



## 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 "Surveying Services" and Exhibit C entitled "Civil Engineering Services."

Engineer shall perform the Engineering Services in accordance with the Work Schedule as identified in Exhibit D 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, shall not exceed the total amount of Eighty-Six Thousand and No/100 Dollars (\$86,000.00) as shown in Exhibit E. The maximum amount payable shall be revised 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 and Exhibit C. 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 E. 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 and Exhibit C 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:

Matthew Smith  
Building Construction Superintendent  
212 Commerce Cove  
Round Rock, TX 78664  
Telephone Number (512) 218-7016  
Email Address [msmith@roundrocktexas.gov](mailto:msmith@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:

Don Pool, CEO  
2P Consultants, LLC  
203 E. Main Street, Suite 204  
Round Rock, TX 78664  
Telephone Number (512) 344-9664  
Email Address [dpool@2pconsultants.com](mailto:dpool@2pconsultants.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, see attached Exhibit F "Clarifications." 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 reasonable and necessary 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)** As required by Chapter 2271, Government Code, Engineer hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**(3) 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 reimbursement of reasonable attorney's 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 G 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:**

Don Pool, CEO  
2P Consultants, LLC  
203 E. Main Street, Suite 204  
Round Rock, TX 78664

**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: \_\_\_\_\_  
Craig Morgan, Mayor

\_\_\_\_\_  
Stephan L. Sheets, City Attorney

**ATTEST:**

By: \_\_\_\_\_  
Meagan Spinks, City Clerk

2P CONSULTANTS, LLC

By: Don J. Pool  
Signature of Principal  
Printed Name: Don J. Pool

**LIST OF EXHIBITS ATTACHED**

- |               |                            |
|---------------|----------------------------|
| (1) Exhibit A | City Services              |
| (2) Exhibit B | Surveying Services         |
| (3) Exhibit C | Civil Engineering Services |
| (4) Exhibit D | Work Schedule              |
| (5) Exhibit E | Fee Schedule               |
| (6) Exhibit F | Clarifications             |
| (7) Exhibit G | Certificates of Insurance  |



**EXHIBIT A**  
**CITY SERVICES**

- A. The City will need to provide access to the site.
- B. The City will provide direction regarding the locations of improvements.
- C. The City has agreed to process the replat internally, plat preparation by 2PC
- D. The City has agreed to process the Re-Zoning internally, field notes and sketch by 2PC
- E. The City will provide any signatures or necessary documents required during the platting or permitting processes.
- F. The city will provide an up to date Title Commitment.

**EXHIBIT B**  
**SURVEYING SERVICES**

**Task Item I – Surveying Services**

**A. Final Plat Preparation**

a. **Coordination** - 2PC will coordinate with the Surveyor for the following items:

1. Plat per City of Round Rock checklist for submittal.
2. Prints for Client's recording of the plat.

**B. Easements**

a. **Coordination** - 2PC will coordinate with the Surveyor any offsite or onsite separate instrument easements required.

**EXHIBIT C**  
**CIVIL ENGINEERING SERVICES**

**Task Item II – Construction Documents**

**A. Project Management**

**a. Coordination and Meetings**

1. This task item includes up to six (6) meetings with the City of Round Rock entities to obtain information necessary to complete the design of the project and to collect any data required for preparation of reports and for design.

**B. Civil Engineering Site Development Construction Plans**

**a. Site Layout Design**

1. Work with the client to determine a layout that is suitable to their but also meets the City of Round Rock Design and Construction Standards.
2. Coordinate with the Architect and Landscape Architect to ensure that the site meets all City of Round Rock architectural and landscape requirements.

**b. Site Grading Design**

1. A grading plan will be prepared that is suitable for construction. This plan will show existing and proposed ground contour lines as well as spot elevations that show the elevations for the proposed improvements.
2. This task item does not provide for structural design of retaining walls, review of walls designed by others, nor inclusion of structural details of any kind on this site grading plan.

**c. Site Drainage Design**

1. A site drainage plan will be produced that will meet the requirements found in the City of Round Rock Drainage Criteria Manual.
2. The site drainage plan will be suitable for construction of improvements to allow for proper drainage of the site. The construction drawings will indicate proposed storm sewers, flumes, swales, headwalls, and other drainage features if required. Profiles of the storm drain main line and laterals will be included if required by the City of Round Rock.
3. Drainage area maps for pre- and post- development conditions will be prepared. The drainage area maps will delineate drainage areas and storm drainage runoff data for this site and for any adjacent properties that may affect drainage on this site.
4. Drainage reports and calculations as necessary for review and approval by the City of Round Rock will be provided.
5. The site is within the Edwards Aquifer Recharge Zone and is required to have water quality features per TCEQ requirements. Therefore, design and analysis of water quality treatment facilities is included in the scope.

6. A Stormwater Pollution Prevention Plan (SWPPP) is required by the City of Round Rock prior to construction. The SWPPP, associated maintenance forms, inspection reports, and record documents shall be prepared, submitted, and maintained by the contractor.
  7. If detention is required, 2PC will provide calculations and designs for the detention pond in accordance with the City of Round Rock Drainage Criteria Manual. The design of the stormwater conveyance system to the detention pond is included in this task. Any structural design elements for the detention pond are not included in this Civil contract.
- d. **Site Utility Design**
1. A site utility plan will be produced that will meet the requirements found in the City of Round Rock Design and Construction Standards.
  2. The water and wastewater utilities are to be provided by the City of Round Rock. 2PC will coordinate with the City and provide them with any information, reports, or studies necessary to get the utilities approved.
  3. The wastewater extension will need to be from a manhole located within Sundance Drive to the proposed fire station. There is a chance this connection could require a lift station.
- e. **Erosion and Sedimentation Control and Tree Protection Plan**
1. An Erosion and Sedimentation Control Plan and Tree Protection Plan will be provided in conjunction with the project site and drainage plan design per City of Round Rock Design and Construction Standards.
- f. **Construction Specifications**
1. Construction notes, standards, and specifications pertaining to the civil site design and relevant to the City of Round Rock Standard Construction Details will be included on the construction drawings as necessary for construction.
- C. **Applications and Permitting**
- a. **Site Development Plan Permitting**
1. Construction drawings and documentation prepared under this proposal will be submitted to the City of Round Rock for review and final acceptance.
  2. This task includes coordinating with each reviewing department and obtaining the approval signatures on the final plan set.
  3. Upon approval of the initial site plan review submittal, the civil site plan package and all necessary documents for approval will be submitted for Site Plan review.
  4. Upon final approval of all City of Round Rock review comments, a final set of signed and sealed drawings will be provided as required by the City of Round Rock.
- b. **TCEQ Water Pollution Abatement Plan (WPAP)**
1. Prepare the design and calculations for the water quality BMP.
  2. Prepare the WPAP application and submit to TCEQ for processing

**c. Plat Applications and Submittals**

1. Review the Plat provided by the Surveyor and submit the Plat, application, and any other required documentation to the City of Round Rock for review by the City.
2. This task includes coordinating with each reviewing department and obtaining their approval.
3. Upon final approval of all City of Round Rock review comments, a final Plat that is signed and sealed by all required parties will be provided to the client.

**d. TDLR Architectural Barriers Project Registration**

1. 2P Consultants will prepare the required TDLR project registration for plan review of the pedestrian elements of the civil site work. 2PC will submit the completed registration form, construction documents, and applicable fee (to be provided by the Owner) to a Registered Accessibility Specialist for the required review and approval of the project. 2PC will design the sidewalks, drives, and building access points to meet or exceed the current ADA regulations.

### **Task Item III – Construction Administration**

#### **A. Construction Phase Services**

##### **a. Bidding Assistance**

1. 2PC will prepare a quantity takeoff of the site related items to assist in the bidding process.
2. 2PC will prepare an Engineers Opinion of Probable Construction Cost of the site related items to assist in the bidding process.

#### **B. Submittal Review**

1. 2PC will review the contractor's product submittals for compliance in accordance with the City of Round Rock's Development Code.
2. 2PC will maintain copies of all submittals for delivery to the City upon project closeout.
3. These tasks will in addition to the previously executed tasks for this project.

#### **C. Construction Administration**

1. 2PC will make monthly visits to the site and observe progress and quality of the executed site work and determine in general if the site work is proceeding in accordance with site plans and specifications.
2. 2PC will check and approve shop drawings, results, tests, and required observations which the Contractor is required to submit, but only for conformance with the design concept of the project.
3. Once site construction is complete, 2PC will conduct a field observation to determine if the project is substantially complete and a final observation to certify that completion so that the Civil Engineer may provide a letter of concurrence to the City of Round Rock.

### **Task Item IV – Project Closeout**

#### **A. Project Closeout**

- a. 2PC will prepare a set of record drawings for submittal to the Client and the appropriate agencies based on as-built plans to be provided by the contractor.

**EXHIBIT D**  
**PROJECT SCHEDULE**

**Engineering Site Plan design services shall be completed within approximately 90 days upon execution and authorization to begin. Permitting is estimated to take 90-180 days. Construction Phase Services cannot begin until construction begins.**

**EXHIBIT E**  
**FEE SCHEDULE AND BASIS OF COMPENSATION**

**CIVIL ENGINEERING DESIGN SERVICES**

**I – Surveying Services**

|                                |            |
|--------------------------------|------------|
| A. Final Plat Preparation..... | \$4,500.00 |
| B. Easements.....              | \$1,500.00 |

**II – Civil Engineering Services**

|   |             |
|---|-------------|
| A. Project Management .....                                   | \$7,500.00  |
| B. Civil Engineering Site Development Construction Plans..... | \$48,000.00 |
| C. Applications and Permitting .....                          | \$13,000.00 |

**III – Construction Administration**

|                                      |            |
|--------------------------------------|------------|
| A. Construction Phase Services ..... | \$9,000.00 |
|--------------------------------------|------------|

**IV – Project Closeout**

|                          |            |
|--------------------------|------------|
| A. Project Closeout..... | \$2,500.00 |
|--------------------------|------------|

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|  |                    |
|--|--------------------|
| <b>Total for Civil Engineering Design Services</b> | <b>\$86,000.00</b> |
|--|--------------------|

The fees for items I-IV, established above, shall be considered lump sum fees unless otherwise noted. Our services will be invoiced monthly based on the percentage of work completed.



**EXHIBIT F**  
**CLARIFICATIONS**

1. Any requested services not specifically covered by the Surveying Services or Civil Engineer Services will be invoiced separately as an additional service.
2. Resolution of conflicts are not included in this Scope and Fee proposal.
3. A Geological Assessment, if required, shall be provided by the owner at his expense and shall be in conformance with the City of Round Rock requirements.

**EXHIBIT G**  
**CERTIFICATE OF INSURANCE**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/16/2022

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).

|   |  |  |  |
|---|--|--|--|
| <b>PRODUCER</b><br>Higginbotham Insurance Agency, Inc.<br>1221 S. Mopac Expy Suite 160<br>Austin TX 78746 |  | <b>CONTACT NAME:</b> Higginbotham Insurance Agency, Inc.<br><b>PHONE (A/C, No, Ext):</b> 512-457-4000<br><b>FAX (A/C, No):</b> 512-472-8888<br><b>E-MAIL ADDRESS:</b> genmail@higginbotham.net   |  |
| <b>INSURED</b><br>2P Consultants, LLC<br>203 E Main St., Suite 204<br>Round Rock TX 78664                 |  | <b>INSURER(S) AFFORDING COVERAGE</b><br><b>INSURER A :</b> Phoenix Insurance Company<br><b>INSURER B :</b> Travelers Casualty and Surety Company<br><b>INSURER C :</b> Charter Oak Fire Insurance Company<br><b>INSURER D :</b> The Travelers Property Casualty Company Of<br><b>INSURER E :</b><br><b>INSURER F :</b> |  |
|   |  | <b>NAIC #</b>  |  |
|   |  | 25623  |  |
|   |  | 19038  |  |
|   |  | 25615  |  |
|   |  | 25674  |  |

**COVERAGES**

CERTIFICATE NUMBER: 30367498

REVISION NUMBER:

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  |              |
|----------|--|-----------|------------|---------------------|-------------------------|-------------------------|---|--------------|
| C        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER.<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br><input type="checkbox"/> OTHER: |           |            | UB-5R193961-21-47-G | 12/15/2021              | 12/15/2022              | 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 - COM/OP AGG   | \$ 2,000,000 |
|          |  |           |            |                     |                         |                         |   | \$           |
| A        | <input type="checkbox"/> AUTOMOBILE LIABILITY<br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY  |           |            | 6805R1930452047     | 12/15/2021              | 12/15/2022              | COMBINED SINGLE LIMIT (Ea accident)   | \$ 1,000,000 |
|          |  |           |            |                     |                         |                         | BODILY INJURY (Per person)  | \$           |
|          |  |           |            |                     |                         |                         | BODILY INJURY (Per accident)  | \$           |
|          |  |           |            |                     |                         |                         | PROPERTY DAMAGE (Per accident)  | \$           |
|          |  |           |            |                     |                         |                         |   | \$           |
| D        | <input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR<br><input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br><input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000  |           |            | CUP5R193807         | 12/15/2021              | 12/15/2022              | EACH OCCURRENCE   | \$ 3,000,000 |
|          |  |           |            |                     |                         |                         | AGGREGATE   | \$           |
|          |  |           |            |                     |                         |                         |   | \$           |
| C        | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below  |           | Y/N<br>N/A | UB-5R193961-21-47-G | 12/15/2021              | 12/15/2022              | <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 |
| B        | Prof. Liability  |           |            | 107358236           | 12/15/2021              | 12/15/2022              | Limit   | 2,000,000    |
| A        | Business Personal Property   |           |            | 6805R1930452047     | 12/15/2021              | 12/15/2022              | Limit   | 105,000      |

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

The General Liability policy includes a blanket automatic additional insured provision that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

**CERTIFICATE HOLDER**

City of Round Rock  
 212 Commerce Blvd.  
 Round Rock TX 78664

**CANCELLATION**

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

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