cost will be prepared for each project submittal.
5. QA/QC of Contract Documents - The QA/QC task includes review of the work at various stages of progress as well as review of all materials to be submitted.
6. Permitting - KFA will submit plans and specifications to TCEQ documenting the project and address any comments or requests for additional information. KFA will also prepare the Storm Water Pollution Prevention Plan for the project. KFA will also prepare any documents required for permitting with the Upper Brushy Creek WCID.
7. Final Design Report - KFA will prepare a Final Design Report documenting the rationale and calculations for the pipeline design, alignment selection, materials to be utilized in the construction, and construction methods to be specified.

Task 5 - Bid Phase Services

1. Bid Documents - KFA will provide Document Engine with original plans and specifications to be copied and distributed to Contractors.
2. Pre-Bid Conference - KFA will attend the pre-bid conference document any questions and any responses provided at the meeting, and issue a follow-up addendum if necessary.
3. Addenda Preparation - Interpret plans and specifications and draft addenda, as necessary, for issuance by the City of Round Rock. Three (3) addenda have been assumed for budgeting purposes.
4. Bid Opening, Tabulation, and Recommendation - Attend bid-opening, prepare bid tabulation and issue a recommendation for award. KFA will attend the public bid opening. After receipt of bids, KFA will tabulate the bids in unit price format. KFA will evaluate the bids for responsiveness, meet with the low bidder if necessary, and issue a recommendation of award to the City of Round Rock.

Task 6 - Construction Phase Services

1. Pre-Construction Conference - KFA will attend a pre-construction conference with the City of Round Rock, Contractor, and other parties as appropriate, and prepare the meeting minutes.
2. Construction Meetings & Site Visits - KFA will attend regular construction meetings with the City of Round Rock, Contractor, and other parties as appropriate, including preparing the meeting minutes. KFA will perform periodic site visits during construction to monitor the progress of the work and verify general conformance with the contract documents. For budgeting purposes we have assumed 12 trips for meetings and site visits.
3. Submittal Review - KFA will maintain a log of all Contractor submittals, track review progress, review and approve submittals, and distribute submittals to the appropriate parties.
4. Pay Estimate Review - KFA will review the Contractor's pay estimates after approval by the City of Round Rock's on-site Inspector and make recommendations for payment.
5. Change Orders - KFA will review all Contractor's requests for Change Orders and prepare Change Orders as appropriate. For budgeting purposes we have assumed three change orders.
6. Requests for Information - KFA will prepare response for RFIs from the Contractor related to possible conflicts and clarifications needed between plans and specifications. Five RFI's have been assumed.
7. Contract Close-Out - KFA will attend a final project walk-thru, document "punch list items", and issue an Engineer's Concurrence for Project Acceptance letter. KFA will also notify TCEQ and other jurisdictional agencies of project completion.
8. Record Drawings - KFA will use the Contractor's redline as-built drawings to document as-built conditions in the final record drawings. KFA will supply the City of Round Rock with one set of reproducible record drawings and provide one set of record drawings in electronic format.

EXHIBIT C
Work Schedule

Task	Start Date	Completion Date	Calendar Days
Notice to Proceed	5/20/2013	5/20/2013	0
Rights of Entry	5/20/2013	6/14/2013	25
Data Gathering	5/20/2013	6/7/2013	18
Preliminary Alignment	6/17/2013	6/28/2013	11
Surveying	6/17/2013	7/19/2013	32
Geotechnical	6/17/2013	7/19/2013	32
Environmental	6/17/2013	7/19/2013	32
Prelim Eng. / 30% Design	7/22/2013	8/23/2013	32
60% Design	8/26/2013	9/20/2013	25
90% Design	9/23/2013	10/18/2013	25
Final Design	10/21/2013	11/8/2013	18
Final Permitting	11/11/2013	12/6/2013	25
Advertise	11/11/2013	12/13/2013	32
Bid Open/Recommend	12/16/2013	12/21/2013	5
City Council Award	12/24/2013	1/18/2014	25
Construction	1/28/2014	10/24/2014	269

EXHIBIT D Fee Schedule

Task	Total Labor Hours	Total Loaded Labor Cost	Other Direct Costs	Subconsultants	TOTALS
Task 1: Surveying	0	\$0.00	\$0.00	\$36,951.00	\$36,951.00
Task 2: Project Management	160	\$19,288.00	\$250.00	\$0.00	\$19,538.00
Task 3: Preliminary Engineering	324	\$33,735.00	\$300.00	\$22,083.00	\$56,118.00
Task 4: Design Phase Services	782	\$77,305.00	\$950.00	\$0.00	\$78,255.00
Task 5: Bid Phase Services	66	\$6,449.00	\$100.00	\$0.00	\$6,549.00
Task 6: Construction Phase Services	424	\$34,808.00	\$1,000.00	\$0.00	\$35,808.00
GRAND TOTAL:	1756	\$171,585.00	\$2,600.00	\$59,034.00	\$233,219.00

EXHIBIT E

Certificates of Insurance

Attached Behind This Page

