



# EXHIBIT

"A"

## CITY OF ROUND ROCK AGREEMENT FOR SURVEYING SERVICES WITH CP&Y, INC.

THE STATE OF TEXAS

§

COUNTY OF WILLIAMSON

§

§

THIS AGREEMENT FOR SURVEYING SERVICES ("Agreement") is made and entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF ROUND ROCK, a Texas home-rule municipal corporation, whose offices are located at 221 East Main Street, Round Rock, Texas 78664-5299, (hereinafter referred to as "City"), and CP&Y, Inc, whose principal place of business is located at 1 Chisholm Trail Road, Suite 130, Round Rock, Texas 78681, (hereinafter called "Surveyor"), and such Agreement is for the purpose of contracting for professional surveying services.

### RECITALS:

WHEREAS, V.T.C.A., Government Code §2254.002(2)(A)(vii) under Subchapter A entitled "Professional Services Procurement Act" provides for the procurement by municipalities of services of professional Surveyors; and

WHEREAS, City and Surveyor desire to Agreement for such professional surveying services; and

WHEREAS, City and Surveyor wish to document their agreement concerning the requirements and respective obligations of the parties;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable considerations, and the covenants and s hereinafter contained to be kept and performed by the respective parties hereto, it is agreed as follows:

### AGREEMENT DOCUMENTS

The Agreement consists of this Agreement and any exhibits attached hereto (which exhibits are hereby incorporated into and made a part of this Agreement) and all Supplemental Agreements (as defined herein in Article 13) which are subsequently issued. These form the entire Agreement, and all are as fully a part of this Agreement as if attached to this Agreement or repeated herein.

**ARTICLE 1**  
**CITY SERVICES**

City shall perform or provide services as identified in Exhibit A entitled “City Services.”

**ARTICLE 2**  
**SURVEYING SERVICES; WORK SCHEDULE**

Surveyor shall perform Surveying Services as identified in Exhibit B entitled “Services.”

Surveyor shall perform the Services in accordance with Exhibit C entitled “Work Schedule.” Such Work Schedule shall contain a complete schedule so that the Surveying Services under this Agreement may be accomplished within the specified time and at the specified cost. The Work Schedule shall provide specific work sequences and definite review times by City and Surveyor of all Surveying Services. Should the review times or Surveying Services take longer than shown on the Work Schedule, through no fault of Surveyor, Surveyor may submit a timely written request for additional time, which shall be subject to the approval of the City Manager.

Surveyor acknowledges that the Work Schedule is of critical importance, and agrees to undertake all necessary efforts to expedite the performance of Surveying Services required herein so that construction of projects will be commenced and completed as scheduled. In this regard, and subject to adjustments in the Work Schedule as provided in Article 2 herein, Surveyor shall proceed with sufficient qualified personnel and consultants necessary to fully and timely accomplish all Surveying Services required under this Agreement in a professional manner. If Surveyor does not perform the Surveying Services in accordance with the Work Schedule, then City shall have the right to terminate this Agreement as set forth below in Article 20. So long as the City elects not to terminate this Agreement, it shall continue from day to day until such time as the Surveying Services are completed. Surveyor shall notify City in writing as soon as possible if it determines, or reasonably anticipates, that the Surveying Services will not be completed in accordance with the Work Schedule.

**ARTICLE 3**  
**AGREEMENT TERM**

**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 it expires by operation of the term indicated herein, or is terminated or extended as provided herein.

The term of this Agreement shall be from the effective date of this Agreement through August 30, 2020.

**Notice to Proceed.** After execution of this Agreement, Surveyor shall not proceed with Surveying Services until authorized in writing by City to proceed as provided in Article 7.

#### **ARTICLE 4**

#### **COMPENSATION**

City shall pay, and Surveyor agrees to accept, the amounts delineated below as full compensation for the Surveying Services performed and to be performed under this Agreement.

This Agreement obligates Surveyor to perform miscellaneous surveying work on an “as needed” basis for tasks deemed necessary by City staff. Such services may include but are not limited to the following activities: easement preparation, small area topographic surveys, spot elevations, ROW determination and delineations, City GPS monument replacement or establishment of new monuments, location of utility markings and potholes, tree surveys, quality control of submitted platting or monuments, and as-built surveys of utilities or other infrastructures. Such tasks shall be issued by City and accounted for via a “Work Order” system. Such tasks issued by City shall be agreed on as to fee before issuance of a Work Order. Each such task shall be authorized by a separate written Notice to Proceed. Any amounts payable under this Agreement shall be at rates as delineated in Exhibit D entitled “Fee Schedule.”

The maximum amount payable under this Agreement, without modification of this Agreement as provided herein, is the sum of **Fifty Thousand and No/100 Dollars (\$50,000.00)**. Surveyor shall prepare and submit to City regular progress reports in sufficient detail to support the progress of the Surveying Services and to support invoices requesting monthly payment. Any preferred format of City for such monthly progress reports shall be identified in Exhibit B. Satisfactory progress of Surveying Services shall be an absolute condition of payment.

The fee herein referenced may be adjusted for additional Surveying Services requested and performed only if approved by written Supplemental Agreement.

#### **ARTICLE 5**

#### **METHOD OF PAYMENT**

Payments to Surveyor shall be made while Surveying Services are in progress. Surveyor shall prepare and submit to City, not more frequently than once per month, a progress report as referenced in Article 4 above. Such progress report shall state the percentage of completion of Surveying Services accomplished during that billing period and to date. Simultaneous with submission of such progress report, Surveyor shall prepare and submit one (1) original and one (1) copy of a certified invoice in a form acceptable to City. This submittal shall also include a progress assessment report in a form acceptable to City.

Progress payments shall be made in proportion to the percentage of completion of Surveying Services identified in Exhibit D. Progress payments shall be made by City based upon Surveying Services actually provided and performed. Upon timely receipt and approval of each statement, City shall make a good faith effort to pay the amount which is due and payable within thirty (30) days. City reserves the right to withhold payment pending verification of satisfactory Surveying Services performed. Surveyor has the responsibility to submit proof to City, adequate and sufficient in its determination, that tasks were completed.

The certified statements shall show the total amount earned to the date of submission and shall show the amount due and payable as of the date of the current statement. Final payment does not relieve Surveyor of the responsibility of correcting any errors and/or omissions resulting from his/her/its negligence.

## **ARTICLE 6**

### **PROMPT PAYMENT POLICY**

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by the City to Surveyor 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. Surveyor 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 Surveyor, 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 Surveyor and a Contractor 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 Agreement, 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.

City shall document to Surveyor the issues related to disputed invoices within ten (10) calendar days of receipt of such invoice. Any non-disputed invoices shall be considered correct and payable per the terms of Chapter 2251, V.T.C.A., Texas Government Code.

## **ARTICLE 7**

### **NOTICE TO PROCEED**

City shall issue a written authorization to proceed with Surveying Services. City shall not be responsible for actions by Surveyor or any costs incurred by Surveyor relating to additional Surveying Services not included in Exhibit B.

## **ARTICLE 8**

### **PROJECT TEAM**

City's Designated Representative for purposes of this Agreement is as follows:

Jeff Bell  
Project Manager Senior  
2008 Enterprise Drive  
Round Rock, Texas 78664  
Telephone Number: (512) 218-7076  
Email Address: [jbell@roundrocktexas.gov](mailto:jbell@roundrocktexas.gov)

City's Designated Representative shall be authorized to act on City's behalf with respect to this Agreement. City or City's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by Surveyor in order to avoid unreasonable delay in the orderly and sequential progress of Surveying Services.

## **ARTICLE 9**

### **PROGRESS EVALUATION**

Surveyor shall, from time to time during the progress of the Surveying Services, confer with City at City's election. Surveyor shall prepare and present such information as may be pertinent and necessary, or as may be requested by City, in order for City to evaluate features of the Surveying Services. At the request of City or Surveyor, conferences shall be provided at Surveyor's office, the offices of City, or at other locations designated by City. When requested by City, such conferences shall also include evaluation of the Surveying Services.

Should City determine that the progress in Surveying Services does not satisfy the Work Schedule, then City shall review the Work Schedule with Surveyor to determine corrective action required.

Surveyor shall promptly advise City in writing of events which have or may have a significant impact upon the progress of the Surveying Services, including but not limited to the following:

- (1) Problems, delays, adverse conditions which may materially affect ability to meet objectives of the Work Schedule, or preclude the attainment of project Surveying Services units by established time periods; and such disclosure shall be accompanied by statement of actions taken or contemplated and City assistance needed to resolve the situation, if any; and
- (2) Favorable developments or events which enable meeting the Work Schedule goals sooner than anticipated.

## **ARTICLE 10**

### **SUSPENSION**

Should City desire to suspend the Surveying Services, but not to terminate this Agreement, then such suspension may be effected by City giving Surveyor thirty (30) calendar days' verbal notification followed by written confirmation to that effect. Such thirty-day notice may be waived in writing by agreement and signature of both parties. The Surveying Services may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from City to resume the Surveying Services. Such sixty-day notice may be waived in writing by agreement and signature of both parties. If this Agreement is suspended for more than thirty (30) days, Surveyor shall have the option of terminating this Agreement.

If City suspends the Surveying Services, the Agreement period as determined in Article 3, and the Work Schedule, shall be extended for a time period equal to the suspension period.

City assumes no liability for Surveying Services performed or costs incurred prior to the date authorized by City for Surveyor to begin Surveying Services, and/or during periods when Surveying Services is suspended, and/or subsequent to the Agreement completion date.

## **ARTICLE 11**

### **ADDITIONAL SURVEYING SERVICES**

If Surveyor forms a reasonable opinion that any work he/she/it has been directed to perform is beyond the scope of this Agreement and as such constitutes extra work, he/she/it shall promptly notify City in writing. In the event City finds that such work does constitute extra work and exceeds the maximum amount payable, City shall so advise Surveyor and a written Supplemental Agreement will be executed between the parties as provided in Article 13. Surveyor shall not perform any proposed additional work nor incur any additional costs prior to the execution, by both parties, of a written Supplemental Agreement. City shall not be responsible for actions by Surveyor nor for any costs incurred by Surveyor relating to additional work not directly associated with the performance of the Surveying Services authorized in this Agreement or any amendments thereto.

## **ARTICLE 12**

### **CHANGES IN SURVEYING SERVICES**

If City deems it necessary to request changes to previously satisfactorily-completed Surveying Services or parts thereof which involve changes to the original Surveying Services or character of Surveying Services hereunder, then Surveyor shall make such revisions as directed by City. Such revisions shall be considered additional Surveying Services and paid for as specified under Article 11.

Surveyor shall make revisions to Surveying Services authorized hereunder as are necessary to correct errors appearing therein, when required to do so by City. No additional compensation shall be due for such Surveying Services.

## **ARTICLE 13**

### **SUPPLEMENTAL AGREEMENTS**

The terms of this Agreement may be modified by written Supplemental Agreement if City determines that there has been a significant change in (1) the scope, complexity or character of the Surveying Services, or (2) the duration of the Surveying Services. Any such Supplemental Agreement must be duly authorized by City Council Resolution or appropriate City Manager action. Surveyor shall not proceed until the appropriate action has been taken. Additional compensation, if appropriate, shall be identified as provided in Article 4.

It is understood and agreed by and between both parties that Surveyor shall make no claim for extra work done or materials furnished until the City authorizes full execution of the written Supplemental Agreement and authorization to proceed. City reserves the right to withhold payment pending verification of satisfactory Surveying Services performed.

**ARTICLE 14**  
**OWNERSHIP OF DOCUMENTS**

All data, basic sketches, charts, calculations, plans, specifications, and other documents created or collected under the terms hereof are exclusive property of City and shall be furnished to City upon request. All documents prepared by Surveyor and all documents furnished to Surveyor by City shall be delivered to City upon completion or termination of this Agreement. Surveyor, at its own expense, may retain copies of such documents or any other data which it has furnished City under this Agreement.

**ARTICLE 15**  
**PERSONNEL, EQUIPMENT AND MATERIAL**

Surveyor shall furnish and maintain, at its own expense, quarters for the performance of all Surveying Services, and adequate and sufficient personnel and equipment to perform the Surveying Services as required. All employees of Surveyor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Surveyor who, in the opinion of City, is incompetent or whose conduct becomes detrimental to the Surveying Services shall immediately be removed from association with the project when so instructed by City. Surveyor certifies that it presently has adequate qualified personnel in its employment for performance of the Surveying Services required under this Agreement, or will obtain such personnel from sources other than City. Surveyor may not change the Project Manager without prior written consent of City.

**ARTICLE 16**  
**SUBAGREEMENTING**

Surveyor shall not assign, subcontract or transfer any portion of the Surveying Services under this Agreement without prior written approval from City. All subcontracts shall include the provisions required in this Agreement and shall be approved as to form, in writing, by City prior to Surveying Services being performed under the subcontract. No subcontracts shall relieve Surveyor of any responsibilities under this Agreement.

**ARTICLE 17**  
**EVALUATION OF SURVEYING SERVICES**

City, or any authorized representatives of it, shall have the right at all reasonable times to review or otherwise evaluate the Surveying Services performed or being performed hereunder and the premises on which it is being performed. If any review or evaluation is made on the premises of Surveyor or a subcontractor, then Surveyor shall provide and require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of City or other representatives in the performance of their duties.

**ARTICLE 18**  
**SUBMISSION OF REPORTS**

Study reports shall be submitted in preliminary form for approval by City before any final report is issued. City's comments on Surveyor's preliminary reports shall be addressed in any final report.

**ARTICLE 19**  
**VIOLATION OF AGREEMENT TERMS/BREACH OF AGREEMENT**

Violation of Agreement terms or breach of Agreement by Surveyor shall be grounds for termination of this Agreement, and any increased costs arising from Surveyor's default, breach of Agreement, or violation of Agreement terms shall be paid by Surveyor.

**ARTICLE 20**  
**TERMINATION**

This Agreement may be terminated as set forth below:

- (1) By mutual agreement and consent, in writing, of both parties.
- (2) By City, by notice in writing to Surveyor, as a consequence of failure by Surveyor to perform the Surveying Services set forth herein in a satisfactory manner.
- (3) By either party, upon failure of the other to fulfill its obligations as set forth herein.
- (4) By City, for reasons of its own and not subject to the mutual consent of Surveyor, upon not less than thirty (30) days' written notice to Surveyor.
- (5) By satisfactory completion of all Surveying Services and obligations described herein.

Should City terminate this Agreement as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to Surveyor. In determining the value of the Surveying Services performed by Surveyor prior to termination, City shall be the sole judge. Compensation for Surveying Services at termination will be based on a percentage of the Surveying Services completed at that time. Should City terminate this Agreement under Subsection (4) immediately above, then the amount charged during the thirty-day notice period shall not exceed the amount charged during the preceding thirty (30) days.

If Surveyor defaults in the performance of this Agreement or if City terminates this Agreement for fault on the part of Surveyor, then City shall give consideration to the actual costs incurred by Surveyor in performing the Surveying Services to the date of default, the amount of Surveying Services required which was satisfactorily completed to date of default, the value of the Surveying Services which are usable to City, the cost to City of employing another firm to complete the Surveying Services required and the time required to do so, and other factors which affect the value to City of the Surveying Services performed at the time of default.

The termination of this Agreement and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of City and Surveyor under this Agreement, except the obligations set forth herein in Article 21 entitled "Compliance with Laws." If the termination of this Agreement is due to the failure of Surveyor to fulfill his/her/its Agreement obligations, then City may take over the project and prosecute the Surveying Services to completion. In such case, Surveyor shall be liable to City for any additional and reasonable costs incurred by City.

Surveyor shall be responsible for settlement of all Agreement and administrative issues arising out of any procurements made by Surveyor in support of the Surveying Services under this Agreement.



## **ARTICLE 21**

### **COMPLIANCE WITH LAWS**

**(1) Compliance.** Surveyor shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation, minimum/maximum salary and wage statutes and regulations, and licensing laws and regulations. Surveyor shall furnish City with satisfactory proof of his/her/its compliance.

Surveyor shall further obtain all permits and licenses required in the performance of the Surveying Services described herein.

In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into an Agreement with a company for goods or services unless the Agreement contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel and will not boycott Israel during the term of this Agreement. The signatory executing this Agreement on behalf of Surveyor verifies Surveyor does not boycott Israel and will not boycott Israel during the term of this Agreement.

**(2) Taxes.** Surveyor will pay all taxes, if any, required by law arising by virtue of the Surveying Services performed hereunder. City is qualified for exemption pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act.

## **ARTICLE 22**

### **INDEMNIFICATION**

Surveyor 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 Surveyor or of any person employed by Surveyor or under Surveyor's direction or control.

Surveyor shall save and hold City harmless from any and all expenses, including but not limited to 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 activities by Surveyor, its agents, or employees.

## **ARTICLE 23**

### **SURVEYOR'S RESPONSIBILITIES**

Surveyor shall be responsible for the accuracy of his/her/its Surveying Services and shall promptly make necessary revisions or corrections to its work product resulting from errors, omissions, or negligent acts, and same shall be done without compensation. City shall determine Surveyor's responsibilities for all questions arising from design errors and/or omissions. Surveyor shall not be relieved of responsibility for subsequent correction of any such errors or omissions in its work product, or for clarification of any ambiguities until after the construction phase of the project has been completed.

## **ARTICLE 24**

### **SURVEYOR'S SEAL**

The responsible Surveyor shall sign, seal and date all appropriate surveying submissions to City in accordance with the Texas Surveying Practice Act and the rules of the State Board of Registration for Professional Engineers.

## **ARTICLE 25**

### **NON-COLLUSION, FINANCIAL INTEREST PROHIBITED**

**(1) Non-collusion.** Surveyor warrants that he/she/it has not employed or retained any company or persons, other than a bona fide employee working solely for Surveyor, to solicit or secure this Agreement, and that he/she/it has not paid or agreed to pay any company or Surveyor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City reserves and shall have the right to annul this Agreement without liability or, in its discretion and at its sole election, to deduct from the Agreement price or compensation, or to otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**(2) Financial Interest Prohibited.** Surveyor covenants and represents that Surveyor, his/her/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 for the construction of the project.

## **ARTICLE 26**

### **INSURANCE**

**(1) Insurance.** Surveyor, at Surveyor's sole cost, shall purchase and maintain during the entire term while this Agreement is in effect professional liability insurance coverage in the minimum amount of Five Hundred Thousand Dollars from a company authorized to do insurance business in Texas and otherwise acceptable to City. Surveyor shall also notify City, within twenty-four (24) hours of receipt, of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.

**(2) Subconsultant Insurance.** Without limiting any of the other obligations or liabilities of Surveyor, Surveyor shall require each subconsultant performing work under this Agreement to maintain during the term of this Agreement, at the subconsultant's own expense, the same stipulated minimum insurance required in Article 26, Section (1) above, including the required provisions and additional policy conditions as shown below in Article 26, Section (3).

Surveyor shall obtain and monitor the certificates of insurance from each subconsultant in order to assure compliance with the insurance requirements. Surveyor must retain the certificates of insurance for the duration of this Agreement, and shall have the responsibility of enforcing these insurance requirements among its subconsultants. City shall be entitled, upon request and without expense, to receive copies of these certificates of insurance.

**(3) Insurance Policy Endorsements.** Each insurance policy shall include the following conditions by endorsement to the policy:

- (a) Each policy shall require that thirty (30) days prior to the expiration, cancellation, non-renewal or reduction in limits by endorsement a notice thereof shall be given to City by certified mail to:

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

- (b) The policy clause “Other Insurance” shall not apply to any insurance coverage currently held by City, to any such future coverage, or to City’s Self-Insured Retentions of whatever nature.

**(4) Cost of Insurance.** The cost of all insurance required herein to be secured and maintained by Surveyor shall be borne solely by Surveyor, with certificates of insurance evidencing such minimum coverage in force to be filed with City. Such Certificates of Insurance are evidenced as Exhibit E herein entitled “Certificates of Insurance.”

## **ARTICLE 27**

### **COPYRIGHTS**

City shall have the royalty-free, nonexclusive irrevocable right to reproduce, publish or otherwise use and/or authorize others to use reports developed by Surveyor for governmental purposes.

## **ARTICLE 28**

### **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, lawful assigns, and legal representatives. Surveyor may not assign, sublet or transfer any interest in this Agreement, in whole or in part, by operation of law or otherwise, without obtaining the prior written consent of City.

## **ARTICLE 29**

### **SEVERABILITY**

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**ARTICLE 30**  
**PRIOR S SUPERSEDED**

This Agreement constitutes the sole agreement of the parties hereto, and supersedes any prior understandings or written or oral Agreements between the parties respecting the subject matter defined herein. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing.

**ARTICLE 31**  
**SURVEYOR'S ACCOUNTING RECORDS**

Records pertaining to the project, and records of accounts between City and Surveyor, shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives at mutually convenient times. The City reserves the right to review all records it deems relevant which are related to this Agreement.

**ARTICLE 32**  
**NOTICES**

All notices to either party by the other required under this Agreement shall be personally delivered or mailed to such party at the following respective addresses:

**City:**

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

and to:

Stephan L. Sheets  
City Attorney  
309 East Main Street  
Round Rock, TX 78664

**Surveyor:**

CP&Y, Inc.  
1 Chisholm Trail Road, Suite 130  
Round Rock, TX 78681

**ARTICLE 33**  
**GENERAL PROVISIONS**

**(1) Time is of the Essence.** Surveyor understands and agrees that time is of the essence and that any failure of Surveyor to complete the Surveying Services for each phase of this Agreement within the agreed Work Schedule may constitute a material breach of this Agreement. Surveyor shall be fully responsible for his/her/its delays or for failures to use his/her/its reasonable efforts in accordance with the terms of this Agreement and the Surveyor's standard of performance as defined herein. Where damage is caused to City due to Surveyor's negligent failure to perform City may accordingly withhold, to the extent of such damage, Surveyor's payments hereunder without waiver of any of City's additional legal rights or remedies.

**(2) Force Majeure.** Neither City nor Surveyor shall be deemed in violation of this Agreement if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

**(3) Enforcement and Venue.** This Agreement shall be enforceable in Round Rock, Williamson County, 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.

**(4) Standard of Performance.** The standard of care for all professional surveying, consulting and related services performed or furnished by Surveyor and its employees under this Agreement will be the care and skill ordinarily used by members of Surveyor's profession practicing under the same or similar circumstances at the same time and in the same locality. Excepting Articles 25 and 34 herein, Surveyor makes no warranties, express or implied, under this Agreement or otherwise, in connection with the Surveying Services.

**(5) Opinion of Probable Cost.** Any opinions of probable project cost or probable construction cost provided by Surveyor are made on the basis of information available to Surveyor and on the basis of Surveyor's experience and qualifications and represents its judgment as an experienced and qualified professional Surveyor. However, since Surveyor has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s') methods of determining prices, or over competitive bidding or market conditions, Surveyor does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost Surveyor prepares.

**(6) Opinions and Determinations.** Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

#### **ARTICLE 34** **SIGNATORY WARRANTY**

The undersigned signatory for Surveyor hereby represents and warrants that the signatory is an officer of the organization for which he/she has executed this Agreement and that he/she has full and complete authority to enter into this Agreement on behalf of the firm. The above-stated representations and warranties are made for the purpose of inducing City to enter into this Agreement.

**IN WITNESS WHEREOF**, the City of Round Rock has caused this Agreement to be signed by and through its authorized representative, and Surveyor, Castleberry Surveying, Ltd., has caused this Agreement to be signed by and through his/her/its duly authorized representative(s), thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions hereof.

**CITY OF ROUND ROCK, TEXAS:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Sara L. White, City Clerk

**FOR CITY, APPROVED AS TO FORM:**

By: \_\_\_\_\_

Stephan L. Sheets, City Attorney

**CP&Y, INC.**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LIST OF EXHIBITS ATTACHED**

- |               |                          |
|---------------|--------------------------|
| (1) Exhibit A | City Services            |
| (2) Exhibit B | Services                 |
| (3) Exhibit C | Work Schedule            |
| (4) Exhibit D | Fee Schedule             |
| (5) Exhibit E | Certificate of Insurance |

## **Exhibit A**

### **City Services**

The City of Round Rock will furnish to the Surveyor the following items/information:

1. Designate a person to act as City's representative with respect to the services to be performed or furnished by the Surveyor. This representation will have authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to surveying services.
2. Provide all criteria and full information as to City's requirements for the Task, including objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and furnish copies of all design and construction information if available to the City and necessary for the Surveyor to complete the Task.
3. Assist Surveyor by placing all available information pertinent to the Task, including previous reports and any other data relative to the ultimate project if available to the City and necessary for the Surveyor to complete the task.



## **Exhibit B**

### **Surveying Services**

#### Surveying Services to be provided:

This contract is to perform miscellaneous surveying tasks on an “as needed” basis for immediate tasks deemed necessary by the CORR Staff.

These services may include but are not limited to the following activities: easement preparation, small area topographic surveys, spot elevations, ROW determination and delineations, CORR GPS Monument replacement or establishment of new monuments, location of utility markings and potholes, tree surveys, quality control of submitted platting or monuments, as-built surveys of utilities or other infrastructures.

These tasks will be issued and accounted for via a “Work Order” system. Individual requests for survey will be proposed and fees agreed upon before issuance of the work order.

Each Surveying Services Task will be authorized by a separate written Notice to Proceed.

#### General Standards for Surveying Services

All surveys shall meet or exceed the standards set in the Professional Land Surveying Practices Act, the General Rules of Procedures and Practices promulgated by the Texas Board of Professional Land Surveying (TBPLS), and subject to the approval of the City of Round Rock.

The Texas Department of Transportation Survey Manual, latest editions, will serve as a guide and shall be the basis for the format and preparation of all right-of-way documents produced, including Right-of-Way Maps, property descriptions (including parcel Plats), and other Right-of-Way work products, unless otherwise directed by the City.

All easement documents shall be formatted and prepared in accordance with the standards set in the Professional Land Surveying Practices Act, the General Rules of Procedures and Practices, the easement documents shall meet Williamson County's Standards for Recordation, and shall be subject to the approval of the City of Round Rock.

All surveys shall be tied to the “City of Round Rock Horizontal and Vertical Control Network”. In the executing of work under this contract should the surveyor find any City Survey Control Monument to be incorrect the surveyor shall notify the City to receive direction and/or authorization to correct the monument data, or relocate and establish new monument data. This data shall be provided to the City utilizing the standard TX DOT – GPS Monument Data form.

All GPS work, whether primary control surveys or other, shall meet or exceed the current Federal Geodetic Control Subcommittee's (FGCS) Geometric Geodetic Accuracy Standards and Specifications for Using GPS Relative Positioning Techniques and the Texas Department of Transportation GPS Manual of Practice.

The North American Datum of 1983 (NAD83), Texas Coordinate System of 1983 (State Plane Coordinates), applicable to the zone or zones in which the work is performed, with values in U.S. Survey Feet, will be used for all horizontal coordinates derived.

Project or surface coordinates will be calculated by applying a Combined Adjustment Factor (CAF) to the State Plane Coordinate values. The value utilized for a project may be directed by the City to a) match existing or ongoing projects, b) conform to a Texas Department of Transportation county-wide surface factor or c) be calculated specifically for the project area.

Elevations will be based on North American Vertical Datum 88 (NAVD88), unless otherwise directed by the City.

All conventional horizontal and vertical control surveys shall meet or exceed the current Federal Geodetic Control Subcommittee's (FGCS) Standards and Specifications for Geodetic Control Networks, and the Texas Department of Transportation Survey Manual, the latest edition of the Texas Society of Professional Surveyors (TSPS) Manual of Practice for Land Surveying in the State of Texas to the order of accuracy specified, and in the categories listed below or in a Supplement Contract, the work shall meet or exceed the order of accuracy specified in the publication listed in this paragraph.

In order to insure accuracy and accountability of the services provide under this contract, the Surveyor may be required to certify work performed under this contract as true and correct according to FGCS Standards, the Texas Department of Transportation Survey Manual, latest edition, the Texas Department of Transportation GPS Manual of Practice, latest edition of the TSPS Manual of Practice for Land Surveying in the State of Texas, as may be applicable.

The Surveyor shall provide temporary signing and traffic control in and around survey operations; signing and traffic control will comply with provisions of the Texas Manual of Uniform Traffic Control Devices. All signs, flags, and safety equipment shall be provided by the surveyor. Should any lane closures be required the Surveyor shall provide 24 hours advance notice to the appropriate authority.

The Surveyor shall provide all personnel, equipment, and materials necessary for the performance of the activities required by this Contract or by any Supplemental Contract.

Data (original and processed) shall be provided to the City on a compact disk or other approved medium and shall be fully compatible with the City's computer system and with programs in use by the City at the time of submission, without further modification or conversion. The program formats used by the City are: ArcInfo, ArcView and AutoCAD.

Variations in these software applications or other requirements listed above shall only be allowed if requested in writing by the Surveyor and approved by the City.

The Surveyor shall perform Quality Control/Quality Assurance on all procedures, field surveys, data, and products prior to delivery to the City. If, at any time, during the course of reviewing a submittal of any item it becomes apparent to the City that the submittal contains errors, omissions, and/or inconsistencies, the City may cease its review and return the submittal to the Surveyor immediately for appropriate action by the Surveyor. A submittal returned to the Surveyor for this reason is not a submittal for purposes of the submission schedule.

The Standards for services that are not boundary-related but that relate to surveying for engineering projects may be determined by the City's project engineer, project manager, construction specifications, or design specifications.

Surveyor shall be responsible for all provisions to enter upon public and private property as required for Surveyor to perform services under this Agreement, Surveyor shall provide City with a written right of entry signed by himself and the property owner authorizing the Surveyor to enter property.

## **Exhibit C**

### **Work Schedule**

This contract is intended to last two years from the date of execution by the City.

Any open Work Authorizations at the end of this contract will be completed at the rates quoted in this contract.

**Exhibit D**  
**CP&Y, INC.**  
**STANDARD RATES SCHEDULE**

Effective January 31, 2018

**Personnel Charges:**

Charges for employees are computed utilizing the following rate schedule. These rates include salary, fringe benefits, overhead and General and Administrative (G&A) costs. Time spent in either local or inter-city travel will be charged for in accordance with the following rate schedule.

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STAFF CATEGORY	RATE/HOUR
Managing RPLS	\$ 150.00
Senior Survey Technician	\$ 100.00
CADD Technician / Research	\$ 90.00
Administrative Support	\$ 75.00
Survey Crew	\$ 135.00
Survey Crew (GPS/RTK)	\$ 165.00
SUE Crew 1 Man	\$ 100.00
SUE Crew 2 Man	\$ 165.00
SUE Crew 2 Man w/Truck	\$ 225.00

**Other Direct Costs:**

Charges for services, equipment and facilities furnished are computed on the basis of cost. Such items include; shipping charges, printing and photographic reproductions, special fees, permits, Insurance and licenses, purchased and leased equipment, etc. Travel and travel related expenses with Owner's prior written authorization.

**Billing:**

Invoices will be issued monthly and are payable within 30 days unless otherwise agreed upon.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/30/2018

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

<b>PRODUCER</b> McLaughlin Brunson A Risk Strategies Company 12801 N CENTRAL EXPY, STE 1710 Dallas, TX 75243	<b>CONTACT NAME:</b> Joe Bryant <b>PHONE (A/C, No, Ext):</b> (214) 503-1212 <b>FAX (A/C, No):</b> (214) 503-8899 <b>E-MAIL ADDRESS:</b> certificate@mclaughlinbrunson.com																					
<b>INSURED</b> CP&Y, Inc. 1820 Regal Row Suite 200 Dallas TX 75235	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>XL Specialty Insurance Company</td><td>37885</td></tr><tr><td>INSURER B:</td><td>Travelers Indemnity Co of America</td><td>25666</td></tr><tr><td>INSURER C:</td><td>Travelers Indemnity Company</td><td>25658</td></tr><tr><td>INSURER D:</td><td></td><td></td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	XL Specialty Insurance Company	37885	INSURER B:	Travelers Indemnity Co of America	25666	INSURER C:	Travelers Indemnity Company	25658	INSURER D:			INSURER E:			INSURER F:		
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INSURER E:																						
INSURER F:																						

**COVERAGES****CERTIFICATE NUMBER:** 43389540**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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab <input checked="" type="checkbox"/> Severability of Int. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	6805H846843 Valuable Papers \$2,245,000	1/1/2018	1/1/2019	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 \$
B	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	BA3865M855	1/1/2018	1/1/2019	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	CUP2D349003	1/1/2018	1/1/2019	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
C	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	<input checked="" type="checkbox"/>	UB0J375469	1/1/2018	1/1/2019	<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
A	<input checked="" type="checkbox"/> <b>Professional Liability</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	DPR9923349	4/1/2018	4/1/2019	Per Claim \$5,000,000 Annual Aggregate \$5,000,000

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

The claims made professional liability coverage is the total aggregate limit for all claims presented within the annual policy period and is subject to a deductible. Thirty (30) day notice of cancellation in favor of certificate holder on all policies.

RE: Surveying Services

The claims made professional liability coverage is the total aggregate limit for all claims presented within the annual policy period and is subject to a deductible. Thirty (30) day notice of cancellation in favor of the certificate holder on all policies.

**CERTIFICATE HOLDER****CANCELLATION**

City of Round Rock Attn: Jeff Bell 2008 Enterprise Drive Round Rock TX 78664	<b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b>  <b>AUTHORIZED REPRESENTATIVE</b>  Joe Bryant
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ACORD 25 (2016/03)

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