

EXHIBIT
"A"

**CITY OF ROUND ROCK AGREEMENT FOR
CONSULTING SERVICES FOR THE
CLEARWELL NO. 1 REHAB 2017 PROJECT
WITH
HOT INSPECTION SERVICES, INC.**

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

THIS AGREEMENT for consulting services related to Clearwell No. 1 Ground Storage Tank Rehab 2017 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 HOT INSPECTION SERVICES, INC. (the "Consultant").

RECITALS:

WHEREAS, City has determined that there is a need for document preparation, construction administration, and inspection services for the rehabilitation and improvements related to the 1,000,000,000-gallon Clearwell No. 1 Ground Storage Tanks; and

WHEREAS, City desires to contract for such 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:

1.01 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, with an estimated completion date of June 30, 2018.

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.

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

6.01 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 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.

7.01 INSURANCE

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

8.01 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

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.

12.01 NON-SOLICITATION

All parties agree that they shall not directly or indirectly solicit for employment, employ, or otherwise retain staff of the other during the term of this Agreement.

13.01 CITY'S RESPONSIBILITIES

City shall perform the services described in Exhibit "A." 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.

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.

Any and all materials created and developed by Consultant in connection with services performed under this Agreement, including all trademark and copyright rights, shall be the sole property of City at the expiration of this Agreement.

16.01 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.

17.01 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 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.

herein, and same shall belong solely to the City at the expiration of the term of this Agreement.

B. Consultant acknowledges and understands that City has adopted a Storm Water Management Program (SWMP) and an Illicit Discharge Ordinance, Sections 14-139 through 14-152 of the City's Code of Ordinances, to manage the quality of the discharges from its Municipal Separate Storm Sewer System (MS4) and to be in compliance with the requirements of the Texas Commission on Environmental Quality (TCEQ) and the Texas Pollutant Discharge Elimination System (TPDES). The Consultant agrees to perform all operations on City-owned facilities in compliance with the City's Illicit Discharge Ordinance to minimize the release of pollutants into the MS4. The Consultant agrees to comply with of the City's stormwater control measures, good housekeeping practices and any facility specific stormwater management operating procedures specific to a certain City facility. In addition, the Services Provider agrees to comply with any applicable TCEQ Total Maximum Daily Load (TMDL) Requirements and/or I-Plan requirements.

22.01 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.

23.01 DESIGNATION OF REPRESENTATIVES

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

Jeff Bell
Senior Project Manager
2008 Enterprise Drive
Round Rock, TX 78664
(512)218-7076
jbelle@roundrocktexas.gov

24.01 NOTICES

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

- (1) When delivered personally to 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.

28.01 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.

29.01 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.

30.01 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.

31.01 RIGHT TO ASSURANCE

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

32.01 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

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: _____

For City, Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

HOT Inspection Services, Inc.

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



HOT Inspection Services, Inc.
P.O. Box 1208 • Round Rock, TX 78680-1208

Office: (512) 244-2523
Fax: (512) 485-5129

EXHIBIT “B”

Konzen’s Scope Of Services **Clearwell No. 1 Rehab 2017 Project**

A. PRELIMINARY PHASE

1. Attend preliminary conference with the Owner/Engineer regarding the project.
2. Prepare a preliminary scope of work and schedule on the project indicating the optional solutions available, including probable cost based on the 2015 Comprehensive Inspection and latest information obtained.
3. Meeting with Owner discuss which plan of action, schedule and best value based on the projected outcome of each alternate.

B. PRE CONSTRUCTION PHASE

1. Establish the scope of work and specifications based on the site surveys and research conducted. Prepare contract documents authorized by the Owner.
2. Assist the Owner in the advertisements of the project for bids.
3. Conduct a pre bid meeting with the Contractor and Owner if necessary.
4. Assist the Owner in the opening and tabulation of bids for construction of the project and consult with the Owner as to the proper action to be taken, based on all of the considerations involved.
6. Conduct a pre construction meeting with the Contractor and Owner.

C. CONSTRUCTION PHASE

1. Conduct on site visits to provide Quality Assurance Surveillance and observe the progress and quality of the executed work in accordance with the Contract Documents. Reasonable measures will be taken by Konzen in performing these services to protect Owner against defects and deficiencies in the Contractor’s work. Konzen shall not guarantee responsibility for the actual supervision of construction operations or for the safety measures which Contractor takes or should take.

- Determination of wet film thickness.
- Determination of dry film thickness.
- Evaluating cleanliness between coats.
- Witnessing holiday testing conducted by the contractor
- Evaluating cure.

The inspection methods to be implemented for the sandblasting and coating inspections will consist of visual inspections, mil gauging, holiday testing, profile gauging and atmospheric measuring. All inspections will verify compliance with the AWWA D102-97 and contract specifications. The measurement of air temperature, surface temperature, humidity, dew point, coating thickness and holiday detection will be recorded in an inspector's logbook. Visits to the contractor's facility providing shop applied coatings will be conducted at the discretion of Konzen. The equipment to obtain all inspection and testing will be supplied by Konzen.

3. Consult and advise with the Owner and issue all instructions to the contractor requested by the Owner. Issue routine change order procedures with Owner's approval. Change orders to be filled out in complete form by the contractor prior to submitting the final pay request and retainage. All signatures required prior to approval by the City Manager.
4. Review with the Owner, submittals by the Contractor. This review is for the benefit of the Owner and covers only general conformance with the information given by the Contract Documents. This review does not relieve the Contractor of any responsibility such as appropriate safety measures to protect workers, property and the public, of the necessity to construct a complete and workable facility in accordance with the Contract Documents.
5. Obtain and review monthly and final estimates for payments to the contractor, and furnish to the Owner any recommended payments to contractors and suppliers.
6. Conduct with the Owner and contractor, a final inspection of the project for compliance with the Contract Documents and submit recommendations concerning project status, as it may affect Owner's final payment to Contractor.

E. WORK EXCLUDED:

1. Work required for safely accessing the tank is not included in the cost of this project. It will be the contractor's responsibility for providing safe access to all areas of the tank for inspection and testing during the construction. OSHA approved staging will be necessary for the complete access of the tank.
2. This proposal assumes that the tank will be accessible for inspection and that any restrictions requiring special work will affect the cost of this proposal.



HOT Inspection Services, Inc.
P.O. Box 1208 • Round Rock, TX 78680-1208

Office: (512) 244-2523
Fax: (512) 485-5129

Exhibit D Fee Schedule

Clearwell No. 1 Rehab 2017 Project

Providing personal services to the City of Round Rock for consulting, on-site project management, and inspection for the rehabilitation and improvements on the Clearwell No. 1 Ground Storage Tank. Services to include: probable cost estimates, technical data, pre-construction and construction documents, bidding and negotiation phase documents, and construction phase inspection.

Total fee below is based on construction cost of \$858,000. A cost of 3% for consulting and 7% for inspection services provided, whereas the cost is divided between the Preliminary and Bidding Phases, Pre-Construction Phase and the Construction Phase for the rehabilitation of Clearwell No. 1.

Clearwell No. 1

Preliminary Phase/Pre-Design	\$ 5,148.00
Pre-Construction Phase	\$20,592.00
Construction Phase	\$60,060.00
 Total Fee	 \$85,800.00



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Date: June 28, 2017
To: Jeff Bell
Project Manager
RE: Personal Services Contract Information

Please find the information requested for the Clearwell No. 1 Rehab 2017 Project. The Personal Services Agreement along with the exhibits is complete for your review. I have based my proposal on the comprehensive inspection conducted in 2015 and the construction budget numbers of Option #5 estimated at \$858,000. This is a different figure than the estimated cost in the spreadsheet. This is due to the 100% SW FB roof design that I would recommend in lieu of trying to rehabilitate the existing roof system.

If you have any questions or require further information, please contact me.

Respectfully Submitted,

John H. Konzen
President
HOT Inspection Services, Inc.



Information for Personal Services Agreement

Project Information	
Project Name	Clearwell 1 GST Rehab 2017
Project Description	Provide services to prepare plans/specifications/contract documents and construction administration and inspection for the rehabilitation and improvements to the 1,000,000-gallon Clearwell No. 1 Ground Storage Tank.
Project ID Number	
City of Round Rock Staff Information	
Owner's Representative	Jeff Bell
Phone	512-218-7076
Mobile	
Fax	512-218-3236
Email Address	jbell@roundrocktexas.gov
Proposed Council Date	8/10/17
Personal Service Provider's Information	
Name of Company	HOT Inspection Services, Inc.
Name of the Principal Signing the Contract/Title	John H. Konzen
Business Address (address for all notices to be mailed)	P.O. Box 1208 Round Rock, TX 78680-1208
Name of Project Manager	John H. Konzen
Title	President/Owner
Phone Number	(O)512-244-2523 (C)512-422-7655
Fax Number	512-485-5129
Email Address	John@hotinspection.com
Work Product Information	
Work Completion Date	June 2018
Service Cost	\$85,800.00



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P.O. Box 1208 • Round Rock, TX 78680-1208

Office: (512) 244-2523
Fax: (512) 485-5129

Exhibit A City Services

Clearwell No. 1 Rehab 2017 Project

The City of Round Rock will provide to Hot Inspection Services, Inc. the following items/information/assistance:

1. Furnish any existing data, maps, plans, as-buils or construction drawings, etc. that may pertain to the project as requested. Provide contract templets and forms necessary to compile the contract documents.
2. Provide utility location services for all City owned utilities within the project boundaries as requested.
3. Provide access to the tank site, assist with tank site visits and drain tank and fill as needed for the rehabilitation project. Trim any trees or remove obstacles that impede the access to the tank surfaces.
4. Provide timely review of construction plans, technical specifications, and contract documents submitted for review.
5. Provide assistance and coordination with Private Property Owners if needed.
6. Provide E-production of contract documents, publish dates and bidding information for project.
7. Provide Engineering Seal for contract documents.
8. Assist during the bid opening date.



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2. Prepare a preliminary scope of work and schedule on the project indicating the optional solutions available, including probable cost based on the 2015 Comprehensive Inspection and latest information obtained.
3. Meeting with Owner discuss which plan of action, schedule and best value based on the projected outcome of each alternate.

B. PRE CONSTRUCTION PHASE

1. Establish the scope of work and specifications based on the site surveys and research conducted. Prepare contract documents authorized by the Owner.
2. Assist the Owner in the advertisements of the project for bids.
3. Conduct a pre bid meeting with the Contractor and Owner if necessary.
4. Assist the Owner in the opening and tabulation of bids for construction of the project and consult with the Owner as to the proper action to be taken, based on all of the considerations involved.
6. Conduct a pre construction meeting with the Contractor and Owner.

C. CONSTRUCTION PHASE

1. Conduct on site visits to provide Quality Assurance Surveillance and observe the progress and quality of the executed work in accordance with the Contract Documents. Reasonable measures will be taken by Konzen in performing these services to protect Owner against defects and deficiencies in the Contractor’s work. Konzen shall not guarantee responsibility for the actual supervision of construction operations or for the safety measures which Contractor takes or should take.

2. Konzen, as an AWS Certified Welding Inspector and NACE Certified Coating Inspector, shall be on the referenced project. The objective of this project is to provide quality assurance surveillance of the welding, sandblasting, and painting during the rehabilitation of the water tanks. Inspection and testing visits will be strategic and at the discretion of the Owner/Engineer. The services to be rendered will include the following:

Welding and Repair Inspection

- Review tank project drawings to provide comments and recommendations.
- Observe and monitor the tank roof demolition and quality of workmanship.
- Review welder qualification records, welding procedures.
- Verify proper welding electrodes and electrode storage to be used on project.
- Conduct inspections on shop fabricated components.
- Conduct inspections of installation of new roof, field welding and repairs.

The inspection methods to be implemented for the above inspection will consist of Visual Testing. All inspections shall verify compliance with the Contract Specifications. Konzen as an AWS Certified Welding Inspector and NACE Certified Coating Inspector, shall conduct all welding inspections.

Shop fabricated items will be inspected on site as they arrive unless the owner requests a shop visit. The fabrication and weld quality will be inspected for compliance to AWWA D100-96. If the owner requires a shop inspection, it shall consist of a visual inspection of the fabricating practices and operations to determine compliance with the AWWA Standard.

Sandblasting and Coating Inspection

- Pre-surface preparation inspection.
- Measurement of ambient conditions.
- Evaluation of compressor and surface preparation equipment.
- Determination of surface preparation cleanliness and profile.
- Inspection of application equipment.
- Witnessing coating mixing.
- Inspecting coating application.

- Determination of wet film thickness.
- Determination of dry film thickness.
- Evaluating cleanliness between coats.
- Witnessing holiday testing conducted by the contractor
- Evaluating cure.

The inspection methods to be implemented for the sandblasting and coating inspections will consist of visual inspections, mil gauging, holiday testing, profile gauging and atmospheric measuring. All inspections will verify compliance with the AWWA D102-97 and contract specifications. The measurement of air temperature, surface temperature, humidity, dew point, coating thickness and holiday detection will be recorded in an inspector's logbook. Visits to the contractor's facility providing shop applied coatings will be conducted at the discretion of Konzen. The equipment to obtain all inspection and testing will be supplied by Konzen.

3. Consult and advise with the Owner and issue all instructions to the contractor requested by the Owner. Issue routine change order procedures with Owner's approval. Change orders to be filled out in complete form by the contractor prior to submitting the final pay request and retainage. All signatures required prior to approval by the City Manager.
4. Review with the Owner, submittals by the Contractor. This review is for the benefit of the Owner and covers only general conformance with the information given by the Contract Documents. This review does not relieve the Contractor of any responsibility such as appropriate safety measures to protect workers, property and the public, of the necessity to construct a complete and workable facility in accordance with the Contract Documents.
5. Obtain and review monthly and final estimates for payments to the contractor, and furnish to the Owner any recommended payments to contractors and suppliers.
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2. This proposal assumes that the tank will be accessible for inspection and that any restrictions requiring special work will affect the cost of this proposal.



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Exhibit C Work Schedule

Clearwell No. 1 Rehab 2017 Project

CLEARWELL 1 GST

Preliminary Phase	06/20/17 - 07/10/17
Pre-Construction	07/11/17 - 8/31/17
Construction Phase	11/1/17 - 6/01/18

Project bids will be scheduled for opening the week of [REDACTED]. Notice to proceed for construction is estimated for [REDACTED]. The actual construction schedule may vary depending on tank availability and shutdown schedule by City. Anticipated completion of Clearwell No. 1 GST is 6/01/18. The tank will need to be drained and remain empty until all coatings applications and cure time has been completed.



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