

EXHIBIT
"A"

**AGREEMENT BETWEEN THE CITY OF ROUND ROCK
AND RABA KISTNER, INC
FOR CONSTRUCTION MATERIALS TESTING SERVICES
FOR THE COUNTY ROAD 112 (EAST) PROJECT**

THE STATE OF TEXAS

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§
§
§

THE CITY OF ROUND ROCK

KNOW ALL BY THESE PRESENTS

COUNTY OF WILLIAMSON

COUNTY OF TRAVIS

THIS AGREEMENT (the "Agreement") for construction materials testing services, is made on this ____ day of _____, 202__, by and between the CITY OF ROUND ROCK, a Texas home-rule municipal corporation with offices located at 221 East Main Street, Round Rock, Texas 78664-5299 (the "City"), and RABA KISTNER, INC., located at 8100 Cameron Road, Suite B-150, Austin, TX 78754-(the "Consultant").

RECITALS:

WHEREAS, City has determined that it has a need for construction materials testing services ("Consulting Services") for the County Road 112 (East) project; and

WHEREAS, City desires to contract with Consultant for the Consulting Services; and

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

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

1.0 EFFECTIVE DATE, DURATION, AND TERM

A. This Agreement shall be effective on the date set forth in the introductory paragraph above, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated as provided herein.

B. The term of this Agreement shall commence upon execution and terminate upon successful completion of the project.

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

2.0 CITY SERVICES

City shall provide the services set forth in **Exhibit "A"** titled, "City Services," which shall be incorporated herein by reference for all purposes.

3.0 CONSULTING SERVICES

Consultant shall satisfactorily provide all Consulting Services described herein and as set forth in **Exhibit "B."** Consultant's undertaking shall be limited to performing Consulting Services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant shall perform the Consulting Services in accordance with this Agreement in a professional and workmanlike manner.

4.0 LIMITATION TO CONSULTING SERVICES

Consultant's undertaking shall be limited to performing the Consulting Services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant and City agree that the Consulting Services to be performed are enumerated in **Exhibit "B,"** and may only be modified by a written Supplemental Agreement executed by both parties as described in **Section 10.0.**

5.0 CONTRACT AMOUNT

A. In consideration for providing the Consulting Services, Consultant shall be paid on the basis of the Fee Schedule attached hereto as **Exhibit "C,"** and incorporated herein by reference for all purposes.

B. Consultant's total compensation for Consulting Services hereunder shall not exceed \$ **142,604.32.** This amount represents the absolute limit of City's liability to Consultant hereunder unless same shall be changed by Supplemental Agreement, and City shall pay, strictly within the not-to-exceed sum recited herein, Consultant's fees for work done on behalf of City.

6.0 INVOICE REQUIREMENTS AND TERMS OF PAYMENT

A. **Invoices:** To receive payment, Consultant shall prepare and submit detailed invoices to the City, in accordance with the delineation contained herein, for Consulting Services rendered. Such invoices for Consulting Services shall detail the services performed, along with documentation for each service performed. Payment to Consultant shall be made on the basis of the invoices submitted by Consultant and approved by the City. Such invoices shall conform to the Fee Schedule.

B. **Backup Material.** Should additional backup material be requested by the City relative to Consulting Services, Consultant shall promptly comply. In this regard, should the City

determine it necessary, Consultant shall make all records and books relating to this Agreement available to the City for inspection and auditing purposes.

C. **Payment of Invoices:** The City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Consultant and to adjust same to meet the requirements of this Agreement. Following approval of an invoice, the City shall endeavor to pay Consultant promptly, but no later than the time period required under the Texas Prompt Payment Act described in **Section 8** herein.

D. **Taxes.** The City is exempt from Federal Excise and State Sales Tax. Therefore, such taxes shall not be included in Consultant's invoices.

7.0 INSURANCE

Consultant shall meet all City of Round Rock Insurance Requirements set forth at: https://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf.

8.0 PROMPT PAYMENT POLICY

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

- (1) There is a bona fide dispute between the City and Consultant, a contractor, subcontractor, or supplier about the service performed that cause the payment to be late; or
- (2) There is a bona fide dispute between Consultant and a subcontractor or between a subcontractor and its supplier about the service performed that causes the payment to be late; or
- (3) The terms of a federal contract, grant, regulation, or statute prevent the City from making a timely payment with federal funds; or
- (4) The invoice is not mailed to the City in strict accordance with any instruction on the purchase order relating to the payment.

9.0 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate this Agreement at the end of any City fiscal

year if the governing body of the City does not appropriate funds sufficient to purchase the Consulting Services as determined by the City's budget for the fiscal year in question. The City may affect such termination by giving Consultant a written notice of termination at the end of its then- current fiscal year.

10.0 SUPPLEMENTAL AGREEMENT

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

11.0 TERMINATION AND DEFAULT

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

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

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

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

greater time if agreed upon between the Parties).

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

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

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

12.0 NON-SOLICITATION

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

13.0 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 Consulting 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 Consulting Services required hereunder, and the City shall not hire, supervise, or pay assistants to help Consultant.

- (5) Neither Consultant nor its employees or subcontractors shall receive training from the City in skills necessary to perform Consulting Services required by this Agreement.
- (6) City shall not require Consultant or its employees or subcontractors to devote full time to performing the Consulting Services required by this Agreement.
- (7) Neither Consultant nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the City.

14.0 CONFIDENTIALITY AND MATERIALS OWNERSHIP

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

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

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

Notwithstanding anything to the contrary contained herein, neither party shall be obligated to treat as confidential any information disclosed by the other party (the "Disclosing Party") which: (1) is rightfully known to the recipient prior to its disclosure by the Disclosing Party; (2) is released by the Disclosing Party to any other person or entity (including governmental agencies) without restriction; (3) is independently developed by the recipient without any reliance on Confidential Information; or (4) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any non-party.

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

Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement.

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

Notwithstanding anything to the contrary in this Agreement, the City will own as its sole property all written materials created, developed, gathered, or originally prepared expressly for the City and delivered to the City under the terms of this Agreement (the "Deliverables"); and Consultant shall own any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, or other similar information which may have been discovered, created, developed or derived by Consultant either prior to or as a result of its provision of Consulting Services under this Agreement (other than Deliverables). Consultant shall have the right to retain copies of the Deliverables and other items for its archives. Consultant's working papers and Consultant's Confidential Information (as described herein) shall belong exclusively to the Consultant. "Working papers" shall mean those documents prepared by Consultant during the course of performing the Project including, without limitation, schedules, analyses, transcriptions, memos, designed and developed data visualization dashboards and working notes that serve as the basis for or to substantiate the Project. In addition, Consultant shall retain sole and exclusive ownership of its know-how, concepts, techniques, methodologies, ideas, templates, dashboards, code and tools discovered, created or developed by Consultant during the performance of the Project that are of general application and that are not based on City's Confidential Information hereunder (collectively, "Consultant's Building Blocks"). To the extent any Deliverables incorporate Consultant's Building Blocks, Consultant gives City a non-exclusive, non-transferable, royalty-free right to use such Building Blocks solely in connection with the deliverables. Subject to the confidentiality restrictions mentioned above, Consultant may use the deliverables and the Building Blocks for any purpose. Except to the extent required by law or court order, City will not otherwise use, or sublicense or grant any other party any rights to use, copy or otherwise exploit or create derivative works from Consultant's Building Blocks.

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

15.0 WARRANTIES

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

16.0 LIMITATION OF LIABILITY

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

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

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

17.0 INDEMNIFICATION

Consultant shall save and hold harmless City and its officers and employees from all claims and liabilities due to activities of his/her/itself and his/her/its agents or employees, performed under this Agreement, which are caused by or which result from the negligent error, omission, or negligent act of Consultant or of any person employed by Consultant or under Consultant's direction or control.

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

18.0 ASSIGNMENT AND DELEGATION

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

19.0 LOCAL, STATE, AND FEDERAL TAXES

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

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

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

20.0 COMPLIANCE WITH LAWS, CHARTER, AND ORDINANCES

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

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

C. In accordance with Chapter 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not have a practice, policy, guidance, or directive that

discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

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

21.0 FINANCIAL INTEREST PROHIBITED

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

22.0 DESIGNATION OF REPRESENTATIVES

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

Bill Stablein
Project Manager
221 E. Main St.
Round Rock, Texas 78664
(512) 218-7044

(B) The Consultant hereby designates the following representative authorized to act on its behalf with regard to this Agreement:

Ali Hekmatfar, Ph.D, PE
Project Manager
8100 Cameron Rd., Suite B-150
Austin, TX 78754
(512) 339-1745

23.0 NOTICES

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

- (A) When delivered personally to recipient's address or email address as below; or
- (B) Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated below.

(C) **Notice to Consultant:**

Gabriel Ornelas, Jr., PE, PMP
8100 Cameron Rd., Suite B-150
Austin, TX 78754

(D) **Notice to City:**

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

AND TO:

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

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

24.0 APPLICABLE LAW, ENFORCEMENT, AND VENUE

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

25.0 EXCLUSIVE AGREEMENT

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

26.0 DISPUTE RESOLUTION

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

27.0 SEVERABILITY

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

28.0 STANDARD OF CARE

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

29.0 GRATUITIES AND BRIBES

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

30.0 RIGHT TO ASSURANCE

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

31.0 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

[Signatures on the following page.]

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

City of Round Rock, Texas

By: _____
Craig Morgan, Mayor

Date Signed: _____

For City, Attest:

By: _____
Ann Franklin, City Clerk

For City, Approved as to Form:

By: _____
Stephanie L. Sandre, City Attorney

Raba Kistner, Inc.

By: Yvonne Garcia Thomas
~~Gabriel Ornelas~~ Yvonne Garcia Thomas, P.E.

Title: Vice President - Austin Practice Leader

Date Signed: November 18, 2024

EXHIBIT A

City Services

The City will provide the following items/information for the ENGINEER under this agreement:

1. Designate a person to act as City's representative with respect to the services to be performed or furnished by the Consultant. This representation will have authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to consultant's services.
2. The City or its representatives should schedule requested services by contacting Engineer's Dispatch at least 24 hours prior to the required service request
3. Provide all criteria and full information as to City's requirements for the Task, including objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and furnish copies of all design and construction information if available to the City and necessary to complete the Task.
4. Provide Consultant copies of geotechnical reports, drawings, and exhibits for review and use in performing our services.
5. The City shall provide Consultant right of entry to perform our field services.
6. The City shall provide Consulting with existing utility maps to assist in locating all underground utilities in the vicinity of geotechnical drilling.
7. Pertinent data related to specific work orders.
8. Timeline for submissions.
9. Meet with ENGINEER on an as-needed basis depending on the work order.
10. Review submittals and provide comments.

Exhibit "B"
Consulting Services

Consultant will provide observation and testing of construction materials for the Gattis School Road, Segment 3 project, to include the following:

- 1) Soils laboratory testing, and in-place field nuclear density testing;
- 2) Concrete compressive strength specimen sampling, testing, and reporting;
- 3) Asphalt aggregate sampling and observation; and
- 4) Verification that the construction is being performed in general accordance with the project plans and specifications.

The foregoing list of services is not meant to be exhaustive, but is representative of the nature of the services expected to be provided.

FEE ESTIMATE BREAKDOWN

Project Name: CR 112 East Improvements				
Project Location: CR 112, Round Rock, TX 78665				
Contact: Bill Stablein				
Asking for Proposal(client): City of Round Rock - Transportation Department				
Address: 3400 Sunrise Road				
City/State/Zip: Round Rock, TX 78665				
Phone Number: 512.218.7044				
Email: bstablein@roundrocktexas.gov				
TESTING/OBSERVATION ITEM	UNIT COST	UNIT	ESTIMATED QUANTITY	ESTIMATED FEE
SOILS				
Laboratory Testing				
Moisture Density Relationship (TxDOT or ASTM)	\$300.00	each	15	\$4,500.00
Sieve Analysis	\$106.00	each	12	\$1,272.00
Atterberg Limits	\$99.00	each	12	\$1,188.00
Lime Series Curve	\$390.00	each	4	\$1,560.00
Sulfate Testing	\$125.00	each	8	\$1,000.00
Field Gradation for Lime Treated Subgrade	\$47.00	each	8	\$376.00
Soil pH for Lime Treated Subgrade (1 point)	\$94.00	each	4	\$376.00
Field Testing/Observation				
In-Place Nuclear Densities (Per Test)	\$30.00	each	630	\$18,900.00
Materials Technician	\$61.50	hour	630	\$38,745.00
Vehicle Travel Charge (37mi RT x 0.67)	\$24.79	trip	210	\$5,205.90
Subtotal				\$73,122.90
CONCRETE				
Laboratory Testing				
Concrete Compressive Strength Cylinders	\$34.40	each	150	\$5,160.00
Field Testing/Observation				
Materials Technician	\$61.50	hour	140	\$8,610.00
Vehicle Travel Charge (37mi RT x 0.67)	\$24.79	trip	50	\$1,239.50
Subtotal				\$15,009.50
PIER OBSERVATIONS (Assumed a pier construction production rate of an average of about 9 to 12 piers/day)				
Laboratory Testing				
Concrete Compressive Strength Cylinders	\$34.40	each	30	\$1,032.00
Field Testing/Observation				
Materials Technician	\$61.50	hour	60	\$3,690.00
Materials Technician (overtime)	\$92.25	hour	15	\$1,383.75
Geotechnical Engineer	\$172.00	hour	6	\$1,032.00
Vehicle Travel Charge (37mi RT x 0.67)	\$24.79	trip	11	\$272.69
Subtotal				\$7,410.44



FEE ESTIMATE BREAKDOWN

TESTING/OBSERVATION ITEM	UNIT COST	UNIT	ESTIMATED QUANTITY	ESTIMATED FEE
ASPHALT				
Laboratory Testing				
Bag Sample (gradation, asphalt content, molding specimens, density of molded specimens, maximum theoretical specific gravity)	\$551.00	each	25	\$13,775.00
Density of Asphalt Cores	\$61.50	each	50	\$3,075.00
Field Testing/Observation				
Lead CMT Technician	\$75.00	hour	126	\$9,450.00
Coring Rig	\$150.00	day	10	\$1,500.00
Generator	\$70.00	day	10	\$700.00
Vehicle Travel Charge (37mi RT x 0.67)	\$24.79	trip	10	\$247.90
Subtotal				\$28,747.90
PROJECT ADMINISTRATION				
Clerical	\$70.00	hour	16	\$1,120.00
Project Engineer (EIT)	\$113.00	hour	8	\$904.00
Senior Project Manager	\$203.00	hour	80	\$16,240.00
Vehicle Travel Charge (37mi RT x 0.67)	\$24.79	trip	2	\$49.58
Subtotal				\$18,313.58
TOTAL ESTIMATED FEE				\$142,604.32