

EXHIBIT**"A"**

**CITY OF ROUND ROCK AGREEMENT FOR
PROFESSIONAL CONSULTING SERVICES FOR
ENVIRONMENTAL SERVICES
WITH
CAMBRIAN ENVIRONMENTAL**

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 environmental services, specifically a Karst Phase Two (2) Investigation for the Dam 101 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 CAMBRIAN ENVIRONMENTAL, located at 4422 Packsaddle Pass, Suite 204, Austin, Texas 78745 (the "Consultant" or "Cambrian Environmental").

RECITALS:

WHEREAS, City desires to contract for Consultant's professional services generally described as an in depth Karst Phase 2 Investigation for the Dam 101 Project; and

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

WHEREAS, desires to contract for such 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

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.

The term of this Agreement shall be until full and satisfactory completion of the work specified herein is achieved. The work is estimated to be completed by February, 2016.

City reserves 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 PROPOSAL FOR SERVICES

For the purposes of this Agreement, the City agrees to furnish the Consultant the information set forth and appended to this Agreement as Exhibit “A” titled “City Services.” For purposes of this Agreement Consultant has issued its proposal for services for the tasks delineated therein, such proposal for services being appended to this Agreement as Exhibit “B” titled “Consultant Services, which document is attached hereto and incorporated herein by reference for all purposes.

3.0 SCOPE OF SERVICES

Consultant shall satisfactorily provide all services described herein and as set forth in Exhibit “B.” 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 shall perform services in accordance with this Agreement, in accordance with the appended proposal for services, and in accordance with due care and prevailing consulting industry standards for comparable services.

4.0 LIMITATION TO SCOPE OF SERVICES

Consultant and City agree that the scope of services to be performed is enumerated in Exhibit “B” and herein, and may not be changed without the express written agreement of the parties. Notwithstanding anything herein to the contrary, the parties agree that City retains absolute discretion and authority for all funding decisions, such to be based solely on criteria accepted by City which may be influenced by but not be dependent on Consultant’s work.

5.0 CONTRACT AMOUNT

In consideration for the professional consulting services to be performed by Consultant, City agrees to pay Consultant an amount not-to-exceed **Ninety-Nine Thousand Seven Hundred Sixty Dollars and No/100 (\$99,760.00)**, in accordance with Exhibit “D” entitled “Fee Schedule,” which document is attached hereto and incorporated herein by reference for all purposes, in payment for services and the Scope of Services deliverables as delineated in Exhibit “B.”

Deductions: No deductions shall be made for Consultant’s compensation on account of penalty, liquidated damages or other sums withheld from payments to Consultant.

Additions: No additions shall be made to Consultant’s compensation based upon project claims, whether paid by the City or denied.

6.0 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.

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.

8.0 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by the City to Consultant will be made within thirty (30) days of the date the City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date the City receives a correct invoice for the goods or services, whichever is later. Consultant may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). 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 goods delivered or 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 goods delivered or 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.

9.0 NON-APPROPRIATION AND FISCAL FUNDING

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

10.0 TIMETABLES

Unless otherwise indicated to Consultant in writing by City, or unless Consultant is unreasonably delayed in the orderly progress of its work by forces beyond Consultant's control, the following timetable structure and deliverable due dates shall be in reasonable conformity to Consultant's schedule tendered to City and attached as Exhibit "C."

11.0 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.

12.0 TERMINATION; DEFAULT

Termination: It is agreed and understood by Consultant that the City may terminate this Agreement for the convenience of the City, upon thirty (30) days' written notice to Consultant, 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 City 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.

13.0 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.

14.0 CITY'S RESPONSIBILITIES

Full information: The City shall provide full information regarding project requirements. The City shall have the responsibility of providing Consultant with such documentation and information as is reasonably required to enable Consultant to provide the services called for. The City shall require its employees and any third parties who are otherwise assisting, advising or representing the City to cooperate on a timely basis with Consultant in the provision of its services. Consultant may rely upon written information provided by the City and its employees and agents as accurate and complete. Consultant may rely upon any written directives provided by the City or its designated representative concerning provision of services as accurate and complete.

Required materials: Consultant's performance requires receipt of all requested information reasonably necessary to provision of services. Consultant agrees, in a timely manner, to provide City with a comprehensive and detailed information request list, if any.

15.0 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.

16.0 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's working papers and Consultant's Confidential Information (as described herein) shall belong exclusively to the Consultant. 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.

17.0 WARRANTIES

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

18.0 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.

In no event shall Consultant be liable to the City, by reason of any act or omission relating to the services provided under this Agreement (including the negligence of Consultant), whether a claim be in tort, contract or otherwise, (a) for any consequential, indirect, lost profit, punitive, special or similar damages relating to or arising from the services, or (b) in any event, in the aggregate, for any amount in excess of the total professional fees paid by the City to Consultant under this Agreement, except to the extent determined to have resulted from Consultant's gross negligence, willful misconduct or fraudulent acts relating to the service provided hereunder.

19.0 INDEMNIFICATION

Consultant and the City each agree to indemnify, defend and hold harmless the other from and against amounts payable under any judgment, verdict, court order or settlement for death or bodily injury or the damage to or loss or destruction of any real or tangible property to the extent arising out of the indemnitor's negligence in the performance of this Agreement.

Consultant agrees to indemnify, defend and hold harmless the City from and against any and all amounts payable under any judgment, verdict, court order or settlement for Third Party claims of infringement of any trade secrets, copyrights, trademarks or trade names alleged to have occurred and arising from the deliverables provided by Consultant to the City in connection with the performance of this Agreement. Should the City's use of such deliverables be determined to have infringed, Consultant may, at its option: (i) procure for the City the right to continue using such deliverables provided or (ii) replace or modify them to make their use non-infringing while yielding substantially equivalent results. If neither of the above options is or would be available on a basis that is commercially reasonable, then Consultant may terminate this Agreement, the City shall return such deliverables provided, and Consultant will refund to the City the fees paid for the deliverables provided. This infringement indemnity does not cover claims arising from the combination of such deliverables with products or services not provided by Consultant; the modification of such deliverables by any person other than Consultant; deliverables complying with or based upon (1) designs provided by or at the direction of the City or (2) specifications or other information provided by or at the direction of the City; or use of systems, materials or work performed in a manner not permitted hereunder or by another obligation of the City to Consultant.

The indemnities in this section are contingent upon: (1) the indemnified party promptly notifying the indemnifying party in writing of any claim which gives rise to a claim for indemnification hereunder; (2) the indemnifying party being allowed to participate in the defense and settlement of such claim; and (3) the indemnified party cooperating with all reasonable requests of the indemnifying party (at the indemnifying party's expense) in defending or settling a claim. The indemnified party shall have the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel.

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 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.

21.0 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.

22.0 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

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.

23.0 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.

24.0 DESIGNATION OF REPRESENTATIVES

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

Alysha Girard
Utilities and Environmental Services
2008 Enterprise Drive
Round Rock, TX 78664
512-218-6646

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

Kemble White
Owner
4422 Packsaddle Pass
Suite 204
Austin, TX 78745
512-663-0156

25.0 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:

Cambrian Environmental
4422 Packsaddle Pass
Suite 204
Austin, TX 78745

Notice to City:

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

AND TO:

Stephan L. Sheets, 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.

26.0 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.

27.0 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.

28.0 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.

29.0 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.

30.0 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.

31.0 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.

32.0 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.

33.0 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 this 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.

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: _____

Cambrian Environmental

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

For City, Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

Exhibit A

Services to be provided by the City

The City will provide the following information and other assistance to the Consultant (Cambrian Environmental) that the City deems appropriate and necessary:

1. Any readily available pertinent existing information relating to the services to be performed by the Consultant; the City will provide one copy of such information in a format chosen by the City.
2. Clear direction and/or response to questions or requests made by the Consultant in the course of the Consultant's performance of services.
3. Timely review of deliverables that have been properly completed and submitted by the Consultant; and timely provisions of comments, if any, to the Consultant resulting from said reviews.

Exhibit B

Services to be provided by the Consultant

1. PROJECT DESCRIPTION

2. SCOPE OF WORK

The scope of Work for this project has been divided into the following tasks:

- Task 1: **Endangered Karst Invertebrate Presence / Absence Investigations**
- Task 2: **Meetings and Miscellaneous Tasks Supporting Agency Consultation**

2.1 Work Breakdown Structure Tasks and Description

2.1.1 Task 1: Endangered Karst Invertebrate Presence / Absence Investigations

Task Description: The project area occurs in a karst area considered by the U.S. Fish and Wildlife Service as likely being occupied by endangered karst invertebrates (Karst Zone 1). It is within the known range of the Bone Cave Harvestman (*Texella reyesi*) and potentially within the range of the Tooth Cave Spider (*Tayshaneta myopica*). Under this task, Cambrian personnel will continue the USFWS endangered karst invertebrate due-diligence protocol based on the results of work previously contracted by UBCWCID. Potential habitat features identified in the previous work will be subjected to further investigation including excavation to determine if habitat is present. Consistent with both USFWS protocols and TCEQ requirements, excavation will be conducted by hand to the extent practicable. If habitat is determined to be present, endangered karst invertebrate habitat presence/absence surveys must be conducted to determine if the habitat is occupied. Based on our prior survey work and refinements to the proposed project which constrained the potential area of effects excavation and habitat assessment of 42 known and/or potential karst features is required. The majority of these features are likely non-karst in origin and require a relatively small amount of excavation to establish non-sensitivity (2-4 features per day). However, at least fifteen features are karstic in nature requiring a determination of their sub-surface extent and potential for containing endangered species habitat (1-4 days per feature). Following excavation we assume that up to five karst features will require full presence/absence surveys for karst invertebrates (and associated reporting) according to USFWS protocols. If suitable habitat is found the outside services of taxonomic experts may be required for identification of some specimens. Potential cost for taxonomic expertise is included in this cost estimate. In 2014 the USFWS revised their endangered karst invertebrate protocols increasing the minimum number of surveys required for an absence finding from three to fourteen surveys. Our cost estimate reflects this revision. Our not-to-exceed limit has been calculated based on several factors including a feature-by-feature estimate of level of effort required to meet FWS excavation protocols, the number of biological surveys per feature required to get to a negative finding under the karst invertebrate protocols (14), a daily rate for our karst invertebrate excavation and survey crew (including at least one USFWS-permitted karst geoscientist), and an estimate of required reporting effort to meet protocol requirements.

2.1.2 Task 2: Meetings and Miscellaneous Tasks Supporting Agency Consultation Task

Description: Cambrian staff will be available to assist in the project's agency coordination including the consultation process under Section 7 of the Endangered Species Act on an as-needed basis. Our cost assumes 50 hours of meeting time, conference calls, field visits and other miscellaneous services to be provided by Cambrian's senior karst geoscientist.

3. KEY PERSONNEL

A summary of the proposed engineering team including names and titles are presented in table B-1.

**TABLE B-1
SUMMARY OF PROPOSED CONSULTANT TEAM PERSONNEL**

NAME	TITLE
Kemble White	Senior Karst Geoscientist
Craig Crawford	Karst Geoscientist
Ashley Wall	Biologist
Ryan Jones	Karst Technician

Exhibit C

Work Schedule

The schedule below provides approximate durations associated with the anticipated milestones:

Lake Creek Dam 101 Phase 2 Karst Investigations			
	2015		
	October	November	December
Task 1:			
Karst Invertebrate Due Dilligence	Field work start*	Continue field work and begin reporting	Field work and reporting complete
Task 2:			
meetings	Scheduled as needed by CoRR	Scheduled as needed by CoRR	Scheduled as needed by CoRR
*Assumes right of entry available at time of work authorization approval			

Exhibit D
Fee Schedule

Project Name: Dam 101 - Karst Phase 2

Task		Total Labor Hours	Total Loaded Labor Cost	Other Direct Costs	Subconsultants	TOTALS
Karst invert due dilligence	senior karst geoscientist (\$155/hr)	110	\$17,050.00			
	karst geoscientist (\$120/hr)	128	\$15,360.00			
	biologist (\$75/hr)	340	\$25,500.00			
	karst technician (\$55/hr)	620	\$34,100.00			
Subtotal			\$92,010.00	\$0.00	\$0.00	\$92,010.00
Meetings						
senior karst geoscientist (\$155/hr)		50	\$7,750.00			
Subtotal			\$7,750.00		\$0.00	\$7,750.00
GRAND TOTAL:		50	\$99,760.00	\$0.00	\$0.00	\$99,760.00