



City of Round Rock

City Council

Meeting Agenda

Craig Morgan, Mayor
Rene Flores, Mayor Pro-Tem, Place 2
Michelle Ly, Place 1
Matthew Baker, Place 3
Frank Ortega, Place 4
Kristin Stevens, Place 5
Hilda Montgomery, Place 6

Thursday, March 9, 2023

6:00 PM

City Council Chambers, 221 East Main St.

A. CALL MEETING TO ORDER

B. ROLL CALL

C. PLEDGES OF ALLEGIANCE

D. CITIZEN COMMUNICATION

Any citizen wishing to speak during citizen communication regarding an item on or off the agenda may do so after completing the required registration card. All comments must be no more than 3 minutes in length per §2-26(b)(5), of the Round Rock Code of Ordinances, 2018 Edition. Any comments regarding items not on the posted agenda may not be discussed or responded to by the City Council per state law.

E. STAFF PRESENTATIONS:

E.1 [Consider a presentation and department update from Communications and Marketing.](#)

F. APPROVAL OF MINUTES:

F.1 [Consider approval of the minutes for the February 9th and 23rd, 2023 City Council meetings.](#)

G. RESOLUTIONS:

G.1 [Consider a resolution authorizing the Mayor to execute a Professional Consulting Services Agreement with Design Workshop, Inc. for the Design of the Lawn at Brushy Creek Downtown Park Project.](#)

G.2 [Consider a resolution authorizing the Mayor to execute an Agreement with DPC Industries, Inc. for the purchase of liquid sulfur dioxide.](#)

- G.3 [Consider a resolution approving an amendment to the agreement between the BCRUA and Thalle Construction Company for the repair of the 36" underwater pipeline.](#)
- G.4 [Consider a resolution authorizing the City Manager to execute a Letter of Intent to Oncor Electric Delivery Company, LLC regarding a request to purchase the streetlighting system.](#)
- G.5 [Consider a resolution authorizing the Mayor to execute a Professional Consulting Services Agreement with Tanko Streetlighting, Inc. for final ownership support of the streetlight system.](#)
- G.6 [Consider a resolution authorizing the Mayor to execute an Engagement Agreement with Bourland Law Firm for representation in the lawsuit styled Cause No. D-1-GN-21-003203; City of Round Rock v. Hegar.](#)
- G.7 [Consider a resolution authorizing the Mayor to execute an Engagement Agreement with Bourland Law Firm for representation in the lawsuit styled Cause No. 22-0482-C395; Texas Disposal Systems, Inc. v. City of Round Rock, et al., in the 395th Judicial District Court.](#)

H. EXECUTIVE SESSION:

- H.1 [Consider Executive Session as authorized by §551.074 Government Code, related to the evaluation of City Attorneys.](#)

I. ADJOURNMENT

In addition to any executive session already listed above, the City Council for the City of Round Rock reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed below, as authorized by Texas Government Code:

*§551.071 Consultation with Attorney
§551.072 Deliberations regarding Real Property
§551.073 Deliberations regarding Gifts and Donations
§551.074 Personnel Matters
§551.076 Deliberations regarding Security Devices
§551.087 Deliberations regarding Economic Development Negotiations*

POSTING CERTIFICATION

I certify that this notice of the Round Rock City Council Meeting was posted on the 3rd day of March 2023 at 5:00 p.m. as required by law in accordance with Section 551.043 of the Texas Government Code.

*/ORIGINAL SIGNED/
Davetta Edwards, Deputy City Clerk*



City of Round Rock

Agenda Item Summary

Agenda Number: E.1

Title: Consider a presentation and department update from Communications and Marketing.

Type: City Council Presentation

Governing Body: City Council

Agenda Date: 3/9/2023

Dept Director: Sara Bustilloz, Communications and Marketing Director

Cost:

Indexes:

Attachments:

Department: Communications & Marketing

Text of Legislative File TMP-23-0098



City of Round Rock

Agenda Item Summary

Agenda Number: F.1

Title: Consider approval of the minutes for the February 9th and 23rd, 2023 City Council meetings.

Type: Minutes

Governing Body: City Council

Agenda Date: 3/9/2023

Dept Director: Meagan Spinks, City Clerk

Cost:

Indexes:

Attachments: 020923 Draft Minutes, 022323 Draft Minutes

Department: City Clerk's Office

Text of Legislative File TMP-23-0143



City of Round Rock

Meeting Minutes - Draft

City Council

Thursday, February 9, 2023

CALL MEETING TO ORDER

The Round Rock City Council met in regular session on February 9, 2023 in the City Council chambers at 221 E. Main Street. Mayor Morgan called the meeting to order at 6:03 pm.

ROLL CALL

Present: 7 - Mayor Craig Morgan
Mayor Pro-Tem Rene Flores
Council Member Michelle Ly
Council Member Matthew Baker
Council Member Frank Ortega
Council Member Kristin Stevens
Council Member Hilda Montgomery

Absent: 0

PLEDGES OF ALLEGIANCE

Mayor Morgan led the following Pledges of Allegiance: United States and Texas.

CITIZEN COMMUNICATION

Peter Orr, 1516 Ashwood Court, spoke regarding the cost of the Heritage Trail construction.

Michael Withrow, 901 S. Mays, thanked the Council for their response to the Ice Storm clean up.

Rachael Karavatz, 3401 McKayla Court, spoke regarding Item H.3 and expressed privacy concerns with the possible three story townhome development.

There were no further citizens wishing to speak at this time.

APPROVAL OF MINUTES:**E.1** [Consider approval of the minutes for the January 26, 2023 City Council meeting.](#)

A motion was made by Council Member Montgomery, seconded by Council Member Ortega, to approve the Minutes. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

APPOINTMENTS:**F.1** [Consider one \(1\) appointment to the Planning and Zoning Commission to fill an unexpired term.](#)

Council unanimously appointed Scott Huckabay to fill the unexpired term.

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

RESOLUTIONS:**G.1** [Consider a resolution adopting the City of Round Rock's Legislative Program for the 88th Legislative Session.](#)

Mayor Morgan made the presentation.

A motion was made by Council Member Ortega, seconded by Council Member Stevens, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.2 [Consider a resolution accepting the City's Quarterly Financial and Investment Report for the quarter ended December 31, 2022.](#)

Susan Morgan, CFO made the staff presentation.

A motion was made by Mayor Pro-Tem Flores, seconded by Council Member Ortega, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.3 [Consider a resolution calling a bond election for May 6, 2023; Making Provisions for Conducting the Election; and Resolving Other Matters Related to Such Election.](#)

Brooks Bennett, Assistant City Manager made the staff presentation.

A motion was made by Council Member Ortega, seconded by Council Member Baker, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.4 [Consider a resolution authorizing the calling of the General Election for May 6, 2023.](#)

A motion was made by Council Member Ortega, seconded by Council Member Ly, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.5 [Consider a resolution authorizing the Mayor to execute Election Services Agreement with Travis County for the May 6, 2023 General Election.](#)

A motion was made by Council Member Stevens, seconded by Council Member Ortega, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.6 [Consider a resolution authorizing the Mayor to execute a Joint Election Agreement with Travis County for the May 6, 2023 General Election.](#)

A motion was made by Council Member Baker, seconded by Council Member Ortega, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.7 [Consider a resolution authorizing the City Manager to issue a Purchase Order to Consolidated Traffic Controls, Inc. for the purchase of traffic signal poles.](#)

Gary Hudder, Transportation Director made the staff presentation.

A motion was made by Council Member Baker, seconded by Council Member Montgomery, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.8 [Consider a resolution authorizing the Mayor to execute a Real Estate Contract with Martin A. and Debra A. Kreczmer for the purchase of a 0.138 acre parcel required for construction of the proposed Red Bud South roadway project.](#)

Gary Hudder, Transportation Director made the staff presentation.

A motion was made by Council Member Ortega, seconded by Council Member Stevens, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

- G.9** [Consider a resolution determining the necessity and authorizing the use of the City's power of eminent domain to acquire fee simple title to 0.125 acre of land from property owned by Robert Harold Behrens, required for the proposed Red Bud South Improvement Project.](#)

Gary Hudder, Transportation Director made the staff presentation.

Mayor Pro-Tem Flores moved that the City Council approve this resolution which authorizes the use of the power of eminent domain to acquire fee simple title to the following parcel of land for construction of proposed improvements to the Red Bud South Project: a 0.125-acre of land from property owned by Robert Harold Behrens, as described in Exhibit A of the resolution. The motion was seconded by Council Member Baker. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

- G.10** [Consider a resolution authorizing the Mayor to execute an Interlocal Agreement with Williamson County regarding the Southwest Williamson County Regional Park Water Meter Relocation Project.](#)

Michael Thane, Utilities and Environmental Services Director made the staff presentation.

A motion was made by Mayor Pro-Tem Flores, seconded by Council Member Stevens, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.11 [Consider a resolution authorizing the Mayor to execute Supplemental Contract No. 1 with Kimley-Horn and Associates, Inc. for the DB Wood Raw Waterline Relocation Project.](#)

Michael Thane, Utilities and Environmental Services Director made the staff presentation.

A motion was made by Council Member Ortega, seconded by Council Member Stevens, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.12 [Consider a resolution approving the action of the Brushy Creek Regional Utility Authority \(BCRUA\) in authorizing the execution of Supplemental Contract No. 2 with Walker Partners for the BCRUA Phase 1D Water Treatment Plant Expansion Project.](#)

Michael Thane, Utilities and Environmental Services Director made the staff presentation.

A motion was made by Council Member Baker, seconded by Mayor Pro-Tem Flores, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.13 [Consider a resolution rejecting all bids submitted for the Frontier Park Improvement Project 2022.](#)

Rick Atkins, Parks and Recreation Director made the staff presentation.

A motion was made by Council Member Ortega, seconded by Council Member Ly, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.14 [Consider a resolution rejecting all bids submitted for the Stark Park Improvement Project 2022.](#)

Rick Atkins, Parks and Recreation Director made the staff presentation.

A motion was made by Council Member Ortega, seconded by Council Member Stevens, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.15 [Consider a resolution authorizing the Mayor to execute a Contract with DigDug Construction, LLC for the Bowman Park Improvements Project.](#)

Rick Atkins, Parks and Recreation Director made the staff presentation.

A motion was made by Council Member Baker, seconded by Council Member Ortega, to the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.16 [Consider a resolution authorizing the Mayor to execute a Contract with Act Global Americas, Inc. for the Buck Egger Park Synthetic Turf Conversion Project.](#)

Rick Atkins, Parks and Recreation Director made the staff presentation.

A motion was made by Council Member Stevens, seconded by Council Member Ortega, to approve the Resolution. The motion passed by the following vote:

Ayes: 6 - Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 1 - Mayor Morgan

G.17 [Consider a resolution authorizing the Mayor to execute a Contract with Patin Construction LLC for the Heritage Trail West Project.](#)

Rick Atkins, Parks and Recreation Director made the staff presentation.

A motion was made by Council Member Baker, seconded by Council Member Ortega, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.18 [Consider a resolution authorizing the Mayor to execute an Agreement with SKATX LLC for the purchase of event lighting, sound and staging services.](#)

Rick Atkins, Parks and Recreation Director made the staff presentation.

A motion was made by Mayor Pro-Tem Flores, seconded by Council Member Ortega, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

G.19 [Consider a resolution removing the monarch designation for a tree located on a proposed development site at 611 Spring Street.](#)

Brad Wiseman, Planning and Development Services Director, made the staff presentation.

A motion was made by Mayor Pro-Tem Flores, seconded by Council Member Stevens, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

ORDINANCES:**H.1** Consider public testimony regarding, and an ordinance zoning 25.053 acres located south of E. Old Settlers Boulevard on the east side of N. Red Bud Lane to the Planned Unit Development (PUD) No.146 zoning district. (First Reading)*

Brad Wiseman, Planning and Development Services Director, made the staff presentation.

Mayor Morgan opened the hearing for public testimony.

There being no testimony, the public hearing was closed.

A motion was made by Council Member Ortega, seconded by Council Member Montgomery, to approve the Ordinance. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

A motion was made by Council Member Baker, seconded by Council Member Ortega, to dispense with the second reading and adopt the Ordinance. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

H.2 Consider public testimony regarding, and an ordinance rezoning 1.02 acres located on the west side of Red Bud Lane and north of Gattis School Road from the OF-1 (General Office) zoning district to the MF-1 (Multifamily - Low Density) zoning district. (First Reading)*

Brad Wiseman, Planning and Development Services Director, made the staff presentation.

Mayor Morgan opened the hearing for public testimony.

There being no testimony, the public hearing was closed.

A motion was made by Mayor Pro-Tem Flores, seconded by Council Member Montgomery, to approve the Ordinance. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

A motion was made by Council Member Ortega, seconded by Council Member Stevens, to dispense with the second reading and adopt the Ordinance. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

H.3 Consider public testimony regarding, and an ordinance zoning 4.72 acres located northwest of N. CR 122 and east of Red Bud Lane to the TH (Townhouse) zoning district. (First Reading)*

Brad Wiseman, Planning and Development Services Director, made the staff presentation.

The developer applicant, Vincent Shaw, presented information and answered Council's questions.

Mayor Morgan opened the public hearing and the following people spoke:

Hope Lazono, Henri Chen, Jim Pizzitola, Michael Lazono, and Jason Ahl, all spoke against certain design elements of the development.

There being no further testimony, the public hearing was closed.

A motion was made by Mayor Pro-Tem Flores, seconded by Council Member Baker, to approve the Ordinance. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

A motion was made by Council Member Ortega, seconded by Council Member Ly, to dispense with the second reading and adopt the Ordinance. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

H.4 Consider public testimony regarding, and an ordinance rezoning 4.77 acres located south of Louis Henna Boulevard on the south side of AW Grimes Boulevard from the C-2 (Local Commercial) zoning district to the PUD (Planned Unit Development) No. 145 zoning district. (First Reading)*

Brad Wiseman, Planning and Development Services Director, made the staff presentation.

Mayor Morgan opened the hearing for public testimony.

There being no testimony, the public hearing was closed.

A motion was made by Council Member Baker, seconded by Council Member Ortega, to approve the Ordinance. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

A motion was made by Council Member Ortega, seconded by Council Member Stevens, to dispense with the second reading and adopt the Ordinance. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

H.5 Consider an ordinance amending Chapter 2, Sec. 2-326, Code of Ordinances, to increase the authority of the City Manager to contract for expenditures and approve certain change orders. (First Reading)*

Susan Morgan, CFO made the staff presentation.

A motion was made by Mayor Pro-Tem Flores, seconded by Council Member Montgomery, to approve the Ordinance. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

A motion was made by Council Member Baker, seconded by Council Member Montgomery, to dispense with the second reading and adopt the Ordinance. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

COUNCIL COMMENTS REGARDING ITEMS OF COMMUNITY INTEREST

EXECUTIVE SESSION:

- J.1** [Consider Executive Session as authorized by §551.071, Government Code, related to consultation with attorneys regarding an update on the Comptroller of Public Accounts' proposed rule amendment related to sales tax.](#)
- J.2** [Consider Executive Session as authorized by §551.087 Government Code, related to consultation with the City Attorney regarding potential legal issues with the Economic Development Program Agreement with Crow Group Series, LLC.](#)

Council recessed into executive session. Mayor Morgan called the session to order at 8:45 pm and adjourned at 9:17 pm. Council returned to regular session, with no action taken.

ADJOURNMENT

There being no further business, Mayor Morgan adjourned the meeting at 9:18 pm.

*Respectfully submitted by:
Meagan Spinks, City Clerk*



City of Round Rock

Meeting Minutes - Draft

City Council

Thursday, February 23, 2023

CALL MEETING TO ORDER

The Round Rock City Council met in regular session on February 23, 2023 in the City Council chambers at 221 E. Main Street. Mayor Morgan called the meeting to order at 6:07 pm.

ROLL CALL

Present: 7 - Mayor Craig Morgan
Mayor Pro-Tem Rene Flores
Council Member Michelle Ly
Council Member Matthew Baker
Council Member Frank Ortega
Council Member Kristin Stevens
Council Member Hilda Montgomery

Absent: 0

PLEDGES OF ALLEGIANCE

Mayor Morgan led the following Pledges of Allegiance: United States and Texas.

CITIZEN COMMUNICATION

There were no citizens wishing to speak.

APPROVAL OF MINUTES:

E.1 [Consider approval of the minutes for the February 3 and February 9, 2023 Council Retreat work sessions.](#)

A motion was made by Council Member Montgomery, seconded by Council Member Ortega, to approve the Minutes. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

RESOLUTIONS:

F.1 [Consider a resolution accepting the City's Annual Comprehensive Financial Report for fiscal year October 1, 2021, to September 30, 2022.](#)

Melana Taylor, Deputy CFO, and Lupe Garcia with Whitley Penn made the presentation.

A motion was made by Council Member Stevens, seconded by Council Member Ly, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.2 [Consider a resolution authorizing the Mayor to execute an Interlocal Agreement with Williamson County Emergency Services District No. 9 for Fire Protection and Emergency Services.](#)

Susan Morgan, CFO, made the staff presentation.

A motion was made by Council Member Ortega, seconded by Council Member Montgomery, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.3 [Consider a resolution authorizing the Mayor to execute Supplemental Agreement No. 1 to "City of Round Rock Agreement for Purchase of Public Safety and Firehouse Supplies and Equipment with GT Distributors, Inc."](#)

Allen Banks, Police Chief, made the staff presentation.

A motion was made by Mayor Pro-Tem Flores, seconded by Council Member Baker, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.4 [Consider a resolution authorizing the Mayor to execute an Agreement with San Antonio Armature Works, Inc. for the purchase of water and wastewater pumps and motors.](#)

Michael Thane, Utilities and Environmental Services Director, made the staff presentation.

A motion was made by Council Member Ortega, seconded by Council Member Montgomery, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.5 [Consider a resolution approving the updated Public Transportation Agency Safety Plan.](#)

Brian Kuhn, Assistant Transportation Director made the staff presentation.

A motion was made by Council Member Baker, seconded by Council Member Ortega, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.6 [Consider a resolution authorizing the Mayor to execute a Contract with M & C Fonseca Co., Inc. for the 2022 Arterial Sidewalk Project.](#)

Brian Kuhn, Assistant Transportation Director made the staff presentation.

A motion was made by Council Member Ortega, seconded by Council Member Stevens, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.7 [Consider a resolution ratifying the issuance of a Purchase Order by the City Manager to T.F.R. Enterprises, Inc. for brush pick-up, grinding and disposal services.](#)

David Buzzell, Parks and Recreation Assistant Director made the staff presentation.

A motion was made by Council Member Baker, seconded by Council Member Ortega, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.8 [Consider a resolution ratifying the issuance of a Purchase Order by the City Manager to Austin Wood Recycling for brush grinding and hauling services.](#)

David Buzzell, Parks and Recreation Assistant Director made the staff presentation.

A motion was made by Council Member Stevens, seconded by Mayor Pro-Tem Flores, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.9 [Consider a resolution ratifying the issuance of a Purchase Order by the City Manager to Vemeer Equipment of Texas, Inc. for the purchase of a wood chipper/grinder.](#)

Chad McDowell, General Services Director made the staff presentation.

A motion was made by Council Member Ortega, seconded by Council Member Stevens, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.10 [Consider a resolution authorizing the Mayor to execute an Agreement with Magnum Custom Trailer Mfg. Co. Inc. for the purchase of trailers and optional equipment.](#)

Chad McDowell, General Services Director made the staff presentation.

A motion was made by Council Member Montgomery, seconded by Council Member Ortega, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.11 [Consider a resolution authorizing the Mayor to execute an Agreement with Rae Security Southwest, LLC for the purchase of security and access supplies, equipment and services.](#)

Chad McDowell, General Services Director made the staff presentation.

A motion was made by Council Member Ortega, seconded by Council Member Ly, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.12 [Consider a resolution determining that John King Construction, Ltd. provides the best value for the City for the Fire Station No. 1 Project and authorizing the Mayor to execute a Standard Form of Agreement.](#)

Chad McDowell, General Services Director made the staff presentation.

A motion was made by Council Member Baker, seconded by Mayor Pro-Tem Flores, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.13 [Consider a resolution authorizing the Mayor to execute a Professional Consulting Services Agreement with Rock Engineering & Testing Laboratory, Inc. for construction materials testing services for the Fire Station No. 1 Project.](#)

Chad McDowell, General Services Director made the staff presentation.

A motion was made by Mayor Pro-Tem Flores, seconded by Council Member Ly, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.14 [Consider a resolution approving the selection of Braun & Butler Construction, Inc. as Construction Manager at Risk and authorizing the Mayor to execute a Standard Form of Agreement with Braun & Butler for the Griffith Building Remodel and Paseo Project.](#)

Chad McDowell, General Services Director made the staff presentation.

A motion was made by Council Member Ortega, seconded by Council Member Stevens, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

F.15 [Consider a resolution authorizing the Mayor to execute an Agreement for Architectural Services and related Supplemental Agreement No. 1 with Marmon Mok Architecture for the Round Rock Sports Center Expansion Project.](#)

Chad McDowell, General Services Director made the staff presentation.

A motion was made by Council Member Ortega, seconded by Council Member Ly, to approve the Resolution. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

COUNCIL COMMENTS REGARDING ITEMS OF COMMUNITY INTEREST

EXECUTIVE SESSION:

- H.1** [Consider Executive Session as authorized by §551.087, Government Code, to deliberate the offer of a financial or other incentive to business prospects considering Round Rock as a location for new or expanded businesses that would bring economic development to the City.](#)
- H.2** [Consider Executive Session as authorized by §551.074 Government Code, related to the evaluation of the City Manager.](#)

Mayor and Council went into executive session. Mayor called executive session to order at 6:55 pm and adjourned at 9:23 pm. Council returned to regular session and considered the following action.

ACTION RELATIVE TO EXECUTIVE SESSION:**I.1** [Consider discussion and/or possible action related to the evaluation of the City Manager.](#)

Mayor Pro-Tem Flores moved to authorize the City Attorney to draft, and the Mayor to execute an Amendment No. 2 to the City Manager's employment agreement increasing the City Manager's base salary to \$303,803.00 and a one-time bonus of \$5000.00. And amending the agreement to state that upon resignation or retirement, the City Manager shall be paid a lump sum payment for all base salary earned, all earned and unused vacation and personal time, and for up to 520 hours of earned and unused accrued sick time. The motion was seconded by Council Member Baker. The motion passed by the following vote:

Ayes: 7 - Mayor Morgan
Mayor Pro-Tem Flores
Council Member Ly
Council Member Baker
Council Member Ortega
Council Member Stevens
Council Member Montgomery

Nays: 0

Absent: 0

ADJOURNMENT

There being no further business, Mayor Morgan adjourned the meeting at 9:23 pm.

*Respectfully submitted by:
Meagan Spinks, City Clerk*



City of Round Rock

Agenda Item Summary

Agenda Number: G.1

Title: Consider a resolution authorizing the Mayor to execute a Professional Consulting Services Agreement with Design Workshop, Inc. for the Design of the Lawn at Brushy Creek Downtown Park Project.

Type: Resolution

Governing Body: City Council

Agenda Date: 3/9/2023

Dept Director: Rick Atkins, Parks and Recreation Director

Cost: \$277,834.00

Indexes: General Self-Financed Construction

Attachments: Resolution, Exhibit A, Form 1295

Department: Parks & Recreation

Text of Legislative File 2023-072

This item will authorize Design Workshop to begin the schematic master plan process for the downtown park - The Lawn on Brushy. This master plan will include the vision for the downtown green spaces, including the newly purchase McConico property, Veterans Park, Heritage Circle property, and associated land acquired for Heritage Trail. Additionally, this master plan will look for opportunities to tie the downtown area to the creek and collaborate/coordinate with the designs for other downtown developments, such as the Town Green and Paseo. As part of the master plan process, there will be an extensive public input process where residents can provide input in the design.

Cost: \$277,834.00

Source of Funds: General Self-Financed Construction

RESOLUTION NO. R-2023-072

WHEREAS, the City of Round Rock desires to retain professional consulting services related to the design services of the Lawn on Brushy Creek Downtown Park Project; and

WHEREAS, Design Workshop, Inc. has submitted an Agreement for Professional Consulting Services to provide said services; and

WHEREAS, the City Council desires to enter into said agreement with Design Workshop, Inc., Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City an Agreement for Professional Consulting Services Related to the Design of the Lawn on Brushy Creek Downtown Park with Design Workshop, Inc., a copy of same being attached hereto as Exhibit "A" and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 9th day of March, 2023.

CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:

MEAGAN SPINKS, City Clerk

EXHIBIT

"A"

**CITY OF ROUND ROCK AGREEMENT FOR
PROFESSIONAL CONSULTING SERVICES RELATED TO
THE DESIGN OF THE LAWN ON BRUSHY CREEK DOWNTOWN PARK
WITH
DESIGN WORKSHOP, INC.**

THE STATE OF TEXAS

§

THE CITY OF ROUND ROCK

§

KNOW ALL BY THESE PRESENTS

§

COUNTY OF WILLIAMSON

§

COUNTY OF TRAVIS

§

§

THIS AGREEMENT for professional consulting services related to design services for the Lawn on Brushy Creek Downtown Park Project (the "Agreement"), is made 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 DESIGN WORKSHOP, INC., with offices located at 1390 Lawrence Street, #100, Denver, Colorado 80204 (the "Consultant").

RECITALS:

WHEREAS, professional services related to the design of the Lawn on Brushy Creek Downtown Park Project (the "Project") are desired by the City; and

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

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

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

NOW, THEREFORE, WITNESSETH:

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

1.0 EFFECTIVE DATE, DURATION, AND TERM

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

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

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

2.0 SCOPE OF SERVICES

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

Consultant shall satisfactorily provide all services described herein and as set forth in Exhibit "A," pursuant to a schedule agreed upon by City. Consultant shall perform services in accordance with this Agreement, in accordance with the appended Scope of Services and in accordance with due care and prevailing consulting industry standards for comparable services.

3.0 LIMITATION TO SCOPE OF SERVICES

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

4.0 CONTRACT AMOUNT

In consideration for the professional consulting services to be performed by Consultant, City agrees to pay Consultant an amount not-to-exceed **Two Hundred Seventy-Seven Thousand Eight Hundred Thirty-Four and No/100 Dollars (\$277,834.00)** as set forth in Exhibit "B," incorporated herein by reference for all purposes.

Reimbursable expenses shall not exceed **Twelve Thousand and No/100 Dollars (\$12,000.00)** and are included in the total not-to-exceed amount of **\$277,834.00**.

5.0 INVOICE REQUIREMENTS; TERMS OF PAYMENT

Invoices: To receive payment, Consultant shall prepare and submit detailed invoices to the City, in accordance with the delineation contained herein, for services rendered. Such invoices for professional services shall track the referenced Scope of Work, and shall detail the services performed, along with documentation for each service performed. Payment to Consultant shall be made on the basis of the invoices submitted by Consultant and approved by the City. Such invoices shall conform to the schedule of services and costs in connection therewith.

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

the City for inspection and auditing purposes.

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

6.0 INSURANCE

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

7.0 PROMPT PAYMENT POLICY

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

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

8.0 NON-APPROPRIATION AND FISCAL FUNDING

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

9.0 SUPPLEMENTAL AGREEMENT

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

10.0 TERMINATION; DEFAULT

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

Any use of all data, information and work product prepared by Consultant for anything other than their specific intended purpose on this Project, and without the involvement of Consultant, shall be at the sole risk of the City and City's agents without liability to Consultant.

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.

Any use of all data, information and work product prepared by Consultant for anything other than their specific intended purpose on this Project and without involvement of Consultant, shall be at sole risk of City and City's agents without liability to Consultant.

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

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

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

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

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

Any use of all data, information and work product prepared by Consultant for anything other than their specific intended purpose on this Project and without the involvement of Consultant, shall be at the sole risk of the City and City's agents and without liability to Consultant.

11.0 NON-SOLICITATION

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

12.0 INDEPENDENT CONTRACTOR STATUS

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

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

13.0 CONFIDENTIALITY; MATERIALS OWNERSHIP

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

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

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

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

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

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

Notwithstanding anything to the contrary in this Agreement, the City will own as its sole property all written materials created, developed, gathered, or originally prepared expressly for the City and delivered to the City under the terms of this Agreement (the "Deliverables"); and Consultant shall own any general skills, know-how, expertise, ideas, concepts, methods,

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

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

14.0 WARRANTIES

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

15.0 LIMITATION OF LIABILITY

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

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

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

16.0 INDEMNIFICATION

Consultant shall save and hold harmless City and its officers and employees from all claims and liabilities due to activities of his/her/itself and his/her/its agents or employees, performed under this Agreement, to the extent caused by the negligent error, omission, or negligent act of Consultant, Consultant's employees and others for whom Consultant may be legally liable.

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, employees, and others for whom the Consultant may be legally liable.

17.0 ASSIGNMENT AND DELEGATION

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

18.0 LOCAL, STATE AND FEDERAL TAXES

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

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

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

19.0 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

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

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

C. In accordance with 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.

20.0 FINANCIAL INTEREST PROHIBITED

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

21.0 DESIGNATION OF REPRESENTATIVES

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

Katie Baker
Park Development Manager
Parks and Recreation Department
301 West Bagdad, Suite 250
Round Rock, Texas 78664
(512) 341-3345
kbaker@roundrocktexas.gov

22.0 NOTICES

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

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

Notice to Consultant:

Design Workshop, Inc.
1390 Lawrence Street, #100
Denver, CO 80204

Notice to City:

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

AND TO:

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

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

23.0 APPLICABLE LAW; ENFORCEMENT AND VENUE

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

24.0 EXCLUSIVE AGREEMENT

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

25.0 DISPUTE RESOLUTION

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

26.0 SEVERABILITY

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

27.0 STANDARD OF CARE

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

28.0 GRATUITIES AND BRIBES

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

29.0 RIGHT TO ASSURANCE

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

30.0 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

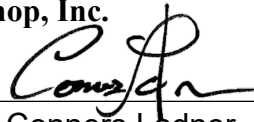
[Signatures on the following page.]

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

City of Round Rock, Texas

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

Design Workshop, Inc.

By:  _____
Printed Name: Conners Ladner
Title: Principal
Date Signed: 02/06/2023

For City, Attest:

By: _____
Meagan Spinks, City Clerk

For City, Approved as to Form:

By: _____
Stephanie L. Sandre, City Attorney

Exhibit "A"

ATTACHMENT A – SCOPE OF SERVICES
for The Lawn on Brushy Downtown Park
Round Rock, Texas
01/04/23

ATTACHMENT A – SCOPE OF SERVICES

PROJECT DESCRIPTION

The Lawn on Brushy Downtown Park site consists of 20 acres of parkland along Brushy Creek and is part of the City of Round Rock series of parkland projects along Brushy Creek. The Lawn on Brushy Downtown Park will serve as an important link between the historic Heritage Trail. The park will integrate and connect to the concurrent transportation project and become a catalyst to downtown Round Rock. The City's desire to integrate access points through local streets, site amenities, play areas, shade structures, interpretive signage, art features, pedestrian creek crossings as well as open spaces; will create a much-desired downtown destination park.

The following narrative describes a comprehensive list of tasks required to reach a community supported conceptual vision for the Round Rock Downtown Park. Following this phase one visioning process, the team will work with the client to formulate an update scope for contract documentation and implementation.

The scope of work to be performed by Design Workshop (DESIGN WORKSHOP) in connection with this agreement is as follows:

BASIC SERVICES:

- Part 1: Project Start-Up
- Part 2: Site Analysis and Discovery
- Part 3: Establishing Stakeholder Values
- Part 4: Developing and Capturing the Vision

RELATED SERVICES:

- Part 5: Boundary, Tree, and Topographic Survey
- Part 6: Wetland and Archeological Assessment

Part 1: PROJECT START-UP

The general objective for this phase of the work is to develop a thorough understanding of the work that has been completed to date, become familiar with the site and to develop a preliminary understanding of the development program.

The specific tasks to be completed are as follows:

1. Review pertinent codes, current entitlements, and conditions of approval, which may impact the site development concepts. Review all previous planning studies associated with the site context.
2. Our team will lead a Strategic Kick-Off Meeting (SKO) with the Client team (and/or Project Working Group advised by the Client). As part of the meeting, we will review the project management plan, communications plan, discuss preliminary goals and tour the site.

Exhibit "A"

The Lawn on Brushy Downtown Park
Round Rock, Texas
01/04/23

- i. Review Project Management Plan: Define the roles and responsibilities of the project team, which will include Client's project manager, the consultant team and any personnel from Client or third parties designated by the Client to participate in the project. Prepare a detailed written project schedule/work plan. Develop an appropriate communication plan for keeping the Client (Board, staff, etc.) informed of project progress. Review the Stakeholder Engagement Strategy.
 - ii. Establish Preliminary Goals: Lead a dialogue about opportunities and constraints of the existing site to target key objectives and priorities to assess perceived needs, review and develop project goals, design criteria, and site program. The result is a distilled set of measurable project goals, as well as key components of the master plan process that will lead to a successful design - what Design Workshop calls Critical Success Factors, that will keep the Design Workshop Team accountable for measurable outcomes.
 - iii. Attend Site Tour with full Design Workshop team: Our team and the Client will walk the study area to discuss existing conditions such as drainage, infrastructure, tree health, historic/cultural development, views, mobility, land use, shade and human comfort and signage. The purpose of the site tour will allow our team to learn, specifically from the Client, key elements of opportunity that might exist on all park parcels, street connections, and local context in the Downtown area. It is anticipated that this site tour will last approximately two to four hours. Our team and client will determine the appropriate stops together prior to the kick-off.
 - iv. Conduct Ecological Site Assessment Field Work: Following the Site Tour, the ecological team will document on-site soil and vegetation conditions on a finer scale. The purpose of the field visit is to assess overall ecological health, map vegetative communities, document valuable or remnant communities and species, problematic species and conditions, potential influences from adjacent properties and opportunities for ecological connectivity. It is anticipated that two to four days will be required to complete this field work.
3. Community engagement is fundamental to every design process and Design Workshop is skilled at listening to the many voices of the community. Part of facilitating this process is being creative with the tools that we use so that everyone has a chance to participate in the form that they feel most comfortable. Our team will develop a Community and Stakeholder Engagement Strategy to gather valuable input from broad perspectives and establish community consensus. We anticipate a robust dialogue with the Client, key stakeholders and the public. We will work with the client team to determine specific objectives for each outreach effort and the best tools for achieving those objectives. As part of executing the Community and Stakeholder Engagement Strategy, Design Workshop will take the lead in preparing presentation documents, facilitating public and stakeholder input sessions, and providing meeting summaries.
4. Understand if any opinions of probable cost have been prepared for the project and collect them for reference. Obtain understanding of target site improvement budget with the client.
5. Review of current operating environment, existing roles and responsibilities for current

Exhibit "A"

The Lawn on Brushy Downtown Park
Round Rock, Texas
01/04/23

organizational capacity.

6. Prepare a project website to be utilized for all engagement and milestones. Intended to inform and engage the community.
7. Coordinate with local engineers and architects that are currently working on downtown Round Rock streetscape, park, trails, or facility improvements.

The following products will be prepared/delivered:

1. Detailed project schedule and work plan;
2. Project management plan;
3. Preliminary list of project goals;
4. Stakeholder Engagement Strategy;
5. Report regarding current operating environment, opportunities, and constraints/challenges.
6. Report for potential permitting associated with codes.
7. Agenda and summary of strategic kick-off meeting.
8. Documentation of site visit through photography and field notes;
9. Monthly outline of accomplishments (carries through all tasks);
10. Creation of shared data folder
11. Establishment of project website

The following meetings are anticipated:

1. Project kick-off meeting with client and site tour (1 day)
2. Bi-weekly client calls (throughout the project – assumes a total of twelve calls)
3. Up to two (2) meetings for coordination with local engineers/architects

Part 2: SITE ANALYSIS AND DISCOVERY

At the heart of Design Workshop's Legacy Design process is a strong baseline condition stemming from thorough site analysis. This task will ultimately serve as the groundwork for measuring existing conditions and establishing key benchmarks. We understand projects within an existing context are often complex and require careful and deliberate analysis. Following the in-depth site visit and data collection and review, our team will establish a detailed inventory and analysis of existing site conditions for the defined area of work.

The specific tasks to be completed are as follows:

1. Prepare a site analysis/framework plan, summarizing major influences upon design. Our analysis of existing conditions may include, but is not limited to, items such as:

Exhibit "A"

The Lawn on Brushy Downtown Park
Round Rock, Texas
01/04/23

- a. Site hydrology
 - b. Topography
 - c. Vegetation (existing remediation/cleanup efforts, evaluation of tree canopy and understory)
 - d. Soil conditions
 - e. Ecological systems including both flora and fauna (habitat types, species, and key movement corridors)
 - f. Vistas and views
 - g. Security
 - h. Noise
 - i. Traffic, parking, services area, utilities (water, sewer, electric, gas, and telecommunications)
 - j. Access and circulation
 - k. Adjacent land use and compatibility
 - l. Existing trails assessment
2. Work with the city to determine baseline operation funding and expectations. The summary of data collected will be informed by an understanding of revenue sources, staffing costs and the parks maintenance budget. This work will be completed in coordination with the Operations and Maintenance related task.
3. Develop a preliminary project matrix with the intent to finalize the agreed list of goals and strategies and provide initial research and evaluation of these items. Each applicable strategy will include benchmarks from other case studies to ensure research and best practices are fully incorporated into this Project. In addition, each strategy and benchmarked metric will be included in an ongoing matrix that will define future roles and responsibilities to ensure that the strategy is realized in the process and through implementation.
4. Establish a list of preliminary programming with client and an understanding of potential revenue generation from hard and soft programming options as part of Operations and Maintenance related services.
5. Up to four (4) additional site visits during analysis phase for further in person investigation.

The following products will be prepared/delivered:

1. Overall existing conditions plans developed from Geographic Information System (GIS) mapping technology data
2. Up to six (6) site inventory maps diagramming:
 - Land use
 - Accessibility
 - Vehicular and pedestrian circulation
 - Vegetation

Exhibit "A"

The Lawn on Brushy Downtown Park
Round Rock, Texas
01/04/23

- Existing major utility and stormwater
 - Lighting
 - Wind comfort and sun exposure
 - Programming
 - Soils
 - Trails inventory map
3. Ecological site assessment report

Part 3: ESTABLISHING STAKEHOLDER VALUES

In conjunction with Task 2 (Site Analysis and Discovery), the Team will conduct a one-day Values Workshop in which we will engage the Client team and key stakeholders in a workshop that will determine the main overarching goals for the project, using site analysis and inventory as a guide. As part of this workshop, the team will gain critical feedback from stakeholders on existing site challenges, site opportunities, and potential park programming. Engagement at the Values stage will consist of a series of survey questions to gain feedback on goals, critical success factors, and programming. The team will also present precedents to the community as part of the polling questions.

The final details of the one-day workshop will be developed in the Community and Stakeholder Engagement Plan, Workshop #1 will include up to (4) stakeholder engagement meetings with various stakeholder groups and a public workshop.

The specific tasks to be completed are as follows:

1. Prior to the workshop, the team will conduct coordination conference calls as part of the bi-weekly calls with the Client to review all developed materials and walk through the logistics of the event.
2. The Client and DW team will select specific community groups/organizations to meet with, as necessary.
3. DW will provide content such as flyers and advertisement materials, but Client will reach out to the stakeholders.

The following products will be prepared/delivered:

1. Plan and lead workshop (one day, up to four (4) stakeholder group interviews, one (1) public webinar/in person meeting to discuss opportunities, constraints, goal setting, analysis and programming.
2. Summary of workshop including written documentation of stakeholder engagement
3. Digital presentation for website

The following meetings are anticipated:

1. Values Workshop - Includes multiple meetings over one day in Round Rock

Exhibit "A"

The Lawn on Brushy Downtown Park
Round Rock, Texas
01/04/23

Part 4: DEVELOPING AND CAPTURING THE VISION

The general objective for this task is to test program goals against site conditions and to explore design ideas through the creation of a series of conceptual alternatives. This will take into consideration each park parcel as well as the key corridors that connect them. Each strategy will be accompanied by 3D simulation graphics, plans, sections, and diagrams to illustrate design intent.

As part of this task, the Team will conduct a one-day Vision Workshop in which we will engage the Client team and key stakeholders in a workshop that will determine input on the overall strategy objectives and conceptual plans. As part of this workshop, the team will gain critical feedback from stakeholders to refine the design into an overall conceptual plan.

The specific tasks to be completed are as follows:

1. Prepare up to three (3) framework diagrams for the parks. Framework diagrams will provide the client a chance to review preliminary layout and programming options.
2. Review framework diagrams with client for feedback.
3. Prepare up to two conceptual plans for the park. Plans will be illustrated through graphic cross sections, perspective drawings, supporting diagrams, and precedent imagery.
4. Lead the client through a visioning charrette prior to the Vision Workshop stakeholder meetings to review and provide feedback on preliminary conceptual design sketches.
5. Prepare for Vision Workshop
 - a. The Client and DW team will select specific community groups/organizations to meet with, as necessary.
 - b. DW will provide content such as flyers and advertisement materials, but Client will reach out to the stakeholders.
6. Prepare refined conceptual plan based on stakeholder feedback to be reviewed with client team.
7. Based on the conceptual design plan, prepare an opinion of the range of probable costs. This range is an opinion only.
8. Based on the final conceptual plan, the Design Team will develop a preliminary operations and maintenance plan for the park that will determine staffing requirements for expanded park amenities as well as other costs associated with operations including supplies, utilities, and contracted services. This will then be matched with the revenue opportunities that are evident for the park with a determination of the sources and level of revenues that will be possible. This estimate will be based on the market analysis that has been completed and the expected market penetration rates of the revenue generating elements of the park.
9. Identify opportunities for the park to leverage additional resources over and above baseline city funding and management. We will identify potential sources of public and private funding that can be layered with earned income to bridge funding gaps to support the park's operations and/or capital needs. We will also identify potential management partner(s) in park implementation and operations based on a high-level assessment of relevant stakeholders' capacities and interests.

Exhibit "A"

The Lawn on Brushy Downtown Park
Round Rock, Texas
01/04/23

The team will define the key capabilities required for park stewardship, which may include management, programming, fundraising, maintenance, and security.

10. Documents will be provided as final booklet and individual graphics

The following products will be prepared/delivered:

1. Up to three (3) framework diagrams
2. Up to two (2) conceptual site plans for the park
3. Final conceptual site plans for the park
4. Up to two (2) site character sections for each street condition or other applicable graphics
5. Up to four (4) 3-D simulation graphics illustrating conceptual design intent.
6. Up to four (4) imagery boards to portray site character
7. Up to two (2) review cycles included as part of client and vision workshop
8. Plan and lead workshop (one day, up to four (4) stakeholder group interviews, two (2) open houses)
9. Graphic booklet to capture conceptual planning process (no more than 50 pages in total)

The following meetings are anticipated:

1. Lead and attend Vision Workshop (one day in Round Rock)
2. Client Visioning Meeting (up to 4 hours)

RELATED SERVICES:

Part 5 Boundary, Tree, and Topographic Survey

Part 6 Wetland and Archeological Assessment

EXCLUSIONS:

- Contract documents: scope only includes deliverables associated with task identified and does not include schematic, design development, construction documentation, observation, bidding, and or permitting.
- Marketing and collateral material such as renderings, graphics, etc. not listed in the scope of work.
- Services required because of changes to the Project including but not limited to changes in size, quality and complexity, schedule, program, or budget.
- Coordination and documentation of LEED, SITES, or any other green certification.
- Deductive or additional change orders requested by Client after the completion of construction documents.

Exhibit "A"

The Lawn on Brushy Downtown Park
Round Rock, Texas
01/04/23

- Plan preparation for and construction observation of portions of the project let on a segregated bid basis.
- The observation and administration of construction for discrete projects or items which may begin prior to completion of schematic design or design development.
- Preparation of record drawings or of measured drawings of existing conditions, it is our understanding that contractor will provide field record drawings for DW review.
- Additional time required in the construction observation phase other than the hours indicated in the Basic Services of the agreement.
- Additional meetings other than the number indicated in Basic Services of the agreement.
- Required traffic studies or regulatory studies not indicated in the scope of services.
- Platting.
- Traffic signal design or modification.
- Geotechnical reporting.

PROJECT TEAM

Design Workshop typically organizes projects in a team format with key responsibilities divided between the Principal-in-Charge and Project Manager. The key team members for your project are listed below:

Principal-in-Charge

Conners Ladner will serve as Principal-in-Charge of the Downtown Round Rock Park project and will have primary responsibility for the overall content and quality of the services performed by Design Workshop and our consultant team.

Project Manager

Margarita Padilla will serve as the Project Manager for the Downtown Park Project and will also be responsible for leading the planning and design efforts associated with the work. Her responsibilities will include the coordination of Design Workshop's in-house design team as well as regular communication and coordination with all members of Design Workshop's consultant team.

SCHEDULE

Design Workshop is prepared **(to begin services immediately)** upon receipt of a retainer and a signed copy of this proposal from an authorized owner's representative.

Task 1: Project Start-Up

- 01/06/23 – SKO & Site Tour
- 01/06/23 to 01/20/23 – Ecological Assessment Field Work
- Bi-weekly client calls throughout the project

Task 2: Site Analysis and Discovery

- 01/06/23 to 02/06/23 - Site Inventory Maps
- 01/06/23 to 02/06/23 - Ecological Site Assessment Report

Exhibit "A"

The Lawn on Brushy Downtown Park
Round Rock, Texas
01/04/23

Task 3: Establishing Stakeholder Values

- 02/06/23 to 02/17/23 – Stakeholder and Community Engagement Window #1
 - TBD - Public Webinar
 - TBD - Values Workshop

Task 4: Developing and Capturing the Vision

- 02/17/23 to 05/19/23 - Conceptual design alternatives
- 03/27/23 to 03/21/23 - Stakeholder and Community Engagement Window #2
 - TBD - Values Workshop
 - TBD - Public Webinar

FEES AND EXPENSES

1. Basic and Related Services

Compensation to Design Workshop for the services described herein and in accordance with the conditions of this agreement shall be for a lump sum fee of \$265,834.

Basic Services:

Part One	Project Start-up	\$64,429
Part Two	Site Analysis and Discovery	\$41,233
Part Three	Establishing Stakeholder Values	\$35,500
Part Four	Developing and Capturing the Vision	\$109,435
Basic Services Professional Fees		\$250,597

Related Services:

Part Five	Boundary, Tree, and Topographic Survey	\$3,403
Part Six	Wetland and Archeological Assessment	\$11,834
Related Services Professional Fees		\$15,237

Reimbursable Expenses: \$12,000 (NTE)

2. REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to compensation for Basic Services. Reimbursable expenses incurred by Design Workshop and consultants directly related to the project such as, but not limited to, travel, photography, telephone charges, video conference charges, and printing

Exhibit "A"

The Lawn on Brushy Downtown Park
Round Rock, Texas
01/04/23

expenses shall be billed at Design Workshop's cost plus ten percent (10%). The total cap for reimbursable expenses will be held at \$12,000 and billed as accrued.

3. RETAINER

In accordance with Design Workshop's policy, a retainer of **(\$15,000)** is payable upon acceptance of this proposal. The retainer will be applied to our final billing. All invoices must be paid prior to release of the final documents.

4. ADDITIONAL SERVICES

Services in addition to those described above are to be compensated on a Time and Materials basis per Design Workshop's current published rate schedule. Additional services will include (but are not limited to) redesign of previously approved work, major revisions to program and/or expansion of scope of services. Whenever practical, changes, additions, or modifications to the scope of services shall be authorized by written change request; however, the absence of such a written change order shall not act as a bar to payment of fees due Design Workshop, provided the change was in fact approved and ordered by the Client.

5. TAXES (For Canada, UAE and other states and countries that may apply)

Any taxes or fees, (local, state or federal), based on gross receipts or revenues will be added to amounts due under this contract.

PAYMENT TERMS

1. This is a lump sum contract (OR percent of construction cost contract) and will be billed monthly as a percentage completed for each phase of the work.
2. **(Clause #1 is for use with Lump Sum and Percent of Construction Cost billing only.)**
3. Invoices will be mailed from Design Workshop's office by the 10th of each month. Invoices are payable within 30 days of the date of billing. Invoicing shall be specific to each major task and will describe the completed portion of the services.
4. Extensive itemized breakdowns of hourly activities or provision of detailed backup for reimbursed expenses for accounting purposes are not a normal procedure; however, at the Client's request, Design Workshop will provide this service at an hourly rate of \$65 (sixty-five dollars) per hour.


ACCEPTANCE

Exhibit "A"

The Lawn on Brushy Downtown Park
Round Rock, Texas
01/04/23

1. This Agreement is entered into between Design Workshop, Inc. and (insert name of client), owner or reputed owner of the property to be benefited by Design Workshop's services.
2. If this contract meets with your approval, please sign below and return one (1) copy for our file.
3. If this agreement is not accepted within two (2) months from the date of receipt, the offer to perform the described services may be withdrawn and Design Workshop may renegotiate this proposal.
4. The Client agrees that they have read and understood the Contract Provisions attached hereto and incorporated herein by reference.

DESIGN WORKSHOP, INC.

By:  _____ Date: 02/06/2023
Title: Principal

APPROVED BY CLIENT:

By: _____ Date: _____
Title: _____

Exhibit "B"

Design Workshop, Inc.

Round Rock Downtown Park
1/4/2023

Detailed Fees - Vision Plan

	Landscape Architecture (Design Workshop)	Civil (Freese Nichols)	Architecture (McKinney York)	Structural (PKA)	Ecologist (Blackland Collaborative)	Geotechnical Engineer (MLA)	Operations and Programming (Agora)	Cost Estimator (Vermeulens)	Signage and Wayfinding (fd2 Design Studios)	UPDATED TOTAL
Part 1: Project Start-Up	\$20,615.00	\$7,214.00	\$6,200.00	\$3,500.00	\$12,900.00			\$10,000.00	\$4,000.00	\$64,429.00
Part 2: Site Analysis and Discovery	\$7,500.00	\$20,633.00	\$1,300.00		\$7,800.00				\$4,000.00	\$41,233.00
Part 3: Establishing Stakeholder Values	\$26,000.00		\$2,500.00		\$3,000.00				\$4,000.00	\$35,500.00
Part 4: Developing and Capturing the Vision	\$51,935.00		\$20,500.00		\$4,500.00		\$25,000.00		\$7,500.00	\$109,435.00
Part 5: Boundary, Tree and Topographic Survey		\$3,403.00								\$3,403.00
Part 6: Wetland Delineation		\$11,834.00								\$11,834.00
Part 7: Archeological Investigation										
<i>Subtotal</i>	\$106,050.00	\$43,084.00	\$30,500.00	\$3,500.00	\$28,200.00	\$0.00	\$25,000.00	\$10,000.00	\$19,500.00	\$265,834.00
<i>Expenses</i>										\$12,000.00
Grand Total with Expenses										\$277,834.00

ACORDTM**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

7/11/2022

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Insurance Services, LLC P.O. Box 7050 Englewood, CO 80155 800 873-8500		CONTACT NAME: PHONE (A/C, No, Ext): 800 873-8500 E-MAIL ADDRESS: den.certificate@usi.com FAX (A/C, No):																						
INSURED Design Workshop, Inc. 1390 Lawrence Street, #100 Denver, CO 80204		<table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td colspan="2">INSURER A : Hartford Casualty Insurance Company</td> <td>29424</td> </tr> <tr> <td colspan="2">INSURER B : Hartford - WC Multiple Issuing Cos</td> <td>00914</td> </tr> <tr> <td colspan="2">INSURER C : Berkley Insurance Company</td> <td>32603</td> </tr> <tr> <td colspan="2">INSURER D :</td> <td></td> </tr> <tr> <td colspan="2">INSURER E :</td> <td></td> </tr> <tr> <td colspan="2">INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A : Hartford Casualty Insurance Company		29424	INSURER B : Hartford - WC Multiple Issuing Cos		00914	INSURER C : Berkley Insurance Company		32603	INSURER D :			INSURER E :			INSURER F :		
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COVERAGES**CERTIFICATE NUMBER:****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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	34SBEAC4649	07/13/2022	07/13/2023	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	X	X	34SBEAC4649	07/13/2022	07/13/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> RETENTION \$10000	X	X	34SBEAC4649	07/13/2022	07/13/2023	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y / <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		X	34WEGTO3899	07/13/2022	07/13/2023	<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
C	Professional Liability Claims Made			AEC905666803	07/13/2022	07/13/2023	\$2,000,000 per claim \$4,000,000 annl aggr.

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

As required by written contract or written agreement, the following provisions apply subject to the policy terms, conditions, limitations and exclusions: The Certificate Holder and owner are included as Automatic Additional Insured's for ongoing and completed operations under General Liability; Designated Insured under Automobile Liability; and Additional Insureds under Umbrella / Excess Liability but only with respect to liability arising out of the Named Insured work performed on behalf of the certificate holder and owner. (See Attached Descriptions)

CERTIFICATE HOLDER**CANCELLATION**

For Proposal Purposes Only
 1390 Lawrence St., Suite 100
 Denver, CO 80204-0000

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



DESCRIPTIONS (Continued from Page 1)

The General Liability, Automobile Liability, Umbrella/Excess insurance applies on a primary and non contributory basis. A Blanket Waiver of Subrogation applies for General Liability, Automobile Liability, Umbrella/Excess Liability and Workers Compensation. The Umbrella / Excess Liability policy provides excess coverage over the General Liability, Automobile Liability and Employers Liability.

Please note that Additional Insured status does not apply to Professional Liability or Workers' Compensation.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Design Workshop, Inc.
Austin, TX United States

Certificate Number:
2023-987537

Date Filed:
02/24/2023

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Round Rock Parks Department

Date Acknowledged:

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

000000 Brushy Creek Park
Master Planning Services for Downtown Round Rock Park

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 UNSWORN DECLARATION

My name is Bonnie Lader, and my date of birth is [REDACTED]

My address is 812 SAN ANTONIO STREET, AUSTIN, TX, 78701, USA
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in TRAVIS County, State of TEXAS, on the 24 day of FEB, 2022
(month) (year)


Signature of authorized agent of contracting business entity
(Declarant)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Design Workshop, Inc.
Austin, TX United States

Certificate Number:
2023-987537

Date Filed:
02/24/2023

Date Acknowledged:
03/02/2023

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Round Rock Parks Department

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

000000 Brushy Creek Park
Master Planning Services for Downtown Round Rock Park

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.**6 UNSWORN DECLARATION**

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)



City of Round Rock

Agenda Item Summary

Agenda Number: G.2

Title: Consider a resolution authorizing the Mayor to execute an Agreement with DPC Industries, Inc. for the purchase of liquid sulfur dioxide.

Type: Resolution

Governing Body: City Council

Agenda Date: 3/9/2023

Dept Director: Michael Thane, Utilities and Environmental Services Director

Cost: \$300,000.00

Indexes: Regional Wastewater Operating Fund

Attachments: Resolution, Exhibit A, Form 1295

Department: Utilities & Environmental Services

Text of Legislative File 2023-073

During the wastewater treatment process, adding chlorine gas to wastewater effluent is one of the last steps of disinfection before releasing it into the creek. The Brushy Creek East Regional Wastewater Treatment Plant uses liquid sulfur dioxide to remove chlorine gas from the water before discharging into the creek because, while the chlorine is a highly effective disinfectant, the chlorine would be toxic to release into the creek. Sulfur dioxide neutralizes the chlorine gas, making the effluent safe for discharge. DPC Industries, Inc. was selected as the lowest responsible bid for the procurement of sulfur dioxide. This contract is for one year, with the option to renew for four consecutive years after the effective date. It is for a not-to-exceed annual amount of \$60,000, and a total not-to-exceed amount of \$300,000.

Cost: \$300,000

Source of Funds: Regional Wastewater Operating Fund

RESOLUTION NO. R-2023-073

WHEREAS, the City of Round Rock (“City”) has duly advertised for bids to purchase liquid sulfur dioxide; and

WHEREAS, DPC Industries, Inc. has submitted the lowest responsible bid; and

WHEREAS, the City Council wishes to accept the bid of DPC Industries, Inc., Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City an Agreement for Purchase of Liquid Sulfur Dioxide with DPC Industries, Inc., a copy of said Agreement being attached hereto as Exhibit “A” and incorporated herein.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 9th day of March, 2023.

CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:

MEAGAN SPINKS, City Clerk

EXHIBIT

"A"

**CITY OF ROUND ROCK AGREEMENT
FOR PURCHASE OF LIQUID SULFUR DIOXIDE
WITH
DPC INDUSTRIES, INC.**

THE STATE OF TEXAS

§

CITY OF ROUND ROCK

§

KNOW ALL BY THESE PRESENTS:

COUNTY OF WILLIAMSON

§

COUNTY OF TRAVIS

§

§

THAT THIS AGREEMENT for the purchase of liquid sulfur dioxide (referred to herein as the "Agreement"), is made and entered into on this the ____ day of the month of _____, 2023 by and between the **CITY OF ROUND ROCK**, a Texas home-rule municipality, whose offices are located at 221 East Main Street, Round Rock, Texas 78664-5299 (referred to herein as the "City"), and **DPC INDUSTRIES, INC.**, whose offices are located at P.O. Box 59, Cleburne, Texas 76033 (referred to herein as the "Vendor").

RECITALS:

WHEREAS, City desires to purchase liquid sulfur dioxide; and

WHEREAS, City has issued its "Invitation for Bid" for the provision of said goods; and

WHEREAS, City has determined the bid submitted by Vendor is the lowest responsible bid; 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, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.0 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Vendor whereby City agrees to buy specified services and Vendor is obligated to sell same. The Agreement includes the following: (a) City's Invitation for Bid, designated Solicitation Number 23-002 dated October 2022 ("IFB"); (b) Vendor's Response to IFB; and (c) any exhibits and/or addenda thereto. Any inconsistencies or conflicts in the contract documents shall be resolved by giving preference in the following order:

- (1) This Agreement;
- (2) Vendor's Response to IFB;
- (3) City's Invitation for Bids, Addenda, exhibits, and attachments.

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.

2.0 EFFECTIVE DATE AND TERM

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

B. The initial term of this Agreement shall be for one twelve (12) month period from the effective date hereof ("Initial Term") with four (4) optional consecutive twelve (12) month renewable terms ("Renewal Terms") upon written agreement of both parties.

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.

3.0 CONTRACT DOCUMENTS AND EXHIBITS

City selected Vendor to supply the services as outlined in the IFB; Addenda to IFB; and Response to IFB submitted by Vendor, all as specified in Exhibit "A," incorporated herein by reference for all purposes. The intent of these documents is to formulate an Agreement listing the responsibilities of both parties as outlined in the IFB and Addenda to IFB and as offered by Vendor in its Response to the IFB.

The goods which are the subject matter of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the total Agreement and they are fully a part of this Agreement as if repeated herein in full.

4.0 ITEMS AWARDED AND SCOPE OF WORK

Items Awarded. All bid items in "Attachment A – Bid Sheet" of Exhibit "A" are awarded to Vendor.

Scope of Work: Vendor shall satisfactorily provide all services described in Exhibit "A," attached hereto, within the contract term specified in Section 2.0. Vendor's undertakings shall be limited to performing services for City and/or advising City concerning those matters on which Vendor has been specifically engaged. Vendor 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.

5.0 COSTS

A. In consideration for the services to be performed by Vendor, City agrees to pay Vendor the amounts set forth in "Attachment A – Bid Sheet" of Exhibit "A."

B. The City shall be authorized to pay the Vendor an amount not-to-exceed **Sixty Thousand and No/100 Dollars (\$60,000.00)** per year for a total not-to-exceed amount of **Three Hundred Thousand and No/100 Dollars (\$300,000.00)** for the entire term of this Agreement.

6.0 INVOICES

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

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

7.0 INTERLOCAL COOPERATIVE CONTRACTING / PURCHASING

Authority for local governments to contract with one another to perform certain governmental functions and services, including but not limited to purchasing functions, is granted under Government Code, Title 7, Chapter 791, Interlocal Cooperation Contracts, Subchapter B and Subchapter C, and Local Government Code, Title 8, Chapter 271, Subchapter F, Section 271.101 and Section 271.102.

Other governmental entities within the State of Texas may be extended the opportunity to purchase off of the City's bid, with the consent and agreement of the successful service provider(s) and the City. Such agreement shall be conclusively inferred for the Vendor from

lack of exception to this clause in the service provider's response. However, all parties hereby expressly agree that the City is not an agent of, partner to, or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that may arise out of such independently-negotiated "piggyback" procurements.

8.0 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 Vendor a written notice of termination at the end of its then current fiscal year.

9.0 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Vendor 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. Vendor 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 Vendor, a contractor, 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 Vendor 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.

10.0 GRATUITIES AND BRIBES

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

11.0 TAXES

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

12.0 ORDERS PLACED WITH ALTERNATE VENDORS

If Vendor cannot provide the goods as specified, City reserves the right and option to obtain the products from another supplier or suppliers.

13.0 INSURANCE

Vendor shall meet all insurance requirements set forth in Part II of IFB 23-002 and on the City's website at:

https://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf

14.0 CITY'S REPRESENTATIVES

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

Michael De Santis
SCADA Specialist
Utilities and Environmental Services
3400 Sunrise Road
Round Rock, Texas 78665
512-218-2005
mdesantis@roundrocktexas.gov

15.0 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 as an anticipatory repudiation of this Agreement.

16.0 DEFAULT

If Vendor abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Vendor 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.

Vendor 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.

17.0 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 Vendor.

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

C. Vendor 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 Vendor, Vendor 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, Vendor 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 Vendor that portion of the charges, if undisputed. The parties agree that Vendor is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

18.0 INDEMNIFICATION

Vendor 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 Vendor, or Vendor's agents, employees or subcontractors, in the performance of Vendor'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 Vendor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

19.0 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Vendor, 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 terms of this contract. The signatory executing this Agreement on behalf of Vendor verifies Vendor 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 a 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 Vendor verifies Vendor 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 a 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 Vendor verifies Vendor does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement.

20.0 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 shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

21.0 NOTICES

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

1. When delivered personally to 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 Vendor:

DPC Industries, Inc.
P.O. Box 59
Cleburne, Texas 76033

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 Vendor.

22.0 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 the State of Texas.

23.0 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Vendor 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.

24.0 DISPUTE RESOLUTION

City and Vendor 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.

25.0 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.

26.0 MISCELLANEOUS PROVISIONS

Standard of Care. Vendor 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. Vendor understands and agrees that time is of the essence and that any failure of Vendor to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Vendor 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 Vendor'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 Vendor 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.

[Signatures on the following page.]

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

City of Round Rock, Texas

DPC Industries, Inc.

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

By: *Lenny Leal*
Printed Name: Lenny Leal
Title: Regional Sales Mgr
Date Signed: 1-26-23

Attest:

By: _____
Meagan Spinks, City Clerk

For City, Approved as to Form:

By: _____
Stephanie L. Sandre, City Attorney

Exhibit "A"



City of Round Rock, Texas
Purchasing Division
221 East Main Street
Round Rock, Texas 78664-5299
www.roundrocktexas.gov

INVITATION FOR BID (IFB)

LIQUID SULFUR DIOXIDE

SOLICITATION NUMBER 23-002

OCTOBER 2022

Exhibit "A"

WATER TREATMENT CHEMICALS PART I GENERAL REQUIREMENTS

1. **PURPOSE:** The City of Round Rock, herein after "the City," seeks a bid from firms experienced in providing bulk delivery services of liquid sulfur dioxide in ton cylinders to the City's wastewater treatment plant.
2. **SOLICITATION PACKET:** This solicitation packet is comprised of the following-

Description	Index
Part I – General Requirements	Page(s) 2-6
Part II – Definitions, Standard Terms and Conditions and Insurance Requirements	Page 7
Part III – Supplemental Terms and Conditions	Page(s) 8-10
Part IV – Specifications	Page(s) 11-12
Attachment A – Bid Sheet	Page 13
Attachment B – Reference Sheet	Page 14

3. **AUTHORIZED PURCHASING CONTACT(S):** For questions or clarification of specifications, you may contact:

Allen Reich
Purchaser
Purchasing Division
City of Round Rock
Phone: 512-218-6682
E-mail: areich@roundrocktexas.gov

Adam Gagnon
Purchaser
Purchasing Division
City of Round Rock
Phone: 512-218-5456
E-mail: agagnon@roundrocktexas.gov

The individual(s) listed above is/are the only authorized City contact(s) for this solicitation. The authorized purchasing contact(s) may be contacted by e-mail for clarification for this solicitation including specifications. No other City employee or representative may be contacted about this solicitation prior to contract approval. No authority is intended or implied that specifications may be amended, or alterations accepted prior to solicitation opening without written approval of the City of Round Rock through the Purchasing Department.

4. **SCHEDULE OF EVENTS:** It is the City's intention to follow the solicitation timeline below.

EVENT	DATE
Solicitation released	October 19, 2022
Deadline for submission of questions	October 26, 2022 @ 5:00 PM, CST
City responses to questions or addendums	Approximately October 28, 2022 @ 5:00 PM, CST
Deadline for submission of responses	November 9, 2022 @ 3:00 PM, CST

All questions regarding the solicitation shall be submitted in writing by 5:00 PM, CST on the due date noted above. A copy of all questions submitted and the City's response to the questions shall be posted on the City's webpage in the form of an addendum at:
<https://www.roundrocktexas.gov/city-businesses/solicitations/>

Exhibit "A"

Questions shall be submitted in writing to the "Authorized Purchasing Contact". The City reserves the right to modify these dates. Notice of date change will be posted to the City's website:

<https://www.roundrocktexas.gov/city-businesses/solicitations/>

5. **SOLICITATION UPDATES:** Respondents shall be responsible for monitoring the City's website at <https://www.roundrocktexas.gov/city-businesses/solicitations/> or any updates pertaining to the solicitation described herein. Various updates may include addendums, cancellations, notifications, and any other pertinent information necessary for the submission of a correct and accurate response. The City will not be held responsible for any further communication beyond updating the website.
6. **RESPONSE DUE DATE:** Signed and sealed responses are due at or before 3:00 PM, on the due date noted in PART I, Section 4 – Schedule of Events. Mail or hand deliver sealed responses to:

City of Round Rock
Attn: Allen Reich
Purchasing Department
221 E. Main Street
Round Rock, Texas 78664-5299

- A. Sealed responses shall be clearly marked on the outside of packaging with the solicitation title, number, due date, and "DO NOT OPEN".
- B. Facsimile or electronically transmitted responses are not acceptable.
- C. Responses cannot be altered or amended after opening.
- D. No response can be withdrawn after opening without written approval from the City for an acceptable reason.
- E. The City will not be bound by any oral statement or offer made contrary to the written specifications.
- F. Samples and/or copies shall be provided at the Respondent's expense and shall become the property of the City.
- G. Late responses will not be considered and will be returned unopened if a return address is provided.
7. **RESPONDENT REQUIREMENTS:** The City of Round Rock makes no warranty that this checklist is a full comprehensive listing of every requirement specified in the solicitation. This list is only a tool to assist participating Respondents in compiling their final responses. Respondents are to carefully read the entire solicitation.

Respondent shall submit one (1) evident signed "Original" and one identical-to-the-original electronic copy of the IFB response on a flash drive. An electronic signature on the "original" solicitation response is acceptable but any resulting contract shall be signed in ink. The submittal is required to include all addendums and requested attachments. The bid response along with samples and/or copies shall be provided at the Respondent's expense and shall become the property of the City.

This invitation for bid (IFB) does not commit the City to contract for any supply or service. Respondents are advised that the City will not pay for any administrative costs incurred in response preparation to this IFB; all costs associated with responding to this IFB will be solely at the interested parties' expense. Not responding to this IFB does not preclude participation in any future RFP/RFQ/IFB.

For your bid to be responsive, addendums and the attachments identified below shall be submitted with your proposal.

- ☐ **Addendums:** Addendums may be posted to this solicitation. Bidders are required to submit signed addendums with their sealed response. The Bidder shall be responsible for monitoring the City's website at <https://www.roundrocktexas.gov/city-businesses/solicitations/> for any updates pertaining to the solicitation.
- ☐ **Attachment A: BID SHEET:** The bid response shall be submitted on the itemized, signed Bid Sheet provided in the solicitation packet. Failure to complete and sign the bid sheet will result in disqualification. If there is a conflict between the unit price and extended price, the unit price will take precedence. Submission of responses on forms other than the City's solicitation document may result in disqualification of the response.

Exhibit "A"

- **Attachment B: REFERENCE SHEET:** Provide the name, address, telephone number and **E-MAIL** of at least three (3) valid Municipal, Government agencies, or firms of comparable size that have utilized services that are similar in type and capacity within the last two (2) years. City of Round Rock references are not applicable. References may be checked prior to award. If references cannot be confirmed or if any negative responses are received it may result in the disqualification of submittal.

8. **BEST VALUE EVALUATION AND CRITERIA:** The City reserves the right to reject any or all responses, or to accept any response deemed most advantageous, or to waive any irregularities or informalities in the response received that best serves the interest and at the sole discretion of the City. All solicitations received may be evaluated based on the best value for the City. In determining best value, the City may consider:

- A. Purchase price.
- B. Reputation of Respondent and of Respondent's goods and services.
- C. Quality of the Respondent's goods and services.
- D. The extent to which the goods and services meet the City's needs.
- E. Respondent's past performance with the City.
- F. The total long-term cost to the City to acquire the Respondent's goods or services.
- G. Any relevant criteria specifically listed in the solicitation.
- H. If the solicitation is evaluated with points, the respondent must earn a minimum of 15 points on criteria not related to cost in order to be considered for contract award.

Respondents may be contacted for clarification of bid and/or to discuss details of the services they are proposing.

9. **CONFIDENTIALITY OF CONTENT:** As stated in Section 16 of City of Round Rock Purchasing Definitions, Standard Terms and Conditions, all documents submitted in response to a solicitation shall be subject to the Texas Public Information Act. Following an award, responses are subject to release as public information unless the response or specific parts of the response can be shown to be exempt from the Texas Public Information Act. Pricing is not considered to be confidential under any circumstances

- A. Information in a submittal that is legally protected as a trade secret or otherwise confidential must be clearly indicated with stamped, bold red letters stating "CONFIDENTIAL" on that section of the document. The City will not be responsible for any public disclosure of confidential information if it is not clearly marked as such.
- B. If a request is made under the Texas Public Information Act to inspect information designated as confidential, the Respondent shall, upon request from the City, furnish sufficient written reasons and information as to why the information should be protected from disclosure. The matter will then be presented to the Attorney General of Texas for final determination.

10. **SUSPENSION OR DEBARMENT CERTIFICATION:** The provisions of the Code of Federal Regulations 2 CFR part 180 suspension and debarment may apply to this agreement. The City of Round Rock is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from doing business with the Federal Government, State of Texas, or the City of Round Rock.

11. **CERTIFICATE OF INTERESTED PARTIES:** Section 2252.908 of the Texas Government Code requires the successful offeror to complete a Form 1295 "Certificate of Interested Parties" that is signed for a contract award requiring council authorization. The "Certificate of Interested Parties" form must be completed on the Texas Ethics Commission website, printed, signed, and submitted to the City by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury prior to final contract execution. Link to Texas Ethics Commission Webpage:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

Exhibit "A"

- 12. EX PARTE COMMUNICATION:** Please note that to insure the proper and fair evaluation of a bid, the City of Round Rock prohibits ex parte communication (e.g., unsolicited) initiated by the Bidder to the City Official, Employee, City Consultant, or Evaluation Team member evaluating or considering the bids prior to the time a bid decision has been made. Communication between Bidder and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the bid. Ex parte communication may be grounds for disqualifying the offending Bidder from consideration or award of the bid then in evaluation, or any future bid.
- 13. OPPORTUNITY TO PROTEST:** The Purchasing Manager for the City of Round Rock ("City"), in consultation with the City Attorney, shall have the authority to settle or resolve any dispute concerning the solicitation or award of a contract. The Purchasing Manager may solicit written responses to the protest from other interested parties. The aggrieved person must prepare his or her complaint in writing and send it by electronic mail to the City's Purchasing Department at protest@roundrocktexas.gov.
- In the event of a timely protest, the City shall not proceed further with the solicitation or award of a contract unless it is determined that the award must take place without delay, to protect the best interests of the City. The procedures for notifying the City of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Purchasing Office may dismiss your complaint or protest.
- A. **Prior to Offer Due Date:** If you are a prospective offeror for the award of a contract ("Offeror") and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the due date for receipt of offers in response to a solicitation ("Offers"), you must notify the City in writing of the alleged deficiency before that date, giving the City an opportunity to resolve the situation prior to the Offer due date.
- B. **After Offer Due Date:** If you submit an Offer to the City and you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process, or the recommended award as follows:
- i. You must file a written notice of your intent to protest within four (4) working days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.
 - ii. You must file your formal written protest within ten (10) working days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Offer has been closed. If you know of the facts before those dates, you must notify the City as stated in section (A) above.
 - iii. You must submit your protest in writing and must include the following information:
 - a. your name, address, telephone number, and email address.
 - b. the solicitation number.
 - c. a specific identification of the statutory or regulatory provision that you are alleging has been violated.
 - d. a detailed statement of the factual grounds for your protest, including copies of any relevant documents.
 - e. a statement of any issues of law or fact that you contend must be resolved; and
 - f. a statement of the argument and authority that you offer in support of your protest.
 - iv. Your protest must be concise and presented logically and factually to help with the City's review.
- C. **Receipt of Timely Protest:** When the City receives a timely and complete written protest, the Purchasing Manager, with assistance from the City Attorney, shall make one of the following determinations:
- i. Determine that a violation of rules and statutes has occurred prior to the award of the contract and inform you and other interested parties of the determination. The City will prepare updated solicitation documents and will re-solicit.
 - ii. Determine that no violation of rules or statutes has occurred and inform you and other interested parties of the decision by letter. The reasons for the determination will be presented in the letter.
 - iii. Determine that a violation of rules and statutes has occurred after the award of the contract and inform you and other interested parties of the determination. However, the awarded contract will not be canceled. As needed, corrective actions may be taken with purchasing or any other pertinent City staff.

City of Round Rock
Liquid Sulfur Dioxide
IFB 23-002
Class/Item: 885-94 / 190-36
October 2022

Exhibit "A"

- iv. A determination will usually be made within fifteen (15) business days after receipt of the formal protest.
- v. **Any written decisions by the Purchasing Manager shall be the final administrative action for the City.**

All documentation pertaining to a protest will be kept on file at the City and are subject to open records requests.

Exhibit "A"

PART II DEFINITIONS, STANDARD TERMS AND CONDITIONS AND INSURANCE REQUIREMENTS

1. **DEFINITIONS, STANDARD TERMS AND CONDITIONS:** By submitting a response to this solicitation, the Respondent agrees that the City's Definitions and Standard Terms and Conditions, in effect at the time of release of the solicitation, shall govern unless specifically provided otherwise in a separate agreement or on the face of a purchase order. In addition, the Supplemental Terms and Conditions listed in Section III, shall also be enforced as part of the contract, and can be obtained from the City's website at: <https://www.roundrocktexas.gov/city-departments/purchasing/>
2. **INSURANCE:** The Respondent shall meet or exceed all insurance requirements set forth in Standard Insurance Requirements. The City's Standard Insurance Requirements document can be viewed and downloaded from the City's website at: <https://www.roundrocktexas.gov/city-departments/purchasing/>.

Exhibit "A"

PART III SUPPLEMENTAL TERMS AND CONDITIONS

1. **AGREEMENT TERM:** The terms of the awarded agreement shall include but not be limited to the following:
 - A. The term of the Agreement shall begin from date of award and shall remain in full force for sixty (60) months.
 - B. Upon expiration of the contract term, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period as is reasonably necessary to re-solicit and/or complete the project up to 90 days.
2. **RESPONDENT QUALIFICATIONS:** The City has established the following minimum qualifications. Respondents who do not meet the minimum qualifications will not be considered for award. The Respondent shall:
 - A. Be firms, corporations, individuals, or partnerships normally engaged in providing water treatment chemicals as specified herein and have adequate organization, facilities, equipment, financial capability, and personnel to ensure prompt and efficient service to the City.
 - B. Provide all labor, supplies and materials required to satisfactorily perform the services as specified herein and own or acquire at no cost to the City all construction aids, appliances, and equipment Respondent deems necessary and maintain sole responsibility for the maintenance and repair of Respondent's vehicles, equipment, tools, pumps, and all associated costs. The City shall not be responsible for any Respondent's tools, equipment, pumps, or materials lost or damaged during the performance of the services specified herein.
 - C. Be domiciled in or have a home office inside the United States. Respondents domiciled outside the United States, or not having a home office inside the United States will not be included for consideration in this procurement process.
3. **SAFETY:** The City reserves the right to remove any employee from City property for violation of federal, state, and local health, safety and environmental laws, ordinances, rules, and regulations. The Respondent shall:
 - A. Ensure that all employees comply with all Occupational Safety and Health Administration (OSHA), State and City safety and occupational health standards and other applicable federal, state, and local health, safety, and environmental laws ordinances, rules, and regulations in the performance of these services.
 - B. Be held responsible for the safety of their employees and unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site. In case of conflict, the most stringent safety requirement shall govern.
 - C. Indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines penalties and liability of every kind arising from the breach of the successful Respondents' obligations under this paragraph.
4. **WORKFORCE:** Successful Respondent shall:
 - A. Ensure Respondent's employees perform the services in a timely, professional, and efficient manner.
 - B. Ensure Respondent's employees, while working on City property, wear a company uniform that clearly identifies them as the Respondent's employee.
 - C. Employ all personnel for work in accordance with the requirements set forth by the United States Department of Labor. The City reserves the right to verify citizenship or right to work in the United States.
5. **PRICING:** The Respondent shall determine and submit a fixed cost for the work and shall include all incidental costs, labor, overhead charges, travel, payroll expenses, freight, equipment acquisition and maintenance, demurrage, fuel surcharges, delivery charges, costs associated with obtaining permits, insurance, bonds, and risk management. No separate line-item charges shall be permitted for either response or invoice purposes.

Exhibit "A"

6. **SUBCONTRACTORS:** Respondent shall not subcontract or otherwise engage subcontractors to provide requested chemicals. Respondent may, however, use subcontracting and/or common carrier for authorized transportation of chemicals.
7. **PRICE INCREASE:** Contract prices for water treatment chemicals shall remain firm throughout the initial twelve (12) month term of the contract. A price increase to the agreement may be considered on the anniversary date of the Contract each year and shall be equal to the consumer price index for that year.
 - A. **Consumer Price Index (CPI):** Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U) for all Urban Consumers. The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average (January through June OR July through December); and each (January through June OR July through December six month average) thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No retroactive contract price adjustments will be allowed. The Consumer Price Index (CPI) is found at the Bureau of Labor Statistics, Consumer Price Index website: <http://www.bls.gov/cpi>
 - B. **Procedure to Request Increase:**
 - i. Mail the written price increase request with the rate detail comparison and comprehensive calculation and any supporting documentation to the designated City Contract Specialist a minimum of 45 days prior to the annual Contract anniversary date. The detailed written calculation will be verified and confirmed. All written requests for increases must include the City of Round Rock contract number, solicitation reference information and contact information for the authorized representative requesting the increase. Price increase requests shall be sent by mail to:

**City of Round Rock
Purchasing Department
Attn: Contract Specialist
221 East Main Street
Round Rock, TX 79664-5299**
 - ii. Upon receipt of the request, the City reserves the right to either accept the escalation and make change to the purchase order within 30 days of the request or negotiate with the Vendor or cancel the agreement or purchase order if an agreement cannot be reached on the value of the increase.
8. **PERFORMANCE REVIEW:** The City reserves the right to review the awarded respondent(s) performance at any time during the contract term.
9. **ACCEPTANCE/INSPECTION:** Acceptance inspection should not take more than five (5) working days. The awarded respondent will be notified within the time frame if the services delivered are not in full compliance with the specifications. In the event the services are not performed to the satisfaction of the City; the vendor shall agree to reperform services to specification at no additional cost to the City. If any agreement or purchase order is cancelled for non-acceptance, the needed services may be purchased elsewhere.
10. **ORDER QUANTITY:** The quantities shown on the solicitation are estimates only. No guarantee of any minimum or maximum purchase is made or implied. The City will only order the services/goods needed to satisfy requirements within budgetary constraints, which may be more or less than indicated.
11. **PERMITS:** The successful Respondent shall verify and obtain all necessary permits, licenses, and/or certificates required by federal, state, and local laws, ordinances, rules, or regulations for the completion of the services as specified if required for the project.
12. **AWARD:** The City reserves the right to enter into an Agreement or a Purchase Order with a single award, split award, primary and secondary award, non-award, or use any combination that best serves the interest and at the sole discretion of the City. Respondents to the solicitation will be notified when City staff recommendation of award has been made. The award announcement will be posted to the City's website at <https://www.roundrocktexas.gov/city-businesses/solicitations/> once City Council has approved the recommendation of award and the agreement has been executed.

Exhibit "A"

13. **POST AWARD MEETING:** The City and successful Respondent(s) may have a post award meeting to discuss, but not be limited to the following:

- A. The method to provide a smooth and orderly transition of services performed from the current contractor.
- B. Provide City contact(s) information for implementation of agreement.
- C. Identify specific milestones, goals, and strategies to meet objectives.

14. **POINT OF CONTACT (POC) / DESIGNATED REPRESENTATIVE:**

- A. **Contractor's point of contact:** In order to maintain consistent standards of quality work performed across the City, the City shall be provided with a designated and identified point of contact upon award of the contract to include contact information. The City's designated representative shall be notified by the Respondent immediately should the point of contact change.
- B. The City's designated representative:

Michael De Santis
Wastewater Treatment Plant
Utilities and Environmental Services Department
Phone: 512-218-2005
E-mail: mdesantis@roundrocktexas.gov

Exhibit "A"

PART IV SPECIFICATIONS

1. **PURPOSE:** The City of Round Rock, herein after "the City" seeks a bid from firms experienced in providing bulk delivery services of liquid sulfur dioxide in one-ton cylinders to the Wastewater Treatment Plant.
2. **TRANSPORTATION AND DELIVERY REQUIREMENTS:** The following transportation requirements are expected to be followed for the duration of the resulting contract-
 - A. Respondent may use subcontracting and/or common carrier for authorized transportation of chemicals.
 - B. Chemicals shall be delivered in conformance with all applicable federal, state, and local laws.
 - C. Items delivered shall be in new and unused condition.
 - D. All chemicals delivered shall be in suitable containers for shipment and storage.
 - E. All empty containers shall be removed by the vendor upon delivery of new containers at no cost to the City.
 - F. All chemical deliveries shall be transported in clean, properly identified, and labeled vehicles used only for the transport and delivery of the designated chemical. As applicable, the City will accept a certification of cleanliness in lieu of dedicated tanker trucks so long as all other elements of the chemical specifications are met.
 - G. All deliveries must include a certified weight ticket.
 - H. Deliveries shall be made during normal working hours; Monday-Friday 7:00AM-2:00PM unless otherwise agreed upon.
 - I. All deliveries shall be scheduled with the City.
 - J. Respondent shall notify the City of any possible delays and will continue to advise the City daily until the delivery is made. Default in scheduled delivery or failure to meet specifications, authorizes the City to purchase the product from a supplier of choice and charge overage (if any) to the defaulting vendor.
 - K. Delivery locations are as follows:

Brushy Creek Regional Wastewater Plant
3939 E. Palm Valley Blvd.
Round Rock, TX 78664
3. **CHEMICAL SPECIFICATIONS:** Liquid Sulfur Dioxide shall-
 - A. Be delivered in one-ton cylinders that can be unloaded by the City's hoist.
 - B. Be a minimum of 99.9% pure by weight as obtained from vaporized liquid sulfur dioxide.
 - C. Not contain impurities harmful or deleterious to public health when added to wastewater.
 - D. Comply with:
 - i. U.S. Environmental Protection Agency (EPA) requirements: <https://www.epa.gov/>
 - ii. Texas Commission on Environmental Quality (TCEQ). <https://www.tceq.texas.gov/>
 - iii. Occupational Safety and Health Administration (OSHA) safety requirements. <http://www.osha.gov/>
 - iv. Federal Motor Carrier Safety Regulations specifically 49CFR part 383. <https://www.fmcsa.dot.gov/regulations/title49/b/5/3%20>
4. **TESTING REQUIREMENTS:**
 - A. The City of Round Rock reserves the right to request chemical product samples.
 - B. Upon request from the City, the awarded vendor shall submit samples for testing within 14 days of the request at no cost to the City.
 - C. Samples will be sent to:

Michael De Santis
Brushy Creek Regional Wastewater Plant
3939 E. Palm Valley Blvd
Round Rock, TX 78664

Exhibit "A"

5. **CONTRACTOR RESPONSIBILITIES:** The Respondent shall-
 - A. Provide the City with a primary and secondary POC for each delivery.
 - B. Notify the City's POC 1 hour prior to delivery. If the City's primary point of contact is not available, Contractor shall contact the secondary point of contact.
 - C. Ensure each delivery driver has adequate directions to the delivery location.
6. **CITY RESPONSIBILITIES:** The City will-
 - A. Provide access to all delivery locations and have personnel on site at the time of delivery.
 - B. Provide the vendor with a primary and secondary POC for all deliveries.
 - C. Coordinate all deliveries with vendor.
 - D. Be responsible for inspecting delivered products for conformance.

Exhibit "A"

ATTACHMENT A BID SHEET

1. **ATTACHMENT A – BID SHEET** is posted in Solicitation Documents for IFB 23-002 Liquid Sulfur Dioxide in an Excel format on the City of Round Rock website at:
<https://www.roundrocktexas.gov/city-businesses/solicitations/>
 - A. In order to be considered responsive Attachment A- Bid Sheet must be completed, signed by an authorized representative and returned by the deadline for submission of response indicated in Part I Section 4 – Schedule of Events.
 - B. The Respondent, by submitting and signing Attachment A – Bid Sheet, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.
 - C. In order to do business with the City of Round Rock you must be registered with the City's Vendor Database. To register, go to: <https://roundrocktxvendors.munisselfservice.com/Vendors/default.aspx>
 - D. By the signature affixed on Attachment A – Bid Sheet, the Respondent hereby certifies that neither the Respondent nor the entity represented by the Respondent, or anyone acting for such entity has violated the antitrust laws of this State, codified in Section 15.01 et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly, the response made to any competitor, or any other person engaged in such line of business.
 - E. The Respondent agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and the amounts shown on bid sheet.

Exhibit "A"
Attachment A Bid Sheet
Liquid Sulfur Dioxide
IFB 23-002

The Respondent represents by their signature below that they are submitting a binding offer and are authorized to bind the respondent to fully comply with the solicitation documents contained in IFB 23-002 Liquid Sulfur Dioxide. The Respondent acknowledges that they have received and read the entire solicitation packet, attachments, addendums, and all documents incorporated by reference, and agrees to be bound by the terms therein.

Special Instructions: All prices must be quoted in order to be considered responsive, be advised that exceptions taken to any portion of the solicitation will jeopardize acceptance of the bid. Alternative bids will not be considered and unauthorized modifications to the bid sheet format will result in the rejection of the bid. The City reserves the right to purchase more or less than the quantities indicated below.

No.	Description	Estimated Quantity	Unit	Unit Cost	Extended Total
1	Liquid Sulfur Dioxide (one-ton cylinder)	25	Ton		1,885.00
Annual Total:					47,125.00

COMPANY NAME:

SLC Industries, Inc.

SIGNATURE OF AUTHORIZED REPRESENTATIVE:

Lenny Leal
Lenny Leal

PRINTED NAME:

361 946-1358

PHONE NUMBER:

EMAIL ADDRESS:

lleal@slcgroup.com

Exhibit "A"

ATTACHMENT B
REFERENCE SHEET

PLEASE COMPLETE AND RETURN THIS FORM WITH THE SOLICITATION RESPONSE

SOLICITATION NUMBER: 23-002
RESPONDENT'S NAME: DPC Industries, Inc. DATE: 10/31/22

Provide the name, address, telephone number and E-MAIL of at least three (3) valid Municipal, Government agencies or firms of comparable size that have utilized services that are similar in type and capacity within the last two (2) years. City of Round Rock references are not applicable. References may be checked prior to award. If references cannot be confirmed or if any negative responses are received it may result in the disqualification of submittal.

1. Company's Name Brazos River Authority
Name of Contact DANIEL POTELL
Title of Contact PURCHASING
E-Mail Address DANIEL.POTELL@BRAZOS.ORG
Present Address 4600 COBBS DRIVE
City, State, Zip Code WACO TX 76710
Telephone Number (254) 761-3272 Fax Number: (254) 400-2272
2. Company's Name CITY OF AUSTIN
Name of Contact MARK RECH
Title of Contact TREATMENT PLANT Supt.
E-Mail Address MARK.RECH@CITYOFAUSTIN.TX.GOV
Present Address 1017 FALLWELL LANE
City, State, Zip Code AUSTIN TX
Telephone Number (512) 972-0601 Fax Number: (512) 705-3230
cell
3. Company's Name CITY OF GEORGETOWN
Name of Contact RANDALL SWENSON
Title of Contact WATER TREATMENT Supt.
E-Mail Address RANDALL.SWENSON@GEORGETOWN.ORG
Present Address _____
City, State, Zip Code Georgetown TX
Telephone Number (512) 297-6010 Fax Number: ()

FAILURE TO PROVIDE THE REQUIRED INFORMATION WITH THE SOLICITATION RESPONSE MAY AUTOMATICALLY DISQUALIFY THE RESPONSE FROM CONSIDERATION FOR AWARD.

Exhibit "A"



ADDENDUM
CITY OF ROUND ROCK, TEXAS

Solicitation: IFB 23-002

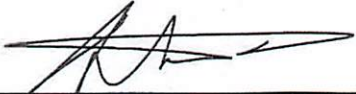
Addendum No: 1

Date of Addendum: 11/9/22

This addendum is to incorporate the following changes to the above referenced solicitation:

- I. **Extension:** The proposal due date is hereby extended until November 16, 2022 at 3:00PM CST.
- II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY:



Allen Reich, Purchaser
Purchasing Office, 512-218-6682

11/9/22

By the signature affixed below this addendum is hereby incorporated into and made a part of the above referenced solicitation.

ACKNOWLEDGED BY:



Name



Authorized Signature



Date

RETURN ONE SIGNED COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE WITH YOUR SEALED PROPOSAL. FAILURE TO DO SO MAY AUTOMATICALLY DISQUALIFY YOUR RESPONSE FROM CONSIDERATION FOR AWARD.

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

DPC Industries, Inc.

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

None

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☒ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☒ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 Brett C. Clapsaddle, CFO
DPC Industries, Inc.
Signature of vendor doing business with the governmental entity

01-30-2023

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING**

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

DPC Industries, Inc.
Houston, TX United States

Certificate Number:
2023-977414

Date Filed:
01/30/2023

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Round Rock, Texas

Date Acknowledged:

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

Bid # 23-002
Liquid Sulfur Dioxide

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Morian, S. Reed	Houston, TX United States	X	
	Morian, S. C.	Houston, TX United States	X	
	Karm, R. C.	Houston, TX United States	X	
	Clapsaddle, Brett C.	Houston, TX United States	X	
	Filer, Kurt R.	Houston, TX United States	X	
	Hixon, William L.	Houston, TX United States	X	

5 Check only if there is NO Interested Party.

☐**6 UNSWORN DECLARATION**

My name is Brett C. Clapsaddle, and my date of birth is [REDACTED].

My address is 300 Jackson Hill Street, Houston, TX, 77007, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 30th day of January, 2023.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

DPC Industries, Inc.
Houston, TX United States

Certificate Number:
2023-977414

Date Filed:
01/30/2023

Date Acknowledged:
02/02/2023

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Round Rock, Texas

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

Bid # 23-002
Liquid Sulfur Dioxide

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Morian, S. Reed	Houston, TX United States	X	
	Morian, S. C.	Houston, TX United States	X	
	Karm, R. C.	Houston, TX United States	X	
	Clapsaddle, Brett C.	Houston, TX United States	X	
	Filer, Kurt R.	Houston, TX United States	X	
	Hixon, William L.	Houston, TX United States	X	

5 Check only if there is NO Interested Party.

☐

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)



City of Round Rock

Agenda Item Summary

Agenda Number: G.3

Title: Consider a resolution approving an amendment to the agreement between the BCRUA and Thalle Construction Company for the repair of the 36" underwater pipeline.

Type: Resolution

Governing Body: City Council

Agenda Date: 3/9/2023

Dept Director: Michael Thane, Utilities and Environmental Services Director

Cost: \$413,676.39

Indexes: Regional Water Fund

Attachments: Resolution, Exhibit A, Form 1295

Department: Utilities & Environmental Services

Text of Legislative File 2023-076

The Brushy Creek Regional Utility Authority (BCRUA) Phase 1, Contract 2 Raw Water Line was completed in 2012 and consists of a 36-inch diameter ductile iron pipeline laid on the lake bed of Lake Travis. The pipeline connects an underwater pipeline manifold at the floating raw water intake barge to the 78-inch diameter raw water pipeline on Trails End Road. The 36-inch diameter raw water pipeline and the raw water intake barge are a temporary raw water delivery system to provide water to the BCRUA Water Treatment Plant until the Phase 2 Raw Water Delivery System comes online.

On December 21, 2020 the 36-inch diameter pipeline failed resulting in a loss of raw water to the BCRUA Water Treatment Plant. The raw water pipeline repair was finished in early May 2021 and the BCRUA system was placed back online.

On August 8, 2022, a routine underwater inspection discovered a leak on the 36-inch pipeline where it was repaired in 2021. In September, Thalle Construction Company was contracted with to make the repair to the raw water line.

On February 14, 2022 the 36-inch diameter pipeline suffered another failure resulting in the loss of raw water to the Water Treatment Plant. Underwater inspections have discovered the pipeline pulled apart where the previous repair connected to the existing pipeline. BCRUA Operations Committee engaged Thalle Construction Company to provide an emergency contract to repair the pipeline. Thalle Construction Company is currently mobilized on Lake Travis for the underwater work associated with the BCRUA Phase 2 Deep Water Intake Project.

The total cost of the repair is estimated to be \$1,551,092.59. The City of Round Rock is responsible for

26.67% of the raw water repair costs. The City of Round Rock's cost is \$413,676.39.

Cost: \$413,676.39 (RR Only)

Source of Funds: Regional Water Fund

RESOLUTION NO. R-2023-076

WHEREAS, the City of Round Rock, Texas (the "City") is a participating and founding member of the Brushy Creek Regional Utility Authority, Inc., (the "BCRUA"); and

WHEREAS, on the 8th day of September 2022, BCRUA and Thalle Construction Company executed a Standard Form of Agreement ("Agreement") for the repair of a 36-Inch Underwater Pipeline; and

WHEREAS, on the 22nd day of February, 2023, BCRUA approved Amendment No. 1 to the Agreement with Thalle Construction Company for an additional emergency repair to the 36-Inch Underwater Pipeline; and

WHEREAS, the City desires to approve the action of the BCRUA in entering into said Amendment No. 1 with Thalle Construction Company, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the City Council hereby approves the action of the Brushy Creek Regional Utility Authority in entering into Amendment No. 1 with Thalle Construction Company, a copy of said contract being attached hereto as Exhibit "A" and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 9th day of March, 2023.

CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:

MEAGAN SPINKS, City Clerk

EXHIBIT

"A"

AMENDMENT NO. 1 TO BRUSHY CREEK REGIONAL UTILITY AUTHORITY STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

This First Amendment to Standard Form of Agreement between Brushy Creek Regional Utility Authority (hereafter "Owner") and Thalle Construction Company (hereafter "Contractor") is dated the _____ day of February, 2023.

RECITALS

WHEREAS, on the 8th day of September 2022, Owner and Contractor executed a Standard Form of Agreement ("Agreement") for the repair of a 36-Inch Underwater Pipeline; and

WHEREAS, an additional emergency repair to the 36-Inch Underwater Pipeline is now required; and

WHEREAS, completion of said additional repair is necessary to protect the public health and safety of the residents; and

WHEREAS, Owner and Contractor desire to amend the Agreement to include the Work and Cost of Work for the additional required repair as set forth herein;

ARTICLE I THE WORK

The Work required to be performed by Contractor pursuant to the Agreement shall be amended to include the additional work described in the attached Exhibit "A1," incorporated herein by reference for all purposes. The Scope of Work described in Exhibit "A" and the additional Scope of Work described in the attached Exhibit "A1" shall collectively be considered the "Work" for the purpose of the Agreement.

ARTICLE II COST OF WORK

The Cost of the Work set forth in the Agreement shall be amended to include the itemized costs in the attached Exhibit "B1," incorporated herein by reference for all purposes. The costs enumerated in Exhibit "B" and the costs enumerated in the attached Exhibit "B1" shall collectively be considered the "Cost of Work" for the purpose of this Agreement.

ARTICLE III
BOND COSTS

Contractor shall provide amended Payment and Performance Bonds in the amount of the amended Cost of Work. Copies of said amended Bonds shall be attached hereto as Exhibit "C," incorporated herein by reference for all purposes.

ARTICLE IV
EXHIBITS

The following exhibits supplement this Agreement and shall form part of the Contract Documents:

Exhibit "A1"	(Additional Scope of Work)
Exhibit "B1"	(Costs for Additional Scope of Work)
Exhibit "C"	(Amended Payment and Performance Bonds)

ARTICLE V
MISCELLANEOUS

This Amendment No. 1 shall amend the original Agreement only as set forth herein with no other changes in terms or conditions of the original Agreement.

[Signatures on the following page.]

IN WITNESS WHEREOF, Owner and Contractor have executed this Amendment No. 1 to be effective as of the last date of due execution by both parties.

OWNER:

BRUSHY CREEK REGIONAL UTILITY AUTHORITY

By: _____
Anne Duffy, its President

Date Signed: _____

**FOR BRUSHY CREEK REGIONAL UTILITY AUTHORITY,
APPROVED AS TO FORM:**

By: _____
Stephan L. Sheets, Attorney

CONTRACTOR:

THALLE CONSTRUCTION

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



February 17, 2023

BCRUA C/O
Walker Partners
804 Las Cimas Parkway
Austin, TX 78746

Attn: Aaron Archer

**Re: BCRUA Phase 2 Raw Water Delivery System
36-In Underwater Line Repair (
February 14, 2023 break event Proposal)**

Please consider this as Thalle Construction Company's ("Thalle") initial assessment, generalized workplan, preliminary schedule, and estimated additional cost of all labor, equipment, material, and fuel necessary to complete the repair plan developed from the investigative dive performed by Global Diving on February 14, 2023 and as outlined on the work plan below and detailed on the attached plan view. This work plan was developed in a cooperative manner with input from both the Owners Engineering Team, Global Diving and Thalle personnel. The information provided is an estimate of probable costs based on available data to date and assumes the use of Owner provided pipe and material fittings as outlined on the attached work plan and the added materials provided by Thalle also outlined on the work plan. Due to the emergency nature of this work the material costs are estimated and final compensation will be based on actual invoice costs. The attached proposal is an estimate, not a maximum amount not to exceed. The final cost will be determined on the cost-plus basis as outlined in *Article 11.4.1.3* of the provided "short form".

Emergency Repair Plan 02.17.2023

This plan is intended to describe the Thalle/ Global's means and methods for repairs of the existing 36" Raw Water Pipeline Running through Lake Travis.

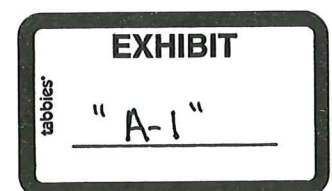
Mobilization

Global will be utilizing the existing Poseidon Barges provided by Thalle. A marine architect has performed a stability analysis. The Dive Crew is assembling the Emergency Work Platform on 02.17.2023. The Crane being utilized on the water is a Broaderson IC80- 3J. Thalle will be providing an operator for the crane to facilitate the tripping process, as well as tugboat movements.

Repair Parts and Fittings

- 2 @ Mega Lug Collar (EBAA 1100) (By BCRUA)
- 2 @ Split Mega Lug Collar (EBAA 1100 SBC) (By Thalle)
- 1 @ MJ Flange Adapter with extra gaskets)(By BCRUA)
- 1 @Rebuild Kit for Disassembly Joint (By Thalle)
- 30 @ 1"dia. B7? All thread rods six feet long each (200 LF) (By Thalle)
- 150 @ Heavy Hex Nuts with washers for all thread (By Thalle)
- 8 @ 1"x 4" Grade 5 bolts with Nyloc Nuts and Washers (for the chocks) (By Thalle)

10110 E FM 917 – Alvarado, TX 76009; Phone: (817) 728-3891





4 @ 1" x 8" Rock Bolts (By Thalle)

W-14 Beam for Chocks 30feet long (By Thalle)

44 feet of High Denier Neoprene (By Thalle)

300 Ready mix grout bags for pipeline support (By Thalle)

Repair Plan

Day (1) 02.17.2023

Construct Dive Barge with crane and spuds. Global will take possession of the repair fittings and inventory. Additional crew dispatched from Seattle and flown to Austin, logistics handled internally.

Day (2) 02.18.2023

Finish all barge assembly and setup. By end of shift the dive barge will be ready for work on Monday.

Global will on the initial dive measure the location of the pipe on each of the horizontal supports of the cross bracing for record.

Global will identify and measure the angular deflection of the two ball joints in the Flex Tend Double Ball Joint, the single Ball Joint, the first pipe joint up stream of the discontinuity and the first pipe joint downstream of the repair area.

Global will provide a redline drawing of the hydrographic survey with the known parts identified for record.

Day (3) 02.20.2023

Dayshift start time 0700. Move barge on location, establish work site and begin site cleanup, remove existing grout bags and place on materials barge.

Nightshift start time 1900. Continue with site preparation, removal of grout bags and place on materials barge.

Day (4) 02.21.2023

Dayshift will remove MJ flange adapter, Mega-Lug, all hardware, and Disassembly Joint.

Nightshift to begin straightening pipe, and begin topside fabrication of all 3 chocks.

Day (5) 02.22.2023

Dayshift will rebuild disassembly joint on deck and continue straightening pipe including resetting the Flex-Tend Force Balanced Double Ball Joint to

+8"-8" (simultaneous operation). Continue with chock fabrication.

Nightshift will check ovality of pipe and locate the cut. The Clamshell cutter will be installed and the pipe cut. The coupon will be marked at 12o'clock and saved for BCRUA.

Day (6-8) 02.23.2023 – 02.25.2023

Dayshift and Nightshift will install 2 Mega-Lug collars, the new MJ flange adapter with Gasket, rebuilt Disassembly joint, and Split Mega-Lug Collar with long Tie Rods.



Day (9-10) 02.26.2023 – 02.27.2023

Dayshift and Nightshift will torque all new hardware to spec. 48 nuts torqued and 24 nuts snugged (mid span hardware).

Day (11) 02.28.2023

Dayshift installs downstream Split Mega-Lug Collar (EBAA 1100SBC), replacing every fourth flange bolt (total of 6 long tie bolts) to the MJ Flange Adapter and torques all new hardware to spec. Begins installing chocks with neoprene.

Nightshift finishes installing chocks and begins supporting pipeline with new grout bags.

Day (12) 03.01.2023

Dayshift finishes supporting pipeline in repair area (entire repair area) leaving space around every fitting for inspection purposes.

Nightshift will perform a full video inspection of all fittings and hardware and prove torque on all installed hardware for the length of the original repair. Divers will install two bubble levels at the crown of the pipeline with splash zone (underwater epoxy) directly in line with the 'H' piling. These levels will have a set measurement point and create a repeatable target for all future inspections. The bubble levels will also show any indication of pipe movement and roll.

Day (13) 03.02.2023

Day shift finalizes any open tasks and unlocks the LOTO from the barge control room. Pipeline is charged and monitored for leaks.

Nightshift continues monitoring for leaks for the first 24 hours.

During the final inspection, Global will provide vertical offset deflection of the pipeline with an angle reading bubble level.

Day (14) 03.03.2023

Repair complete and shift work ends.

Plan B (Additional 2 days, Shift begins 02.22.2023 – 02.24.2023)

Pipe is too out of round or cut too far back to reconnect

Day (1) Plan B

Dayshift will cut a section of BCRUA supplied pipe long enough to join both ends of the pipeline. The MJ Flange Adapter will be installed on the downstream end as originally planned with two Mega-Lug Collars and long Tie Rods.

Nightshift will install two Mega-Lug collars on the new section of pipe and two Mega-Lug Adaptors on the upstream original pipe and connect with a BCRUA supplied MJ Sleeve.

Day (2) Plan B

Dayshift and Nightshift Torque all Mega-Lug Tie Bolts and foot bolts to spec.



See attached cost outline for the estimated repair work price. This pricing outline includes 10 inspection dives over the next 6 months as requested by BCRUA representatives. This includes the actual dive, an inspection video, full written report and review meeting.

See attached schedule based on authorization and execution of the contract amendment.

Note Thalle and our subcontracting partner have begun mobilization and material procurement based on the email notice provided on February 15, 2023 by Karen Bondy to Robert Farrow.

Respectfully Submitted

Robert Farrow

Senior Project Manager

Rfarrow@thalle.com

10110 E. FM 917

Alvarado, Texas 76009

direct: 817.728.3891 | cell: 817.583.4230

Proposed Contract Modification

ISSUING OFFICE

Change Request



ATTN: Joerg Moser
Walker Partners
BCRUA Emergency Repair

Robert Farrow
10110 E. FM 917
Alvarado, Texas 76009

Project No.

Reference: [Emergency Underwater Repair](#)

Date:

[February 17, 2023](#)

Description:

[See Outline](#)

CONTRACTOR'S PROPOSAL

DESCRIPTION		AMOUNT
LABOR		\$284,703.25
MATERIALS & MISC EXPENSES		\$43,628.10
SUBCONTRACTOR OTHER		\$534,337.00
SUBTOTAL		\$862,668.35
MARGIN	25.00%	\$215,667.09
SUBTOTAL W/ MARGIN		\$1,078,335.44
EQUIPMENT		\$452,374.00
		\$452,374.00
SUBTOTAL EQUIPMENT COSTS		\$452,374.00
Insurance	0.87%	\$11,440.87
BONDS	0.68%	\$8,942.29
SUBTOTAL BONDS		\$20,383.16
UNIT PRICE WORK		
UNIT	UNIT PRICE	QUANTITY
ls		1.00
		\$0.00
SUBTOTAL UNIT PRICE WORK		\$0.00
Total Cost of Change		\$1,551,092.59

Contractor's Certification: I certify this estimate is made in good faith, and the supporting documentation is accurate and complete to the best of my knowledge and belief.

Robert Farrow
Project Manager

Date 2/15/2023

EXHIBIT

tabbies

"B-1"

0.00
See Outline

Emergency Underwater Repair
Crew Labor Costs

100A

Activity: See Outline

Resource ID	Resource Description	QTY.	UoM	Unit Cost	Burden (55%)	Overtime	Rate	Extended Cost
FMNUTILITY	Marine Foreman	336.00	MH	\$ 55.00	1.55	0	\$ -	\$ 28,644.00
LAB1	Land Support skilled labor (2)	336.00	MH	\$ 26.00	1.55	176	\$ 2,288.00	\$ 15,828.80
LAB3	Land Support Pipe Fitters (2)	168.00	MH	\$ 42.00	1.55	88	\$ 1,848.00	\$ 12,784.80
LAB4	Land Support Labor (2)	84.00	MH	\$ 55.00	1.55	0	\$ -	\$ 7,161.00
OE2	Land Support Welder	84.00	MH	\$ 26.00	1.55	176	\$ 2,288.00	\$ 5,673.20
OE3	Land Support Pipe Fitters (2)	84.00	MH	\$ 32.00	1.55	88	\$ 1,408.00	\$ 5,574.40
	Land Support Labor (2)	84.00	MH	\$ 24.00	1.55	88	\$ 1,056.00	\$ 4,180.80
SUP 5	Land Support Welder	84.00	MH	\$ 60.00	1.55	40	\$ 1,200.00	\$ 9,012.00
	Land /Marine Crane Operator	336	MH	\$ 78.00	1.55	232	\$ 9,048.00	\$ 49,670.40
	Field Engineer	168	MR	\$ 48.00	1.55	NO	0.00%	\$ 12,499.20
	Field Sup	168	MR	\$ 95.00	1.55	NO	0.00%	\$ 24,738.00
	Safety Rep	336	HR	\$ 65.00	1.55	NO	0.00%	\$ 33,852.00
			MR		1.55	NO	0.00%	\$ -
	Per Diam	2268	MR	\$ 10.00	1.00	NO	0.00%	\$ 22,680.00
	Smalls Tools Modifier	0.25		\$ 209,618.60	1	NO	0.00%	\$ 52,404.65
PM	Project Manager		MH	\$ 110.00	1.55%	NO	0.00%	\$ -
			Activity	0	Subtotal:			\$ 284,703.25

0.00
Emergency Underwater Repair

Emergency Underwater Repair

200A
EQUIPMENT COSTS

Activity:

200A

Resource ID	Resource Description	QTY.	UoM	Unit Cost	Markup	Taxable	Tax Rate (8.25%)	Extended Cost
3-TSRENTAL			LS			YES	8.25%	\$ -
Cutter	Clamshell cutter	11.00	day	\$ 1,469.00	N/A	NO	0.00%	\$ 16,159.00
Veh Foreman		216.00	hr	\$ 8.75	N/A	NO	0.00%	\$ 1,890.00
8GEN5KW	Carry Deck Crane	216.00	HR	\$ 481.25	N/A	NO	0.00%	\$ 103,950.00
8EX03S	40x60 Barge	216.00	Hr	\$ 562.50	N/A	NO	0.00%	\$ 121,500.00
8EX06S	Freight Charges	48.00	HR	\$ 306.25	N/A	NO	0.00%	\$ 14,700.00
8LDR05	Misc Specialty Tools	1.00	ls	\$ 9,375.00	N/A	NO	0.00%	\$ 9,375.00
8PU01	Tug Boat	216.00	HR	\$ 395.00	N/A	NO	0.00%	\$ 85,320.00
8TRUCKW2	Welding Machine	216.00	HR	\$ 55.00	N/A	NO	0.00%	\$ 11,880.00
8TS3	Manboat	216.00	HR	\$ 268.75	N/A	NO	0.00%	\$ 58,050.00
Extended Pipeline Inspections								
8PUMP03E	30x15 Mat Barge	40.00	HR	\$ 343.75	N/A	NO	0.00%	\$ 13,750.00
8TOOLS01	Tug Boat	40.00	HR	\$ 395.00	N/A	NO	0.00%	\$ 15,800.00
					N/A	NO	0.00%	\$ -
			HR		N/A	NO	0.00%	\$ -
			HR		N/A	NO	0.00%	\$ -
			HR		N/A	NO	0.00%	\$ -
			HR		N/A	NO	0.00%	\$ -
			HR		N/A	NO	0.00%	\$ -
			HR		N/A	NO	0.00%	\$ -
			HR		N/A	NO	0.00%	\$ -
Activity 200A Subtotal:								\$ 452,374.00
0								

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contro

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Emergency Underwater Repair

See Outline

Materials

Activity: Mechanical Fitment (Materials)

200B

Resource ID	Resource Description	QTY.	UoM	Unit Cost	Taxable	Tax Rate (8.25%)	Extended Cost
					NO	0.00%	\$ -
					NO	0.00%	\$ -
	Porta Pots	0.00	Mon	\$ 675.00	NO	0.00%	\$ -
	Dumpster	0.00	Mon	\$ 1,275.00	NO	0.00%	\$ -
	Dumpster Disposal Fees	2.00	ea	\$ 1,275.00	NO	0.00%	\$ 2,550.00
	Spill Containment Kit	1.00	ea	\$ 4,500.00	NO	0.00%	\$ 4,500.00
	Life Rings	0.00	ea	\$ 1,275.00	NO	0.00%	\$ -
	Misc Mats Steel	1.00	ls	\$ 5,000.00	NO	0.00%	\$ 5,000.00
	Concrete bags	300.00	ea	\$ 18.00	NO	0.00%	\$ 5,400.00
	Mid Span Restraint	4.00	ea	\$ 3,300.00	NO	0.00%	\$ 13,200.00
	Gaskets	2.00		\$ 130.00	NO	0.00%	\$ 260.00
	1" All Thread rod and bolts	1.00	ls	\$ 1,670.00	NO	0.00%	\$ 1,670.00
	Coil Rod 3/4 Washers and Nuts	1.00	ls	\$ 2,245.00	NO	0.00%	\$ 2,245.00
	Contact Cement	3.00	gal	\$ 45.00	NO	8.25%	\$ 146.14
	1" Anchors	1.00	box	\$ 145.00	NO	8.25%	\$ 156.96
	Misc Mats Steel	1.00	ls	\$ 8,500.00	NO	0.00%	\$ 8,500.00
					YES	8.25%	\$ -
					NO	0.00%	\$ -
					NO	0.00%	\$ -
					NO	0.00%	\$ -
					NO	0.00%	\$ -
				Activity	200B	Subtotal:	\$ 43,628.10

0

contro

0

Emergency Underwater Repair

See Outline

Activity: Subcontractor Other Expenses 300A

Resource ID	Resource Description	QTY.	UoM	Unit Cost	Burden (50%)	Extended Cost
Global Mob		1.00	LS	\$ 54,000.00	N/A	\$ 54,000.00
					N/A	\$ -
Global 24 Hour Crew		14.00	LS	\$ 27,467.00	N/A	\$ 384,538.00
			LS		N/A	\$ -
Investigation 2.14.23		1.00	LS	\$ 15,799.00	N/A	\$ 15,799.00
OTHER			LS	\$ -	N/A	\$ -
OTHER			LS	\$ -	N/A	\$ -
Inspections		10.00	EA	\$ 8,000.00	N/A	\$ 80,000.00
Tug and Barge	See Equipment Schedule	40.00	HR	\$ -	N/A	\$ -
OTHER			LF		N/A	\$ -
OTHER			LF		N/A	\$ -
OTHER			LS		N/A	\$ -
Pump Sub			LS		NA	\$ -
OTHER				\$ -	N/A	\$ -

SUBTOTAL SUBCONTRACTOR OTHER

300A

SUBTOTAL

\$

534,337.00

0

0

contro

EXHIBIT “C”

(Amended Payment and Performance Bonds)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2023-988682

Date Filed:
02/28/2023

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

THALLE CONSTRUCTION CO., INC
ALVARADO, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

CITY OF ROUND ROCK

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

000000 OFF-SITE 24" WWL REPAIR
OFF-SITE 24" WWL REPAIR AT GATTIS/GREENLAWN

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 UNSWORN DECLARATION

My name is John Zupan, and my date of birth is [REDACTED].

My address is 10110 E. FM 917, Alvarado, TX, 76009, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Johnson County, State of Texas, on the 28 day of February, 20 23.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

THALLE CONSTRUCTION CO., INC
ALVARADO, TX United States

Certificate Number:
2023-988682

Date Filed:
02/28/2023

Date Acknowledged:
03/02/2023

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

CITY OF ROUND ROCK

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

000000 OFF-SITE 24" WWL REPAIR
OFF-SITE 24" WWL REPAIR AT GATTIS/GREENLAWN

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)



City of Round Rock

Agenda Item Summary

Agenda Number: G.4

Title: Consider a resolution authorizing the City Manager to execute a Letter of Intent to Oncor Electric Delivery Company, LLC regarding a request to purchase the streetlighting system.

Type: Resolution

Governing Body: City Council

Agenda Date: 3/9/2023

Dept Director: Gary Hudder, Transportation Director

Cost:

Indexes:

Attachments: Resolution, Exhibit A

Department: Transportation

Text of Legislative File 2023-074

In 2021, the City retained Tanko to perform a street light inventory and audit on street lights throughout the City. This audit was done partially in anticipation of the City's negotiations with TxDOT of a new maintenance agreement and primarily to identify current costs associated with various utility owned street lights. In 2022, the City approved an agreement with Tanko for additional services for preliminary ownership support, which included a preliminary feasibility of purchasing the existing Oncor owned street lighting system, an appraisal of that system, and a cost benefit analysis of the City's potential purchase of the system. Based on that analysis - the City could see substantial cost savings for long term maintenance and deliver a more consistent service to residents by purchasing the existing infrastructure and converting existing street lights to LED fixtures.

This item would authorize the City Manager to sign a letter of intent to Oncor regarding the purchase of approximately 5800 street lights within City limits.

RESOLUTION NO. R-2023-074

WHEREAS, the City of Round Rock, Texas (“City”) is interested in pursuing the negotiation and potential purchase of the streetlight system currently owned by Oncor Electric Delivery Company, LLC (“Oncor”), located within the City’s municipal boundaries (“Streetlight System”); and

WHEREAS, the City Council desires to approve a Letter of Intent to Oncor to pursue the negotiation and potential purchase of the Streetlight System, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City a Letter of Intent to Oncor regarding the City’s request to purchase the Streetlighting System, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 9th day of March, 2023.

CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:

MEAGAN SPINKS, City Clerk



EXHIBIT
"A"

Mayor
Craig Morgan

Mayor Pro-Tem
Rene Flores

Councilmembers
Michelle Ly
Matthew Baker
Frank Ortega
Kristin Stevens
Hilda Montgomery

City Manager
Laurie Hadley

City Attorney
Stephanie Sandre

March 10, 2023

Armando Perez
Customer Operations
Oncor Electric Delivery Company, LLC
Armando.perez@oncor.com
350 Texas Avenue
Round Rock, TX 78664

RE: Request to Purchase Streetlighting System

Dear Mr. Perez,

The City of Round Rock ("City") is interested in pursuing the negotiation and potential purchase of the streetlight system currently owned by Oncor Electric Delivery Company, LLC ("Oncor"), located within the City's municipal boundaries. This includes the streetlight fixture, the arm, any and all wiring above the ground feeding the streetlight from Oncor (excludes any wiring associated with the utility distribution network), base (where applicable), and the pole (if a standalone pole). The City has engaged Tanko Lighting, a streetlight consulting firm, to help facilitate this matter.

The City would prefer to negotiate and reach a mutually agreeable purchase price with Oncor, as it is the most advantageous path for both parties. However, the City is aware and willing to utilize alternative options to secure and finalize the transfer of ownership, if necessary.

The City is open to discussing this matter further. Please contact me by March 17th to schedule a time to meet.

Thank you for your time and attention.

Sincerely,

Laurie Hadley
City Manager



City of Round Rock

Agenda Item Summary

Agenda Number: G.5

Title: Consider a resolution authorizing the Mayor to execute a Professional Consulting Services Agreement with Tanko Streetlighting, Inc. for final ownership support of the streetlight system.

Type: Resolution

Governing Body: City Council

Agenda Date: 3/9/2023

Dept Director: Gary Hudder, Transportation Director

Cost: \$172,865.00

Indexes: General Fund

Attachments: Resolution, Exhibit A, Form 1295

Department: Transportation

Text of Legislative File 2023-075

In 2021, the City retained Tanko to perform a street light inventory and audit on street lights throughout the City. This audit was done partially in anticipation of the City's negotiations with TxDOT of a new maintenance agreement and primarily to identify current costs associated with various utility owned street lights. In 2022, the City approved an agreement with Tanko for additional services for preliminary ownership support, which included a preliminary feasibility of purchasing the existing Oncor owned street lighting system, an appraisal of that system, and a cost benefit analysis of the City's potential purchase of the system. Based on that analysis - the City could see substantial cost savings for long term maintenance and deliver a more consistent service to residents by purchasing the existing infrastructure and converting existing street lights to LED fixtures.

The scope of services to assist the City in final ownership support and LED conversion includes the following:

Ownership support - including providing process guidance, ownership negotiation and consulting related to the purchase of the street lights from Oncor, and final coordination of ownership transfer.

LED Conversion - design of the system for conversion to LED, and providing a conversion plan, and providing some specialized design for existing fixtures as necessary.

The contract would be a not to exceed amount of \$172,865.

Cost: \$172,865.00

Source of Funds: General Fund

RESOLUTION NO. R-2023-075

WHEREAS, the City of Round Rock (“City”) desires to retain professional consulting services related to final ownership support of the City’s streetlight system; and

WHEREAS, Tanko Streetlighting, Inc. has submitted an Agreement for Professional Consulting Services to provide said services; and

WHEREAS, the City Council desires to enter into said agreement with Tanko Streetlighting, Inc., Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City an Agreement for Professional Consulting Services Related to Final Ownership Support of the Streetlight System with Tanko Streetlighting, Inc., a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 9th day of March, 2023.

CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:

MEAGAN SPINKS, City Clerk

EXHIBIT
"A"

**CITY OF ROUND ROCK AGREEMENT FOR
PROFESSIONAL CONSULTING SERVICES RELATED TO
FINAL OWNERSHIP SUPPORT OF THE
STREETLIGHT SYSTEM WITH
TANKO STREETLIGHTING, INC.**

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

THIS AGREEMENT for professional consulting services related to final ownership support of the City of Round Rock’s streetlight system (the “Agreement”), is made 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 TANKO STREETLIGHTING, INC., located at 220 Bayshore Boulevard, San Francisco, California 94124 (the “Consultant”).

RECITALS:

WHEREAS, professional consulting services related to final ownership support of the City’s streetlight system (the “Project”) are desired by the City; and

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

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

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

NOW, THEREFORE, WITNESSETH:

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

1.0 EFFECTIVE DATE AND TERM

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

B. The term of this Agreement shall commence upon the effective date hereof and terminate upon successful completion of the services.

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

2.0 SCOPE OF SERVICES

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

Consultant shall satisfactorily provide all services described herein and as set forth in Exhibit "A." Consultant shall perform services in accordance with this Agreement, in accordance with the appended Proposal and Scope of Services and in accordance with due care and prevailing consulting industry standards for comparable services.

3.0 LIMITATION TO SCOPE OF SERVICES

Consultant's undertaking shall be limited to performing services for City and/or advising City concerning those matters on which Consultant has been specifically engaged, and may only be modified by a written Supplemental Agreement executed by both parties as described in Section 9.0.

4.0 CONTRACT AMOUNT

In consideration for the professional consulting services to be performed by Consultant, City agrees to pay Consultant an amount not-to-exceed **One Hundred Seventy-Two Thousand Eight Hundred Sixty-Five and No/100 Dollars (\$172,865.00)** as set forth in Exhibit "A."

5.0 INVOICE REQUIREMENTS AND TERMS OF PAYMENT

Invoices: To receive payment, Consultant shall prepare and submit detailed invoices to the City, in accordance with the delineation contained herein, for services rendered. Such invoices for professional services shall track the referenced Scope of Work, and shall detail the services performed, along with documentation for each service performed. Payment to Consultant shall be made on the basis of the invoices submitted by Consultant and approved by the City. Such invoices shall conform to the schedule of services and costs in connection therewith.

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

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

6.0 INSURANCE

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

7.0 PROMPT PAYMENT POLICY

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

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

8.0 NON-APPROPRIATION AND FISCAL FUNDING

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

such termination by giving Consultant a written notice of termination at the end of its then-current fiscal year.

9.0 SUPPLEMENTAL AGREEMENT

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

10.0 TERMINATION; DEFAULT

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

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

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

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

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

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

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

11.0 NON-SOLICITATION

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

12.0 INDEPENDENT CONTRACTOR STATUS

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

- (1) Consultant has the right to perform services for others during the term hereof.
- (2) Consultant has the sole right to control and direct the means, manner and method by which it performs its services required by this Agreement.
- (3) Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
- (4) Consultant or its employees or subcontractors shall perform services required hereunder, and the City shall not hire, supervise, or pay assistants to help Consultant.

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

13.0 CONFIDENTIALITY; MATERIALS OWNERSHIP

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

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

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

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

subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

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

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

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

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

the extent that they form part of the Deliverables.

14.0 WARRANTIES

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

15.0 LIMITATION OF LIABILITY

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

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

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

16.0 INDEMNIFICATION

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

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

17.0 ASSIGNMENT AND DELEGATION

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

18.0 LOCAL, STATE AND FEDERAL TAXES

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

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

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

19.0 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

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

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

C. In accordance with 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 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of

at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement.

20.0 FINANCIAL INTEREST PROHIBITED

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

21.0 DESIGNATION OF REPRESENTATIVES

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

Brian Kuhn
Assistant Director
Transportation Department
3400 Sunrise Road
Round Rock, Texas 78665
bkuhn@roundrocktexas.gov

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

Jason Tanko
Chief Executive Officer
Tanko Streetlighting, Inc.
220 Bayshore Boulevard
San Francisco, CA 94124
jason@tankolighting.com

22.0 NOTICES

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

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

Notice to Consultant:

Tanko Streetlighting, Inc.
220 Bayshore Boulevard
San Francisco, CA 94124

Notice to City:

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

AND TO:

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

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

23.0 APPLICABLE LAW; ENFORCEMENT AND VENUE

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

24.0 EXCLUSIVE AGREEMENT

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

25.0 DISPUTE RESOLUTION

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

26.0 SEVERABILITY

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

27.0 STANDARD OF CARE

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

28.0 GRATUITIES AND BRIBES

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

29.0 RIGHT TO ASSURANCE

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

30.0 MISCELLANEOUS PROVISIONS

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

Consultant shall be fully responsible for its delays or for failures to use reasonable efforts in accordance with the terms of this Agreement. Where damage is caused to City due to

Consultant's failure to perform in these circumstances, City may withhold, to the extent of such damage, Consultant's payments hereunder without a waiver of any of City's additional legal rights or remedies. City shall render decisions pertaining to Consultant's work promptly to avoid unreasonable delays in the orderly progress of Consultant's work.

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

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

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

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

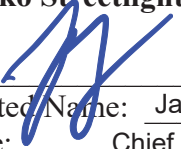
[Signatures on the following page.]

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

City of Round Rock, Texas

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

Tanko Streetlighting, Inc.

By:  _____
Printed Name: Jason Tanko
Title: Chief Executive Officer
Date Signed: 2/16/23

For City, Attest:

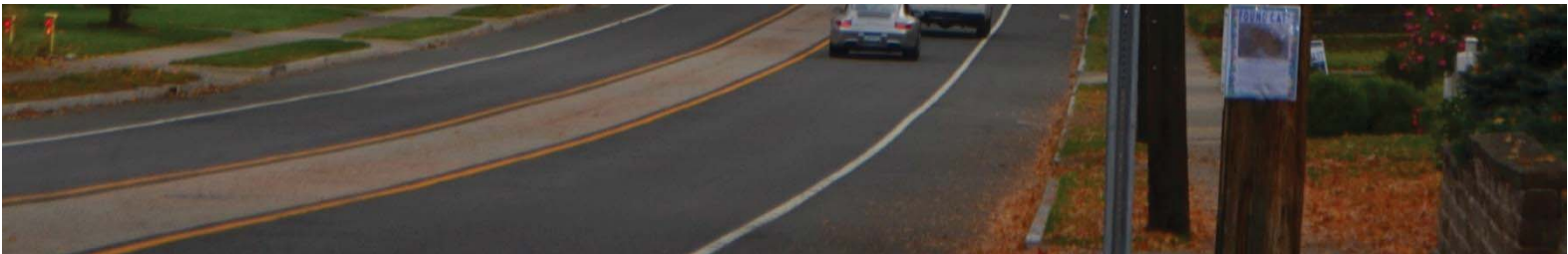
By: _____
Meagan Spinks, City Clerk

For City, Approved as to Form:

By: _____
Stephanie L. Sandre, City Attorney



PROPOSAL FOR FINAL OWNERSHIP SUPPORT OF STREETLIGHT SYSTEM FOR THE CITY OF ROUND ROCK, TX



Submitted by:

Jason Tanko
Chief Executive Officer
Tanko Streetlighting, Inc.
220 Bayshore Boulevard
San Francisco, CA 94124
jason@tankolighting.com

Submitted to:

Brian Kuhn
Assistant Director – Transportation
City of Round Rock
Round Rock City Hall
221 E Main St.
Round Rock, TX 78664
bkuhn@roundrocktexas.gov

February 6, 2023

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By Tanko Lighting
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TABLE OF CONTENTS

Table of Contents	2
Cover Letter	3
Scope of Work	4
Phase 1: Ownership Support	4
Task 1: Municipal Process Support	4
Task 2: Ownership Negotiations & Consulting Services	5
Task 3. Final Coordination of Ownership Transfer	6
Phase 2: LED Conversion	6
Task 1: Design	6
Task 2. LED Conversion Plan	9
Task 3. LED Conversion Plan Implementation	10
Optional Adders	10
Pole Labeling (Optional)	10
Remedy of Miss-Billings (Optional)	10
Photometric Overlay (Optional)	11
Custom Design for Decorative Fixtures (Optional)	11
Pricing.....	12

COVER LETTER

February 6, 2023

Brian Kuhn
Assistant Director – Transportation
Round Rock City Hall
221 E Main St.
Round Rock, TX 78664
bkuhn@roundrocktexas.gov

Dear Mr. Kuhn,

Tanko Streetlighting, Inc. ("Tanko Lighting") appreciates the opportunity to submit this proposal for final ownership support of the streetlight fixtures within the City of Round Rock.

As you know, we recently completed the audit and data reconciliation of the streetlights within the City and are currently in the process of completing the initial ownership support activities. We anticipate the completion of those activities shortly and are thus providing our proposed final scope of services to support this project.

Please let us know should you have any questions. We look forward to your feedback.

Regards,



Jason Tanko
Chief Executive Officer

Enclosures

SCOPE OF WORK

Phase 1: Ownership Support

This phase will implement additional tasks to prepare the City for a Council vote on whether to pursue streetlight acquisition. If the City votes affirmatively, this phase will also include activities to support the City through the acquisition process.

Task 1: Municipal Process Support

Our previous contract ended with our team providing the City with drafts for the Letter of Intent, First Offer Letter, and Final Offer Letter to support communications with the utility. We will continue our support by leading the City through the process of submitting these communications, including the required details and timing of submissions.

Additionally, we will introduce the City to our streetlight ownership Progression Plan, which outlines the path and required steps necessary to prepare for the Council to vote on whether to pursue acquiring the ownership of the streetlights. There are two essential elements in the Progression Plan: the Project Schedule and the Four Protocols:

- Project Schedule: This is customized to the City's particular administrative process, including timing for review and approval of documentation, agenda management, Council meetings, closed sessions, etc. The Project Schedule is updated regularly to accommodate the City's timing and project status updates.
- Four Protocols: These Protocols are key to understanding the process. They explain the actions necessary at each stage of the process – from initiation to investigation and discovery, moving into negotiations, and ultimately lead to the City's determination of its course of action.

Regularly recurring meetings will be scheduled to assist the City with moving through the proposed Progression Plan.

Our team will also provide comprehensive services to support the City in the exploration of its options regarding potentially obtaining ownership of its streetlight assets, including:

- Assisting the City with the tasks and timing necessary as it moves through each potential stage of the Progression Plan
- Providing sample documentation and supporting materials as required or necessary
- Initiating and leading negotiations with the utility, as necessary
- Presenting analyses, strategies and options to City staff and Council members via webinars, phone calls and/or a limited number of meetings
- Developing a post-acquisition maintenance strategy that includes the City's options for both routine and emergency maintenance services for consideration prior to any decision for the potential acquisition
- Providing assistance and coordination to support the City's legislative and/or public relations efforts related to its proposed ownership initiative
- Connecting the City with a third-party financing entity, if needed
- Consulting with City legal representatives on the path to potential ownership
- Providing background evidence, case law, data, research, legal arguments, and precedence to support a legal approach to purchase the streetlight system (if necessary). Please note that Tanko Lighting is not comprised of licensed attorneys. Thus, our team will merely coordinate with City staff, and/or with the City's legal counselor(s) and provide consulting services with streetlight expertise.

Deliverables:

- Progression Plan: An overview of the Progression Plan and the initial steps for this project stage.
- Project Schedule: The Project Schedule will be provided at the initiation of the project and is updated throughout the project duration to accommodate City requirements and needs.
- Supporting Documentation: Case law, data, and other background materials to support the City's efforts for the potential purchase of the streetlight system.
- Municipal Process Support: Draft, sample, and necessary documentation, meetings, and research to support this stage of the Progression Plan.

Task 2: Ownership Negotiations & Consulting Services

If the City Council affirmatively votes to pursue acquisition of the streetlights, the court process begins. Throughout this process, the City will always remain open to a negotiated settlement and Tanko Lighting will provide supporting consulting services for both possibilities of legal or negotiated resolution (even if they are concurrent) through the following activities:

- Assisting the City with the tasks and timing necessary as it moves through each potential stage
- Providing sample documentation and supporting materials as required or necessary
- Regularly recurring meetings to assist the City with moving through the proposed Progression Plan
- Participating and leading negotiations with the utility as necessary
- Presenting analyses, strategies and options to City staff and Council members via webinars, phone calls and/or a limited number of meetings
- Providing assistance and coordination to support the City's legislative and/or public relations efforts related to its proposed ownership initiative
- Consulting with the City's legal representatives on the path to potential ownership
- Providing background evidence, case law, data, research, legal arguments, and precedence to support a legal approach to purchase the streetlight system (if necessary). Please note that Tanko Lighting is not comprised of licensed attorneys. Thus, our team will merely coordinate with City staff, and/or with the City's legal counselor(s) and provide consulting services with streetlight expertise. All court appearances, court filings, court costs, utility appraisal fees, filing fees, attorney's fees, legal costs/services, and expert witness fees will be the City's responsibility
- Providing consulting services to both the City and the City's attorney with expertise and vast knowledge of utilities, context and technical aspects of streetlights, experience with other acquisitions, and comprehensive knowledge of the streetlighting industry
- Support of determination of the system's value and purchase price, including assistance with depositions, data on previous sales, rate analysis, etc.

All potential court appearances, court filings, court costs, utility appraisal fees, filing fees, attorney's fees, legal costs/services, and expert witness fees will be the City's responsibility.

Deliverables:

- Supporting Documentation: Case law, data, and other background materials and sample documentation to support the City's legal case for the potential purchase of the streetlight system.
- Streetlight Ownership Offer from Utility: Tanko Lighting's efforts may result in a viable offer as a result of negotiations, mediation, arbitration, or a Commissioners' award of the streetlight assets (if the City decides to pursue streetlight acquisition). A viable offer will potentially include such elements as:
 - Projected date of transfer
 - Definition of assets (and estimated quantity)

- Fusing/electrical requirements
- Points of demarcation, and
- Valuation, etc.

Task 3. Final Coordination of Ownership Transfer

Once the City is granted a Commissioners' award of ownership of the streetlight system, there will be a period of time in which final negotiations and transfer of assets will occur. The duration of this process is highly variable – and could last several months or years.

During this period, our team will continue to support the City, culminating in a final bill of sale and transition of streetlight assets to the City, including such activities (if necessary) as:

- Coordination of utility correspondence/negotiations
- Review of the pole attachment agreement terms
- Review of purchase and sale agreement terms (including separation requirements)
- Support of final determination of the system's value and purchase price, including assistance with depositions, data on previous sales, rate analysis, etc.

All potential court appearances, court filings, court costs, utility appraisal fees, filing fees, attorney's fees, legal costs/services, and expert witness fees will be the City's responsibility.

Deliverables:

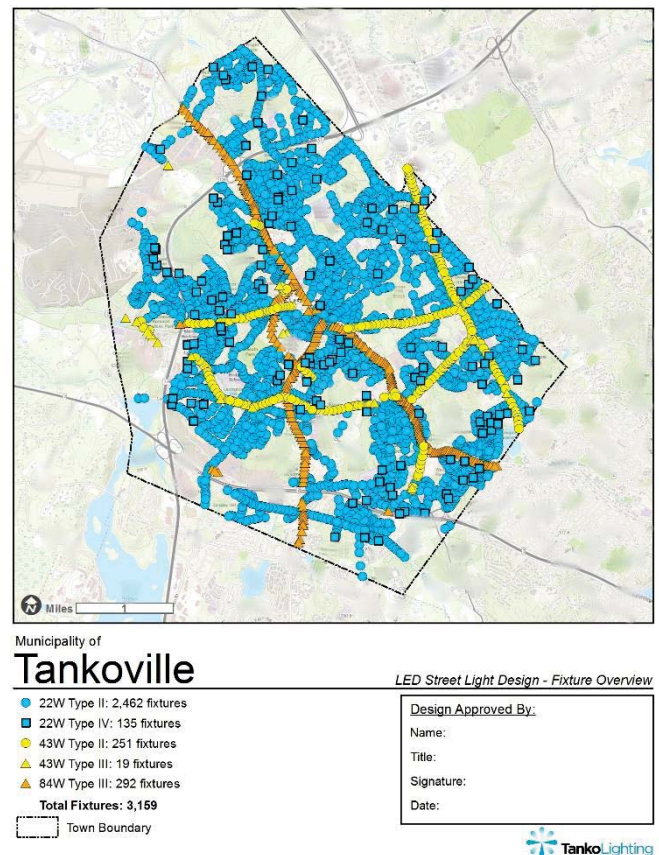
- Ongoing Coordination: Support activities, including document review, contract and/or financial negotiations/correspondence with the utility, consulting, etc. to ensure the final transfer of streetlight assets to the City.

Phase 2: LED Conversion

If the City pursues streetlight acquisition, it is critical that its system be optimized for energy savings via a conversion to light emitting diode (LED) fixtures. This phase will ensure that a replacement design and implementation plan are prepared so the City can expedite its transition to LED fixtures.

Task 1: Design

In Tanko Lighting's experience, a comprehensive LED streetlight conversion project is the ideal opportunity for a municipality to reassess its entire streetlighting design and ensure that field



Tanko Lighting's Municipal Overview Map shows an entire municipality with recommended replacement fixtures.

conditions are optimized for all applications in the design. To achieve this, our team routinely conducts municipal-wide design processes for each of its turn-key streetlighting projects.

It should be noted that we can implement this task prior to ownership transfer, upon the City's request. The benefit of completing this task sooner is that the City could proceed with LED conversion of any of the streetlights currently owned by the City, as well as have the design prepared so as to streamline LED conversion once it purchases the utility-owned streetlights.

Our goal will be to provide the City with an appropriate replacement design that includes the brand of fixture, photocell, replacement wattages, color temperatures, distribution patterns and other appropriate settings and options to optimize the LED streetlight retrofit. The design will ultimately result in a replacement plan for all existing streetlights that includes photometric data, lifecycle cost analysis (including the initial capital outlay), net present value and return on investment, energy savings, as well as maps of the replacement plan (see sample map on previous page).



Examples of the different light distribution patterns from an HPS fixture (top) vs. an LED fixture (bottom).

In our experience, a critical initial step in proper design involves photometric analysis – which is an examination of the distribution or “spread” of light from the fixture onto the ground. Whereas a typical High Pressure Sodium (HPS) fixture indiscriminately throws the light in all directions, a typical LED fixture pinpoints the light spread to where it is needed most – on the roadway (see graphic to the right).

Given that an LED streetlight conversion is a significant investment, ensuring that the replacement LED fixtures properly distribute the light is imperative before the installation phase begins. The only way to confirm that the LED replacement fixtures improve the existing conditions is to model the light spread of the existing and replacement fixtures.

Tanko Lighting is seasoned in this type of modeling. Our proven process may include both theoretical photometrics modeling (demonstrating the light distribution from an aerial perspective at the fixture location), as well as photopic (which measures the light that the cones of the eyes typically perceive) and scotopic (which measures the light that the rods of the eyes typically perceive) field measurements obtained from directly under the fixture and at varying distances to the sides of and across the street from the fixture. The results from these models portray the most accurate existing and replacement conditions that verify that the replacement LED fixtures will improve the system.

Tanko Lighting's approach to comprehensive design typically includes the following elements:

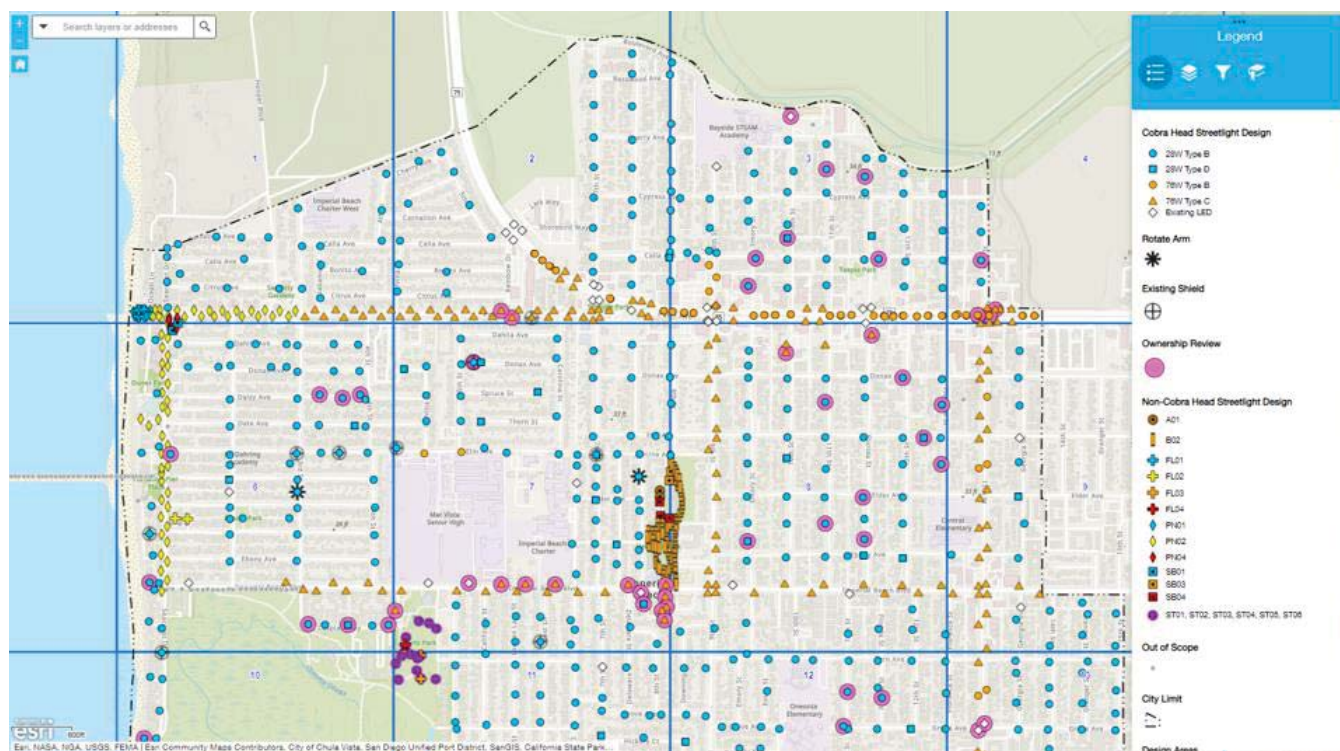
- Providing typical photometric renderings based on assumptions, including wattage, distribution type, pole height, spacing etc.
- Organizing the streetlight infrastructure by roadway classifications (such a residential, collector and arterial) and conducting a minimum of three theoretic photometric renderings for replacement fixtures of the City's preferred fixture brands and lines. Developing theoretic photometric renderings for one typical existing fixture

per main roadway classification (one for residential, one for collector and one for arterial) to demonstrate baseline conditions and aid in fixture and manufacturer selection. Please note these theoretical photometric renderings are distinct from photometric overlays, which are described in more detail in the Optional Adders section, below.

- Applying standard LED replacement wattage recommendations based on the location of each existing HPS fixture.
- Addressing distribution pattern needs for the specific roadway types and neighborhood characteristics (such as cul-de-sac locations) to ensure a tight light distribution pattern and minimize backlighting.
- Conferring with the City's safety coordinators and police officers to solicit feedback on areas that are currently over- or under-lit and are public safety concerns.
- Coordinating an optional pilot project installation, including selecting appropriate fixture(s) to pilot, identifying locations to pilot in, obtaining fixtures and coordinating with an installer. Tanko Lighting recommends that the pilot include the installation of 8-10 fixtures, presumably in groups of 2, to evaluate differences in color temperature, wattage, etc. Upon request, Tanko Lighting may conduct photopic/scotopic field light measurements, as well as manufacturer-provided photometric analyses before and after sample fixture installations to confirm that the theoretical design is appropriately meeting field conditions. If the City is interested in a pilot installation, Tanko Lighting can provide pricing upon request.
- Reviewing additional data sets (upon request and only if there is readily-available data) to identify potential areas in need of special consideration (such as available data on important localized land uses (e.g. parks, schools, hospitals, etc.), pedestrian, vehicle use and crash data, relative volumes of pedestrian and bicycle activity, unique neighborhood characteristics) and incorporating the analysis of the additional data into the design recommendations.
- Selecting appropriate wattages and distribution types for replacement fixtures to meet the City's needs, while maintaining the objective of providing a simplified design that standardizes inventory (so that the system has consistency and can be more easily maintained over time).
- Applying the City's preferred products, typical models and special considerations to its GIS inventory to produce maps of the type and wattages by location (see sample map on the previous page), as well as an analysis of the total cost, incentives, savings, and payback for the potential retrofit design.
- Presenting the options and total cost/incentives/savings/payback to the City and obtain its final approval on design.

Our team will guide the City through how to interpret the photometrics, reviewing how the results indicate the products' spread of light, the distances the fixtures reach, how much back light is present (which is wasted light), how much light is distributed directly under the fixture, and the general containment of light in the road/right-of-way. The interpretation of the photometrics data will enable the City to confidently choose a fixture that meets its preferences.

We provide an interactive design web map to facilitate our design process. Please see the graphic below.



A sample of our interactive design web map.

The overall benefits to Tanko Lighting's design approach include:

- Standardization – The City is ensured that there is a consistent design method resulting in wattage continuity on its streets. Standardization also leads to a reduction in the variety of fixtures that the City must keep in its inventory
- Safety – Based on the most updated field conditions, the City can be assured that the design matches the system's current needs and results in improved public safety from streets no longer being under or over lit
- Efficiency – The process takes a very thorough approach by examining all relevant field factors and thereby maximizes the available savings by utilizing the most efficient design, while meeting light output needs
- Streamlined Installation – The process allows for the development of a detailed scope of work (via a map of all replacements) by fixture for the installers to follow in the field – which enables more efficient materials gathering at the start of each work day

Deliverables:

- Replacement Plan Maps: City-wide maps with recommended LED replacement wattages for the City to review and approve.
- Pilot Installation (Optional): Coordination of a pilot installation of a minimum number of City-preferred products.

Task 2. LED Conversion Plan

Once ownership of the system is granted to the City, we will develop and provide an LED Conversion Plan. The plan will prepare the City for the final project phase, in which the streetlight fixtures are converted to LED. While the plan will be provided to the City in this task, please note that implementation of the plan will commence upon the City's approval of the

plan, as well as execution of a contract amendment to increase the budget for the final costs (additional costs such as for materials, installation, etc.), and upon final ownership transfer to the City.

The LED Conversion Plan will include a strategy outlining the City's selected fixtures, a scope of work for our ongoing support, the City's preferred approach to procurement of materials and installation, as well as a schedule for implementation and costs and savings for this phase.

Deliverables:

- LED Conversion Plan: A strategy documenting logistics, as well as schedule, costs and savings associated with the LED conversion of the streetlights that the City will ultimately own.

Task 3. LED Conversion Plan Implementation

Once the City has reviewed and approved the LED Conversion Plan, our team will implement the strategies and provide the deliverables outlined in the plan, including materials procurement, installation contractor selection, financing (if requested), installation management, commissioning, and rate changes.

Optional Adders

Pole Labeling (Optional)

Upon request from the City, Tanko Lighting will specify number sequence, tag characteristics, material specifications and location on the pole for a City pole ID system. This may include a specific label indicating City ownership. Typically, we specify a tag recommendation that consists of five to seven digits. We will also procure the approved materials and have our field staff install them on the poles (provided that the installation is system-wide and installed on the poles within an arm's reach). We will provide the City with a scope of work and pricing for this task, upon request.

Remedy of Miss-Billings (Optional)

There are often data discrepancies between a municipality's streetlight utility bill and actual field conditions. Additionally, historic streetlight utility billing errors are common for streetlight systems. These sorts of issues can result in inaccurate streetlight utility bills – often amounting to unnecessary and significant costs for a municipality.

As a part of our standard data reconciliation process, we provided the Data Reconciliation Report to the City and utility that can be used to remedy location, quantity and wattage discrepancies. These discrepancies need to be dealt with directly with the utility to update the billing and realize savings. Successful remedy of these issues can result in significant savings on streetlight bills.

Should the City require additional assistance reconciling the discrepancies with the utility to credit the City for any miss-billings, we can perform this service either upon completion of the data reconciliation process, or during the final purchase negotiations with the utility. We will provide the City with a scope of work and pricing for this task, upon request.

Photometric Overlay (Optional)

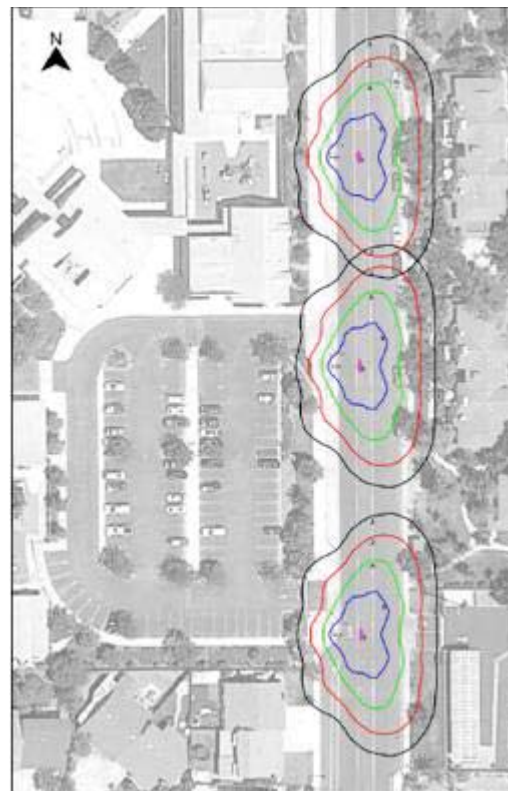
Upon request, the theoretical photometric renderings we typically provide can also be customized into photometric overlays for specific fixture locations within the City. See graphic to the right for a sample photometric overlay. Each fixture's overlay will:

- Be an approximation based on theoretical manufacturer representations of the LED replacement fixture (note that it will exclude immediate existing conditions).
- Consist of a single fixture part number at one fixture location.
- Be represented at the location of the existing fixture.

We recommend a maximum of 8 – 12 overlays for one area (beyond this quantity, we will need to adjust the pricing). Should the City be interested in pursuing this option, we will offer it as an adder price of \$550 per photometric overlay.

Custom Design for Decorative Fixtures (Optional)

If the City has decorative fixtures that need to be designed, we will offer a basic LED replacement option (defined as any non-cobra head fixture where the design can be determined through the audit process, or has already been designed), per our standard design process. Any decorative fixture beyond this will require a custom LED replacement design, which we will offer as an adder lump sum price of \$850 per custom design created (not on a per fixture basis). This adder will include the costs of designing the custom LED retrofit, including sending a contractor to measure the fixture, designing a custom insert, working with a metal fabricator to create a sample, etc.



Example of three photometric overlays.

PRICING

Please find our proposed pricing in the table below. Please note that this pricing and is valid for sixty (60) days from the date of this proposal.

Proposed Pricing					
Phase	Activity	Task	Proposed Pricing	Estimated Quantity	Extended Price
Phase 1	Ownership Support	Task 1: Municipal Process Support	\$7,500.00 fixed fee lump sum	1	\$7,500.00
		Task 2: Ownership Negotiations & Consulting Services	Total fee of \$65,000.00	1	\$65,000.00
		Task 3: Final Coordination of Ownership Transfer	Total fee of \$27,500.00	1	\$27,500.00
Phase 2	LED Conversion	Task 1: Design	\$10.00 per fixture	4,865	\$48,650.00
		Task 2: LED Conversion Plan	Included at no extra charge	1	Included at no extra charge
		Task 3: LED Conversion Plan Implementation	TBD – To be provided during the LED Conversion Plan, outlining costs such as materials and installation	1	TBD – To be provided during the LED Conversion Plan, outlining costs such as materials and installation
	Adder	Custom Design for Decorative Fixtures (Optional)	\$850.00 per Custom Fixture Type (estimated 10 fixture types)	10	\$8,500.00
Subtotal:					\$157,150.00
Contingency (@ 10%):					\$15,715.00
TOTAL NOT TO EXCEED CONTRACT AMOUNT:					\$172,865.00

- Proposed Payment Terms:
 - Phase 1: Ownership Support
 - Task 1: Tanko Lighting will invoice the City for the Municipal Process Support task upon submission of the draft and sample documentation that supports this stage of the Progression Plan.
 - Task 2: The total cost for Task 2 is \$65,000, which may be either a lump sum payment or two distinct and separate payments, depending on the evolution of the Progression Plan and the timing of the potential offer.
 - If the City obtains a viable offer as a result of negotiations (prior to a Commissioners' court award of possession), a flat fee of \$65,000 is due upon receipt of the offer.
 - Alternatively, if the negotiations follow the more likely process, then the \$65,000 will be divided into two pay points:
 - Pay Point 1: A flat fee of \$30,000 will be due upon initial submission of court filings, documents, and/or proceedings.
 - Pay Point 2: An additional flat fee of \$35,000 will be due upon receipt of a viable offer that may be the result of negotiations, mediation, arbitration, or a Commissioners' court award of possession of the streetlight assets in favor of the City.
 - Task 3: Tanko Lighting will invoice the City for Final Ownership Transfer Coordination at 25% of the price for this Task every three months after the commencement of this task, culminating in the final balance to be billed upon full completion of the asset transfer.
 - Phase 2: LED Conversion
 - Task 1: Tanko Lighting will invoice the City for the Design upon submission of the design deliverables.
 - Task 2: Tanko Lighting will invoice the City upon submission of the deliverable for this task.
 - Task 3: Tanko Lighting will invoice the City for the LED Conversion Plan Implementation based upon shipment of materials and the remaining amounts on a monthly basis, based on the quantity of fixtures installed each month.
 - Adder: Tanko Lighting will invoice the City for the Custom Design for Decorative Fixtures upon submission of each design.
 - The City shall pay Tanko Lighting within thirty (30) days of receipt of invoices.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Tanko Streetlighting, Inc.
San Francisco, CA United States

Certificate Number:
2023-985941

Date Filed:
02/21/2023

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Round Rock

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

000000 - S-Light Oship Support
Professional Consulting Services Related to Final Ownership Support of the Streetlight System

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Tanko, Jason	San Francisco, CA United States	X	
	Bressani Tanko, Clare	San Francisco, CA United States	X	

5 Check only if there is NO Interested Party.

☐

6 UNSWORN DECLARATION

My name is Clare Bressani Tanko, and my date of birth is .

My address is 220 Bayshore Blvd., San Francisco, CA, 94124, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in San Francisco County, State of California, on the 22 day of February, 20 23.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Tanko Streetlighting, Inc.
San Francisco, CA United States

Certificate Number:
2023-985941

Date Filed:
02/21/2023

Date Acknowledged:
02/23/2023

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Round Rock

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

000000 - S-Light Oship Support
Professional Consulting Services Related to Final Ownership Support of the Streetlight System

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Tanko, Jason	San Francisco, CA United States	X	
	Bressani Tanko, Clare	San Francisco, CA United States	X	

5 Check only if there is NO Interested Party.

☐

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)



City of Round Rock

Agenda Item Summary

Agenda Number: G.6

Title: Consider a resolution authorizing the Mayor to execute an Engagement Agreement with Bourland Law Firm for representation in the lawsuit styled Cause No. D-1-GN-21-003203; City of Round Rock v. Hegar.

Type: Resolution

Governing Body: City Council

Agenda Date: 3/9/2023

Dept Director: Laurie Hadley, City Manager

Cost:

Indexes: General Fund

Attachments: Resolution, Exhibit A

Department: Administration

Text of Legislative File 2023-071

RESOLUTION NO. R-2023-071

WHEREAS, the City of Round Rock desires to retain legal services for representation in the lawsuit styled Cause No. D-1-GN-21-003198 (consolidated with Cause No. D-1-GN-21-003203), City of Round Rock v. Hegar; and

WHEREAS, Bourland Law Firm has submitted an engagement agreement to provide said services; and

WHEREAS, the City Council wishes to enter into said engagement agreement with Bourland Law Firm, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City an engagement agreement with Bourland Law Firm, a copy of said engagement agreement being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 9th day of March, 2023.

CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:

MEAGAN SPINKS, City Clerk

February 17, 2023

VIA ELECTRONIC MAIL

City of Round Rock
c/o Mayor Craig Morgan
221 East Main Street
Round Rock, Texas 78664

Re: Engagement Agreement; **Cause No. D-1-GN-21-003198 (consolidated with D-1-GN-21-003203); City of Round Rock, et al v. Hegar, in the 201st Judicial District Court (assigned to the 250th Judicial District Court); Travis County, Texas**

Dear Mayor Morgan:

Please allow this letter to serve as an engagement agreement setting forth the terms of the continued representation of the City of Round Rock (the "Client" and/or "you") by my firm for representation in the lawsuit styled *Cause No. D-1-GN-21-003198 (consolidated with D-1-GN-21-003203); City of Round Rock, et al v. Hegar, in the 201st Judicial District Court (assigned to the 250th Judicial District Court); Travis County, Texas*, in addition to consultation relating to the issues addressed in the case and any future appeals of the case. The following paragraphs outline the terms of our agreement. It is my distinct honor to be able to continue to represent the City, and I look forward to continuing to work with the City Council and City Attorney on this matter.

This letter will cover our billing practices and the scope of our representation. Our billing practices are slightly different from some law firms and hopefully will be viewed favorably by you. We do not charge for internal office expenses such as copying, long distance phone calls, facsimile charges, staff overtime or other related overhead items. It is necessary, however, for us to pass along charges incurred from outside vendors such as court reporters, process servers, expert witnesses, copy services (for large copying projects), and FedEx/UPS charges, as well as court costs, filing fees, and any travel costs related to this case. Additionally, if this case requires electronic research, you will be charged a fee for that service, which will be based on the duration of usage and discounted from the market rate set by the provider. Please understand that all outside vendor invoices in an amount of \$400.00 or above will be forwarded to the Client, and it is the Client's responsibility to directly and timely pay the vendors. The Client will still be responsible for outside charges that are less than \$400.00, but we will pay those directly and they will be included as a pass-through expense on our monthly firm invoice.

Each month, we will send an invoice that sets forth all work that has been performed and any pass-through expenses that have been incurred for the month. At that time, we encourage you to closely scrutinize the invoice. We are very conscious of attorneys' fees and expenses and will prudently ensure that you are billed fairly and responsibly. Should you ever have any questions or comments regarding our bills, we

request that you let us know immediately so that we can have an opportunity to discuss your concerns and attempt to resolve them to your satisfaction.

I will be the lead attorney handling this matter. However, if it becomes necessary or cost-effective to assign tasks to others to help me, I will do so. The hourly rates for others who may assist with your case are:

Cindy Olson Bourland	\$475.00
Contract Attorneys	\$150.00 – 350.00
Associate Attorneys	\$150.00 – 250.00
Paralegals	\$ 75.00
Law Clerks	\$ 75.00

The hourly fee amount is billed to our clients based on 1/10 of an hour increments. For example, 0.1 hours is equal to 6 minutes, 0.2 hours is equal to 12 minutes, etc.

Please understand that, given the likelihood of court proceedings that may take a substantial amount of time, such as hearings, discovery, pre-trial motions, briefing, and a final hearing of several days in district court, in addition to any interlocutory or final appeals to the Third Court of Appeals and/or to the Supreme Court of Texas, it is impossible for me to predict how long this case will go on before a final resolution or final judgment is reached and, consequently, I am unable to make an estimate of total future legal fees. However, I will continue to work closely with Steve Sheets and to be as efficient and expeditious as possible in representing the City in this matter.

Given the scope of the matter involved in this representation, it also may be necessary to associate with or bring in other various legal and economic specialists. Should that become advantageous or necessary to best serve the City's needs in this matter, I will make such a recommendation and will work with the City Attorney to choose such specialists. The cost or fees of any such associated counsel or expert will be borne by the Client.

The place of performance of this agreement is Williamson County, Texas. All fees and expenses are payable at the address of the law firm. Further, the Client agrees and acknowledges that the law firm has not made any representation or guarantee as to the outcome of this case, and that the nature of such representation and/or litigation makes it very hard to predict any total amount of legal fees that will be incurred or any particular outcome, given all of the factors and issues involved in this case. This written agreement contains the entire agreement of the parties. There are no terms of our agreement that are not contained in this written agreement. This agreement supersedes any and all prior agreements between the parties relating to the subject matter hereof.

Please also be advised that the Client may discharge the law firm at any time. If the Client becomes displeased or dissatisfied with the legal services of the law firm, the Client shall give written notice to the law firm. The notice shall be by certified mail, return receipt requested. The Client and the law firm will make all reasonable efforts to resolve

any problem that arises. If no resolution is reached, the law firm will withdraw at the Client's written request.

The law firm may also withdraw from further representation for any of the following reasons: the Client fails to pay fees or expenses required under this agreement; the Client fails to cooperate and comply fully with any reasonable request of the law firm; the Client engages in conduct or makes statements that render it unreasonably difficult for the law firm to carry out the purposes of its employment; and/or the Client fails to abide by any of the terms of this agreement. Before the law firm withdraws from its representation of the Client, the law firm shall give ten days' written notice to the Client. The notice shall be by certified mail, return receipt requested. In addition, the Client agrees and acknowledges that the law firm may withdraw if the Client fails either to pay an invoice in full or to replenish a retainer (when applicable) within sixty (60) days.

It is our firm policy to maintain your files in electronic form for a period of three (3) years after the conclusion of our representation of you. You hereby authorize us to destroy your files three (3) years from the conclusion and/or resolution of your case, unless you instruct us otherwise before the end of said three (3) year period and make arrangements to receive or pick up copies of your case files.

It is my intention to vigorously represent the City in this matter. With that goal in mind, however, I am also very careful to follow the ethical guidelines and the local customs and practices. If a situation ever arises where we feel that the actions being requested by the Client violate any of the local practices and customs or the ethical rules, we will inform you.

To ensure that there is no confusion regarding our fee agreement, please sign this letter in the space provided below indicating your agreement to the terms and conditions of our representation. Should you have any questions or comments regarding this agreement, please contact me before you sign it so that we can discuss them. Also, please do not hesitate to contact me if you need additional information at this time.

Sincerely,

BOURLAND LAW FIRM, P.C.



Cindy Olson Bourland

COB/dp

AGREED:

City of Round Rock

By: _____

(Printed name)

Its: _____

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Bourland Law Firm, P.C.
Round Rock, TX United States

Certificate Number:

2023-990055

Date Filed:

03/02/2023

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Bourland Law Firm, P.C.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

000000

Legal services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Bourland, Cynthia Olson	Round Rock, TX United States	X	

5 Check only if there is NO Interested Party.

☐

6 UNSWORN DECLARATION

My name is Cynthia Olson Bourland, and my date of birth is [REDACTED].

My address is 3333 Sam Bass Road, , TX, 78681, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Williamson County, State of TX, on the 3rd day of March, 20 23.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Bourland Law Firm, P.C.
Round Rock, TX United States

Certificate Number:
2023-990055

Date Filed:
03/02/2023

Date Acknowledged:
03/03/2023

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Bourland Law Firm, P.C.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

000000
Legal services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Bourland, Cynthia Olson	Round Rock, TX United States	X	

5 Check only if there is NO Interested Party.

☐

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)



City of Round Rock

Agenda Item Summary

Agenda Number: G.7

Title: Consider a resolution authorizing the Mayor to execute an Engagement Agreement with Bourland Law Firm for representation in the lawsuit styled Cause No. 22-0482-C395; Texas Disposal Systems, Inc. v. City of Round Rock, et al., in the 395th Judicial District Court.

Type: Resolution

Governing Body: City Council

Agenda Date: 3/9/2023

Dept Director: Laurie Hadley, City Manager

Cost:

Indexes: General Fund

Attachments: Resolution, Exhibit A

Department: Administration

Text of Legislative File 2023-077

This agency continues to represent the City of Round Rock with the legal against Texas Disposal Systems, Inc.

RESOLUTION NO. R-2023-077

WHEREAS, the City of Round Rock desires to retain legal services for representation in the lawsuit styled Cause No. 22-0482-C395; Texas Disposal Systems, Inc. v. City of Round Rock, et al.; and

WHEREAS, Bourland Law Firm has submitted an engagement agreement to provide said services; and

WHEREAS, the City Council wishes to enter into said engagement agreement with Bourland Law Firm, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City an engagement agreement with Bourland Law Firm, a copy of said engagement agreement being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 9th day of March, 2023.

CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:

MEAGAN SPINKS, City Clerk

February 24, 2023

VIA ELECTRONIC MAIL

City of Round Rock
c/o Mayor Craig Morgan
221 East Main Street
Round Rock, Texas 78664

Re: Engagement Agreement; **Cause No. 22-0482-C395; Texas Disposal Systems, Inc. v. City of Round Rock, et al**, in the 395th Judicial District Court, Williamson County, Texas; and in the Third Court of Appeals, Austin, Texas

Dear Mayor Morgan:

Please allow this letter to serve as an engagement agreement setting forth the terms of the continued representation of the City of Round Rock (the "Client" and/or "you") by my firm for representation in the lawsuit styled *Cause No. 22-0482-C395; Texas Disposal Systems, Inc. v. City of Round Rock, et al*, in the 395th Judicial District Court, Williamson County, Texas, in addition to representation before the Third Court of Appeals for the portion of the case that has been appealed and any future or related appeals of the case. The following paragraphs outline the terms of our agreement. It is my distinct honor to be able to continue to represent the City, and I look forward to continuing to work with the City Council and City Attorney on this matter.

This letter will cover our billing practices and the scope of our representation. Our billing practices are slightly different from some law firms and hopefully will be viewed favorably by you. We do not charge for internal office expenses such as copying, long distance phone calls, facsimile charges, staff overtime or other related overhead items. It is necessary, however, for us to pass along charges incurred from outside vendors such as court reporters, process servers, expert witnesses, copy services (for large copying projects), and FedEx/UPS charges, as well as court costs, filing fees, and any travel costs related to this case. Additionally, if this case requires electronic research, you will be charged a fee for that service, which will be based on the duration of usage and discounted from the market rate set by the provider. Please understand that all outside vendor invoices in an amount of \$400.00 or above will be forwarded to the Client, and it is the Client's responsibility to directly and timely pay the vendors. The Client will still be responsible for outside charges that are less than \$400.00, but we will pay those directly and they will be included as a pass-through expense on our monthly firm invoice.

Each month, we will send an invoice that sets forth all work that has been performed and any pass-through expenses that have been incurred for the month. At that time, we encourage you to closely scrutinize the invoice. We are very conscious of attorneys' fees and expenses and will prudently ensure that you are billed fairly and responsibly. Should you ever have any questions or comments regarding our bills, we request that you let us know immediately so that we can have an opportunity to discuss your concerns and attempt to resolve them to your satisfaction.

I will be the lead attorney handling this matter. However, if it becomes necessary or cost-effective to assign tasks to others to help me, I will do so. The hourly rates for others who may assist with your case are:

Cindy Olson Bourland	\$575.00
Contract Attorneys	\$150.00 – 475.00
Associate Attorneys	\$150.00 – 475.00
Paralegals	\$100.00
Law Clerks	\$100.00

The hourly fee amount is billed to our clients based on 1/10 of an hour increments. For example, 0.1 hours is equal to 6 minutes, 0.2 hours is equal to 12 minutes, etc.

Please understand that, given the likelihood of court proceedings that may take a substantial amount of time, such as hearings, discovery, pre-trial motions, briefing, and a final hearing of several days in district court, in addition to the pending interlocutory appeal and any additional appeals to the Third Court of Appeals and/or to the Supreme Court of Texas, it is impossible for me to predict how long this case will go on before a final resolution or final judgment is reached and, consequently, I am unable to make an estimate of total future legal fees. However, I will continue to work closely with the City Attorney and to be as efficient and expeditious as possible in representing the City in this matter.

Given the scope of the matter involved in this representation, it also may be necessary to associate with or bring in other various legal and economic specialists. Should that become advantageous or necessary to best serve the City's needs in this matter, I will make such a recommendation and will work with the City Attorney to choose such specialists. The cost or fees of any such associated counsel or expert will be borne by the Client.

The place of performance of this agreement is Williamson County, Texas. All fees and expenses are payable at the address of the law firm. Further, the Client agrees and acknowledges that the law firm has not made any representation or guarantee as to the outcome of this case, and that the nature of such representation and/or litigation makes it very hard to predict any total amount of legal fees that will be incurred or any particular outcome, given all of the factors and issues involved in this case. This written agreement contains the entire agreement of the parties. There are no terms of our agreement that are not contained in this written agreement. This agreement supersedes any and all prior agreements between the parties relating to the subject matter hereof.

Please also be advised that the Client may discharge the law firm at any time. If the Client becomes displeased or dissatisfied with the legal services of the law firm, the Client shall give written notice to the law firm. The notice shall be by certified mail, return receipt requested. The Client and the law firm will make all reasonable efforts to resolve any problem that arises. If no resolution is reached, the law firm will withdraw at the Client's written request.

The law firm may also withdraw from further representation for any of the following reasons: the Client fails to pay fees or expenses required under this agreement; the Client fails to cooperate and comply fully with any reasonable request of the law firm; the Client engages in conduct or makes statements that render it unreasonably difficult for the law firm to carry out the purposes of its employment; and/or the Client fails to abide by any of the terms of this agreement. Before the law firm withdraws from its representation of the Client, the law firm shall give ten days' written notice to the Client. The notice shall be by certified mail, return receipt requested. In addition, the Client agrees and acknowledges that the law firm may withdraw if the Client fails either to pay an invoice in full or to replenish a retainer (when applicable) within sixty (60) days.

It is our firm policy to maintain your files in electronic form for a period of three (3) years after the conclusion of our representation of you. You hereby authorize us to destroy your files three (3) years from the conclusion and/or resolution of your case, unless you instruct us otherwise before the end of said three (3) year period and make arrangements to receive or pick up copies of your case files.

It is my intention to vigorously represent the City in this matter. With that goal in mind, however, I am also very careful to follow the ethical guidelines and the local customs and practices. If a situation ever arises where we feel that the actions being requested by the Client violate any of the local practices and customs or the ethical rules, we will inform you.

To ensure that there is no confusion regarding our fee agreement, please sign this letter in the space provided below indicating your agreement to the terms and conditions of our representation. Should you have any questions or comments regarding this agreement, please contact me before you sign it so that we can discuss them. Also, please do not hesitate to contact me if you need additional information at this time.

Sincerely,

BOURLAND LAW FIRM, P.C.



Cindy Olson Bourland

COB/dp

AGREED:

City of Round Rock

By: _____

(Printed name)

Its: _____

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Bourland Law Firm, P.C.
Round Rock, TX United States

Certificate Number:

2023-990049

Date Filed:

03/02/2023

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Round Rock

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

000000
Legal services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Bourland, Cynthia Olson	Round Rock, TX United States	X	

5 Check only if there is NO Interested Party.

☐

6 UNSWORN DECLARATION

My name is Cynthia Olson Bourland, and my date of birth is [REDACTED].

My address is 3333 Sam Bass Road, Round Rock, TX, 78681, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Williamson County, State of Texas, on the 2nd day of March, 2023.
(month) (year)

Cdy Olson Bld

Signature of authorized agent of contracting business entity
(Declarant)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Bourland Law Firm, P.C.
Round Rock, TX United States

Certificate Number:
2023-990049

Date Filed:
03/02/2023

Date Acknowledged:
03/03/2023

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Round Rock

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

000000
Legal services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Bourland, Cynthia Olson	Round Rock, TX United States	X	

5 Check only if there is NO Interested Party.

☐**6 UNSWORN DECLARATION**

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)



City of Round Rock

Agenda Item Summary

Agenda Number: H.1

Title: Consider Executive Session as authorized by §551.074 Government Code, related to the evaluation of City Attorneys.

Type: Executive Session

Governing Body: City Council

Agenda Date: 3/9/2023

Dept Director:

Cost:

Indexes:

Attachments:

Department:

Text of Legislative File TMP-23-0140