

EXHIBIT
"A"

**CITY OF ROUND ROCK
PROFESSIONAL CONSULTING SERVICES AGREEMENT
FOR TANK CLEANING SERVICES
WITH
CONSOR ENGINEERS, LLC**

THE STATE OF TEXAS	§	
	§	
CITY OF ROUND ROCK	§	KNOW ALL BY THESE PRESENTS:
	§	
COUNTY OF WILLIAMSON	§	
COUNTY OF TRAVIS	§	

THAT THIS Professional Consulting Services Agreement for tank cleaning services, and for related goods and services, (referred to herein as the "Agreement"), is made and entered into on this the ____ day of the month of _____, 2022, by and between the **CITY OF ROUND ROCK, TEXAS**, a home-rule municipality whose offices are located at 221 East Main Street, Round Rock, Texas 78664 (referred to herein as the "City") and **CONSOR ENGINEERS, LLC DBA "U.S. UNDERWATER"**, whose mailing address is 123 Sentry Drive, Mansfield, Texas 76063 (referred to herein as the "Consultant").

RECITALS:

- WHEREAS**, City desires to procure tank cleaning services; and
- WHEREAS**, City has determined that the procurement of said services is for a professional service; and
- WHEREAS**, City desires to procure tank cleaning services from Consultant and Consultant desires to provide said services; and
- WHEREAS**, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

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

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Consultant whereby City agrees to purchase specified services and Consultant is obligated to provide same.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods and services** mean the specified services, supplies, materials, commodities, or equipment.

2.01 EFFECTIVE DATE AND TERM

A. This Agreement shall be effective on the date it has been signed by both parties hereto, and shall remain in full force and effect unless and until it expires by operation of the term stated herein, or until terminated or extended as provided herein.

B. The term of this Agreement is for sixty (60) months from the effective date hereof.

C. City reserves the right to review the relationship at any time, and may elect to terminate this Agreement with or without cause or may elect to continue.

3.01 CONTRACT DOCUMENTS AND EXHIBITS

City selected Consultant to supply the services as set forth in Exhibit "A," attached hereto and incorporated herein by reference for all purposes. Exhibit "A," together with this Agreement, comprise the total Agreement and is fully a part of this Agreement as if repeated herein in full.

4.01 SCOPE OF WORK

Consultant shall satisfactorily provide all services described under the attached exhibits within the contract term specified in Section 2.01. Consultant's undertakings shall be limited to performing services for the City and/or advising City concerning those matters on which Consultant has been specifically engaged. The Scope of Work may only be modified by a written Supplemental Agreement executed by both parties. Consultant shall perform its services in accordance with this Agreement, in accordance with the appended exhibits, in accordance with due care, and in accordance with prevailing industry standards for comparable services.

5.01 COSTS

A. Costs listed on the attached Exhibit "A" shall be the basis of any charges collected by the Consultant.

B. The City shall be authorized to pay Consultant an amount not-to-exceed **Eight Hundred Seventy-Four Thousand Four Hundred and No/100 Dollars (\$874,400.00)** for the term of this Agreement.

6.01 INVOICES

All invoices shall include, at a minimum, the following information:

- A. Name and address of Consultant;
- B. Purchase Order Number;
- C. Description and quantity of items received or services provided; and
- D. Delivery or performance dates.

7.01 NON-APPROPRIATION AND FISCAL FUNDING

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

8.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Consultant will be made within thirty (30) days of the day on which City receives the performance, supplies, materials, equipment, and/or deliverables, or 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 the performance and/or deliverables or services, whichever is later. Consultant may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b); however, this Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Consultant, a contractor, a subcontractor or supplier about the goods delivered or the service performed that cause 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 Consultant and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- D. Invoices are not mailed to City in strict accordance with instructions, if any, on the purchase order or the Agreement or other such contractual agreement.

9.01 GRATUITIES AND BRIBES

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

10.01 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Consultant's charges.

11.01 INSURANCE

Consultant shall meet all insurance requirements as set forth at:
<https://www.roundrocktexas.gov/departments/purchasing>

12.0 INDEPENDENT CONTRACTOR STATUS

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

- (1) Consultant has the right to perform services for others during the term hereof.
- (2) Consultant has the sole right to control and direct the means, manner and method by which it performs its services required by this Agreement.
- (3) Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.

- (4) Consultant or its employees or subcontractors shall perform services required hereunder, and the City shall not hire, supervise, or pay assistants to help Consultant.

13.01 CITY'S REPRESENTATIVE

City hereby designates the following representatives authorized to act in its behalf with regard to this Agreement:

Michael Thane
Utilities and Environmental Services
3400 Sunrise Road
Round Rock, Texas 78665
512-218-3236
mthane@roundrocktexas.gov

14.01 RIGHT TO ASSURANCE

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

15.01 DEFAULT

If Consultant abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Consultant agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Consultant shall be declared in default of this Agreement if it does any of the following:

- A. Fails to make any payment in full when due;
- B. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- C. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- D. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

16.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Consultant.

B. In the event of any default by Consultant, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Consultant.

C. Consultant has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Consultant, Consultant shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Consultant shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Consultant that portion of the charges, if undisputed. The parties agree that Consultant is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

17.01 INDEMNIFICATION

Consultant shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Consultant, or Consultant's agents, employees or subcontractors, in the performance of Consultant's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Consultant (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

18.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Consultant, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott

Israel during the term of this contract. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

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

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

19.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

20.01 NOTICES

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

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

Notice to Consultant:

CONSOR Engineers, LLC
123 Sentry Drive
Mansfield, TX 76063

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

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

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

21.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

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

22.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Consultant and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

23.01 DISPUTE RESOLUTION

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

24.01 SEVERABILITY

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

stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

25.01 MISCELLANEOUS PROVISIONS

Standard of Care. Consultant represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Consultant understands and agrees that time is of the essence and that any failure of Consultant to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Consultant shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Consultant's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Consultant shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.


Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, City and Consultant have executed this Agreement on the dates indicated.

City of Round Rock, Texas

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

CONSOR Engineers, LLC

By: 
Printed Name: Rachel Potter
Title: Director of Sales & Marketing
Date Signed: 9-30-2022

Attest:

By: _____
Meagan Spinks, City Clerk

For City, Approved as to Form:

By: _____
Stephanie L. Sandre, City Attorney

Exhibit "A"



CONSOR Engineers, LLC
dba U.S. Underwater
123 Sentry Drive, Mansfield, TX 76063
P: 800 860 2178 | F: 817 447 0021

Service Quote

Account Name	City of Round Rock	Date	6/22/2022
Contact Name	Michael De Santis	Prepared By	Ryan Enos
Email	mdesantis@roundrocktexas.gov	Email	renos@usunderwaterservices.com
Quote Number	00010446	Quote Name	Tank Cleanings- 2022 Round Rock
		Expiration Date	

Product	Line Item Description	Sales Price	Quantity	UOM	Total Price
Hourly Labor Rate	Stone Oak Standpipe- 1/8"-3/4" @ 90%	\$695.00	14.00	hour	\$9,730.00
Depth Pay (1 - 100)	Stone Oak Standpipe (Est. 8 dives @ 120')	\$2.00	800.00	foot	\$1,600.00
Depth Pay (101 - 150)	Stone Oak Standpipe (Est. 8 dives @ 120')	\$3.00	160.00	foot	\$480.00
Hourly Labor Rate	Vista Heights Standpipe- 1/4"-1 1/2" @ 85%	\$695.00	16.00	hour	\$11,120.00
Depth Pay (1 - 100)	Vista Heights Standpipe (Est. 10 dives at 130')	\$2.50	1,000.00	foot	\$2,500.00
Depth Pay (101 - 150)	Vista Heights Standpipe (Est. 10 dives @ 130')	\$4.00	300.00	foot	\$1,200.00
Hourly Labor Rate	Bowman Road Ground- 1/4"-1/2" @ 100%	\$525.00	6.00	hour	\$3,150.00
Hourly Labor Rate	Westinghouse GST- 1" @ 100%	\$525.00	6.00	hour	\$3,150.00
Hourly Labor Rate	Highway 1431 EST- 1/4"-3" @ 100%	\$525.00	8.00	hour	\$4,200.00
Hourly Labor Rate	High Country- 1/4"-2" @ 95%	\$525.00	10.00	hour	\$5,250.00
Hourly Labor Rate	Southeast Elevated- 1/48"-1 1/2" @ 95%	\$525.00	12.00	hour	\$6,300.00
Hourly Labor Rate	Chisholm Valley Elevated- 1/4"-3" @ 85%	\$525.00	16.00	hour	\$8,400.00
Hourly Labor Rate	Chandler Creek Elevated- 1/4"-3/4" @ 90%	\$525.00	12.00	hour	\$6,300.00
Hourly Labor Rate	South 81 Tower- 1/4"- @ 10%	\$525.00	8.00	hour	\$4,200.00
Hourly Labor Rate	South East Booster Ground- 1/16"-1" @ 30%	\$525.00	12.00	hour	\$6,300.00
Hourly Labor Rate	Lake Creek Ground- 1/8"-1" @ 30%	\$525.00	8.00	hour	\$4,200.00
Hourly Labor Rate	McNeil Road Ground- 1/8" @ 30%	\$525.00	4.00	hour	\$2,100.00
Hourly Labor Rate	Barton Hill- 1/2"- 3" @ 90%	\$525.00	10.00	each	\$5,250.00
Hourly Labor Rate	Clearwell #4 North- 3/4"- 3" @ 100%	\$525.00	22.00	hour	\$11,550.00
Hourly Labor Rate	Clearwell #3 West- 1/2"- 2" @ 10%	\$525.00	18.00	hour	\$9,450.00
Hourly Labor Rate	Clearwell #1 South- 1/8"- 2" @ 60%	\$525.00	14.00	hour	\$7,350.00
Hourly Labor Rate	Clearwell #2 East- 1/8"- 2" @ 80%	\$525.00	18.00	hour	\$9,450.00
Hourly Labor Rate	Reuse Elevated- 4"-48" @ 100%	\$525.00	50.00	hour	\$26,250.00
Hourly Labor Rate	Reuse Clearwell- 6"-36" @ 100%	\$525.00	40.00	hour	\$21,000.00
Mobilization/Demobilization	Standpipe Team	\$2,500.00	1.00	trip	\$2,500.00
Mobilization/Demobilization	Ground/Elevated Team	\$1,900.00	1.00	trip	\$1,900.00

Estimated Total Project Cost

Total Price \$174,880.00

Total Price is based off our best, good faith evaluation of the effort required to complete the scope of work given the information available at the time of the quote. We reserve the right to adjust prices due to changes in the work scope, errors or omission of information.

Description Sediment removal from water storage tanks using commercial divers. Tanks will remain full of water and in service, sediment will be discharged on site. Estimate is based on current sediment levels in the tanks as of 6/16/2022. This is a T&M estimate, USU will bill for actual number of hours/trips. Hourly rate includes labor, equipment & Per Diem.

Exhibit "A"

Standard Terms & Conditions

CLARIFICATIONS

Service Quote is contingent upon availability of personnel and equipment.
Final billing will reflect the actual work done times the applicable unit of measure. Quantities quoted are based on our best, good faith effort to estimate the full scope and cost of the project.
Standard payment terms are Net 30 days.
USU accepts Visa and MasterCard for invoice payment. A 3.5% processing fee will be added to the total amount invoiced for all payments made using a credit or purchase card.
Scope of work will be performed will meet all American Water Works Association (AWWA) requirements and OSHA 29 CFR specifications, including AWWA current standards (ANSI/AWWA c652-92) regarding disinfection procedures when conducting underwater activities in potable water storage facilities. All equipment used will be for potable water only.
Water access hatches must have dimensions of 24" x 24" or greater for diver entry.
Client is responsible for coordinating the turning off radio frequency (RF) antennas/transmitters which could create an unsafe work environment. USU will charge \$450.00 per hour for all downtime caused by delays related to unsafe RF activity.
To efficiently complete work, USU requires 10 hours access to tank sites per day. If site is not accessible for at least the 10-hour minimum, Client may be subject to additional fees and/or mobilization charges. Client must have tanks full prior to arrival of the dive team. Additional onsite delays not caused by USU will be subject to an hourly charge of \$450.00. This includes but is not limited to: waiting on Client to arrive, waiting for keys, insect infestations, tanks not being full and baffle walls not revealed to USU prior to agreement in scope of work. Baffle walls create a larger scope of work; please disclose baffle walls so that USU may properly estimate the job.
Project Supervisor will consult with the client representative on the final decision regarding safe working conditions.
If additional mobilization is required to complete a project caused by customer related downtime, USU will invoice additional mobilization fees.
Should Contractor be inhibited or denied access to a facility to perform an inspection a standard exterior inspection checklist will be completed, and Client will be billed for full quoted inspection price.
Unless otherwise noted, standpipes will be inspected to 60', and remainder will be inspected by drop camera.
Inspection reports will include a proposal of recommendations for compliance with applicable AWWA, OSHA, TCEQ (Texas only) or state standards/requirements. USU will provide digital copies of the completed report. Paper copies of the report can be obtained by client request.
Water level indicator repairs/component replacement is not warranted unless the entire system is replaced.
HOURLY RATE CLAUSE: Sediment removal & other applicable work specified in line items above will be billed hourly per the rate quoted for each tank. Prices above are shown with an estimated quantity of hours; final billing will be based on the total number of hours spent working on sediment removal/other applicable activity including setup, tear-down and waiting for tanks to fill/refill. Sediment removed will be discharged on-site and will be the responsibility of the Client to dispose of. Should Client require the sediment hauled offsite, USU must reconsider the scope of work and adjust pricing accordingly. Unless otherwise stated, rock & other debris are not included in standard sediment removal. Should these items be found, USU will notify Client and adjust the price according to the new scope of work. Client must be able to maintain a full water level during the sediment removal process.
Pressure Tank Clause, if applicable: A full internal (if accessible) and external inspection will be conducted. Client understands tanks must be drained, de-pressurized and opened prior to inspection. Client is responsible for resealing hatches and drains as well as replacing gaskets.
Epoxy Repair Clause, if applicable: Water temperature must be above 40 degrees F for all epoxy repairs. The Aquatopoxy product is a two-part epoxy which requires a minimum of [2] gallons per facility. Syntho-steel is a solid stick that requires a minimum of [1] stick per facility. Even though these are extremely durable products, this type of repair is considered temporary. There are no warranties or guarantees on epoxy work. Unless otherwise specified, pricing does not include site specific training. If a pre-project orientation/training is required to access the site, Client must notify USU prior to quote acceptance. Additional charges may apply for site specific orientation/training.

I hereby certify that I have read and agree to the above terms and conditions of this service quote.

Quote Acceptance Information

Signature _____ Title _____

Printed Name _____ Date _____

Purchase Order # _____ Please provide copy of purchase order, if applicable.