

EXHIBIT

"A"

**CITY OF ROUND ROCK AGREEMENT FOR
PROFESSIONAL CONSULTING SERVICES FOR
ENVIRONMENTAL SERVICES
WITH
POWER ENGINEERS, INC.**

THE STATE OF TEXAS

§

THE CITY OF ROUND ROCK

§

KNOW ALL BY THESE PRESENTS

§

COUNTY OF WILLIAMSON

§

COUNTY OF TRAVIS

§

THIS AGREEMENT for professional consulting services related to environmental services to be provided on an as-needed basis for various projects (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 POWER ENGINEERS, INC., located at 2600 Via Fortuna, Suite 450, Austin, Texas 78746 (the "Consultant" or "POWER Engineers").

RECITALS:

WHEREAS, City desires to contract for Consultant's professional services generally described as environmental services; 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 from the effective date of this Agreement through December 31, 2020.

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 CITY SERVICES

The City agrees to furnish the Consultant the information set forth and appended to this Agreement as Exhibit "A" titled "Services to be provided by the City," which document is attached hereto and incorporated herein by reference for all purposes.

3.0 SCOPE OF SERVICES

The Scope of Services is appended to this Agreement as Exhibit "B" titled "Services to be provided by the Consultant," which document is attached hereto and incorporated herein by reference for all purposes.

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 the appended "Work Schedule," attached as Exhibit "C" and incorporated herein by reference for all purposes. Services performed by Consultant shall be 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 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 described in Exhibit "B," City agrees to pay Consultant an amount not-to-exceed **Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00)**, in accordance with Exhibit "D" entitled "Fee Schedule," which document is attached hereto and incorporated herein by reference for all purposes.

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 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.

8.0 NON-APPROPRIATION AND FISCAL FUNDING

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

9.0 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."

10.0 SUPPLEMENTAL AGREEMENT

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

11.0 TERMINATION; 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.

12.0 NON-SOLICITATION

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

13.0 INDEPENDENT CONTRACTOR STATUS

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

- (1) Consultant has the right to perform services for others during the term hereof.

- (2) Consultant has the sole right to control and direct the means, manner and method by which it performs its 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.

14.0 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.

15.0 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 manner. Consultant shall re-perform any work not in compliance with this representation reported to Consultant within one (1) year of completion of the work.

16.0 LIMITATION OF LIABILITY

Should any of Consultant's services not conform to the requirements of the City or of this Agreement, then and in that event the City shall give written notification to Consultant; thereafter, (a) Consultant shall either promptly re-perform such 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.

17.0 INDEMNIFICATION

Consultant and the City each agree to indemnify 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 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 the Consultant to the City. 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 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.

18.0 ASSIGNMENT AND DELEGATION

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

19.0 LOCAL, STATE AND FEDERAL TAXES

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

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

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

20.0 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Consultant, its consultants, agents, employees and subcontractors shall use best efforts in accordance with the standard of care set forth in Section 15.0 of this Agreement 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 as set forth in Exhibit "A," and same shall belong solely to

the City at the expiration of the term of this Agreement.

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

21.0 INSURANCE

A. Insurance. Consultant, at Consultant'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 One Million Dollars per claim from a company authorized to do insurance business in Texas and otherwise acceptable to the City. Consultant shall also notify the 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.

B. Subconsultant Insurance. Without limiting any of the other obligations or liabilities of Consultant, Consultant 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 Paragraph A above, including the required provisions and additional policy conditions as shown below in Paragraph C.

Consultant shall obtain and monitor the certificates of insurance from each subconsultant in order to assure compliance with the insurance requirements. Consultant 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. The City shall be entitled, upon request and without expense, to receive copies of these certificates of insurance.

C. Cost of Insurance. The cost of all insurance required herein to be secured and maintained by Consultant shall be borne solely by Consultant, with certificates of insurance evidencing such minimum coverage in force to be filed with the City. Such Certificates of Insurance are evidenced as Exhibit E herein entitled "Certificates of Insurance."

D. Notice. As set forth in the Certificate of Insurance, thirty (30) days prior to the expiration, cancellation, non-renewal or reduction in limits by endorsement, a notice thereof shall be given to the City by certified mail to:

City Manager
221 East Main Street
Round Rock, TX 78664

22.0 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.

23.0 DESIGNATION OF REPRESENTATIVES

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

Dillon Johns, E.I.T.
Utilities and Environmental Services
2008 Enterprise Drive
Round Rock, TX 78664
512-671-2752
djohns@toundrocktexas.gov

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

Steve McVey, P.G.
Senior Project Manager
2600 Via Fortuna, Suite 450
Austin, TX 78746
512-879-6625
steve.mcvey@powereng.com

24.0 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:

POWER Engineers, Inc.
2600 Via Fortuna, Suite 450
Austin, TX 78746

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.

25.0 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.

26.0 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.

27.0 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.

In the event a dispute or claim arises under this Agreement, the parties must attempt to resolve the dispute or claim using the following procedure prior to terminating the Agreement: The party with the dispute shall make a written request for a telephone conference to be held between a representative of each party within five (5) days of the request. The purpose of this telephone conference and any subsequent telephone conferences shall be to negotiate in good faith the matter(s) constituting the dispute. If within ten (10) calendar days of the initial telephone conference, the parties have not reached a mutually satisfactory resolution, then the parties shall attempt to resolve the dispute or claim with the assistance of a mutually selected

mediator. If the parties cannot agree on a mediator, the parties shall each select a mediator and the two mediators shall agree upon a third mediator. A mediator shall be chosen within fifteen (15) days or within such time frame as agreed upon by both parties. Any mediation proceeding shall occur in Round Rock, Texas. Any costs and fees, other than attorney fees, associated with the mediation shall be shared equally by the parties. Failing resolution through mediation, either party may pursue legal action in Williamson County, Texas.

28.0 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.

29.0 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, according to generally accepted business practices as set forth in Section 15.0 of this Agreement.

30.0 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.

31.0 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.

32.0 MISCELLANEOUS PROVISIONS

Time is of the Essence. Consultant agrees that time is of the essence and that 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.

[Signatures on the following page.]

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

City of Round Rock, Texas

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

POWER Engineers, Inc.

By: Timothy P. Gessner
Printed Name: Timothy P. Gessner
Title: Business Unit Director
Date Signed: 12/14/2018

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 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

The City of Round Rock is seeking assistance on an as-needed basis for environmental related tasks. The Consultants will provide a support team with sufficient qualified staff to ensure prompt availability with minimal notice for each task.

Work authorizations (WAs) will be issued with discreet scopes and budgets. To maintain accurate accounting of contract value authorized and spent, the Consultant will provide a monthly report summarizing all WAs issued, total budget amount, cumulative invoiced amount, current invoice amount, budget remaining and status of the work completion. This monthly reporting task would be a stand-alone line item and should be included by the City of Round Rock in budgeting purposes as a fixed, monthly cost (see Exhibit D – Fee Schedule Env Svcs 2019).

Types of technical work may include:

Environmental Review, Permitting and Analysis

Support for City projects and/or interests regarding compliance with various Federal and State Regulatory Agencies including: Texas Commission on Environmental Quality (TCEQ), Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service (USFWS), and Texas Parks and Wildlife Department (TPWD).

Work may include biological surveys, archaeological surveys, and other environmental assessment activities necessary for site assessments, risk assessment and management, records management, construction support, regulatory strategy and liaison for the following:

- Phase I and II Environmental Site Assessments (ESAs)
- National Environmental Policy Act (NEPA) Documentation
- TCEQ Edwards Aquifer Protection Program
- USACE 404 Permitting and Regulatory Wetland Delineations
- Total Maximum Daily Load (TMDL) and associated I-Plan
- TCEQ TPDES Wastewater Treatment Plant Permitting and Compliance Support
- TCEQ Drinking Water Supply Permitting and Compliance Support

Hazardous Materials, Hazardous Waste, and Solid Waste Management Issues

Assistance with Federal and State environmental regulations governing the management of city-generated hazardous/special waste, hazardous/special material spills, clean up, and restoration.

Work may include support and guidance regarding the storage, transportation, use, removal, lawful disposal, manifests, underground tanks, health and safety concerns, training, and permit requirements. Tasks may include hazardous and special waste management services (including but not limited to): preparation of annual waste reports, training for City staff regarding waste management, and assistance to the City regarding the classification and proper disposal of waste.

Facilities Environmental Management & Inspections

Asbestos: The Consultant may be required to perform asbestos surveys, prepare abatement project specifications, and oversee abatement activities. The Consultant shall provide a Licensed Asbestos Consultant Agency and a Licensed Asbestos Individual Consultant to perform or oversee the services.

Other Related Risks (e.g. Mold, Lead-Based Paint, Radon, and Radiation): The Consultant may be required to provide guidance and assistance regarding the assessment and remediation for potential mold, lead-based paint, radon, radiation, and/or indoor air quality concerns.

Storm Water Management: The Consultant may be required to assist the City with management of its TPDES MS4, CGP, and/or MSGP permits including providing direction and guidance in storm water pollution prevention plans (SWP3). The Consultant may also be required to conduct storm water monitoring, training, and inspections of City facilities in relation to appropriate permits.

In support of the activities above, the consultant may also be required to

Task Supplemental 1: Analytical Laboratory Services

The City expects that analytical laboratory services will be required for this contract to perform analytical testing in support of the above mentioned environmental services. The laboratories should maintain accreditation by an approved, independent accrediting organization, e.g., American Association of Laboratory Accreditation (A2LA) and/or demonstrate successful participation in appropriate proficiency analytical testing programs for the testing that they will perform under this contract, and/or be in good standing with TCEQ and EPA, as necessary.

Task Supplemental 2: Texas Antiquities Code/Texas Historical Commission

It is not uncommon for environmental and archeological consulting services to overlap on the same project. The consultant (or its partner firm) may be required to conduct investigations for environmental, antiquities, and historical concerns often inform and direct decisions on land acquisition, preliminary site layout, etc. Antiquities/Historical consultants shall have knowledge and experience of Federal and State regulations and grant requirements.

1. 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
Steve McVey	Senior Project Manager
Julie Morelli	Senior Project Manager
Rob von Czoernig	Project 1 Manager
Jennifer Knowles	Staff 3 Scientist/ GIS
Jacob Geesin	Natural Resource Scientist
Ryan Bayer	Senior Consultant

Nathan Collier	Natural Resource Scientist
Kelsey Krueger	Natural Resource Scientist
Matt Klaser	Senior Technician
Betty Moore	Senior Consultant
Paul Moore	Project 3 Manager
Dave Sorrells	Senior Consultant
Bob Fisher	Project 2 Manager
Michele Foss	Project 3 Scientist
Chris Dayton	Principal Investigator
Matt Stotts	Project Archeologist
Bill Bishop	Asbestos Consultant
Lee Thompson	Asbestos & Mold Consultant
Matthew Zappa	Asbestos & Lead Consultant
Troy Jenkins	Asbestos, Mold & Indoor Air Consultant

EXHIBIT C

Work Schedule

All work shall be complete by December 31, 2020.

(Work Schedule to be determined with each individual Work Authorization.)

Exhibit D - Fee Schedule Env Services 2019-2020

POWER Engineers, Inc., Prime Contractor

Labor Category	Hourly Rate
Principal	\$215
Senior Consultant	\$205
Senior Project Manager/Engineer/Scientist	\$190
Project 3 Manager/Engineer/Scientist	\$175
Project 2 Manager/Engineer/Scientist	\$165
Project 1 Manager/Engineer/Scientist	\$155
Senior Staff Engineer/Scientist	\$150
Staff 3 Engineer/Scientist	\$135
Staff 2 Engineer/Scientist	\$125
Staff 1 Engineer/Scientist	\$115
Natural Resources Specialist	\$115
Natural Resources Scientist	\$95
Senior Technician/Draftsman	\$90
Technician/Draftsman	\$85
Project Support Specialist	\$75
Administrative Assistant	\$55

Cox McLain Environmental Consulting, Subcontractor

Labor Category	Hourly Rate
Principal Investigator	\$95
Project Archeologist	\$80

Jenkins Environmental, Subcontractor

Labor Category	Hourly Rate
Principal Consultant (Indoor Air Quality)	\$175
Asbestos/Mold/Lead Consultant	\$115
Lead/Asbestos Project Manager	\$115
Inspector Project Manager	\$85

Program Management & Monthly Reporting Task	Hourly Rate
Assumes Principal and Project Support Specialist will spend 1 hour per month to generate this report.	\$265

ACORDTM**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

3/26/2018

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

PRODUCER Greyling Ins. Brokerage/EPIC 3780 Mansell Road, Suite 370 Alpharetta, GA 30022	CONTACT NAME: Carly Underwood	
	PHONE (A/C, No, Ext): 770.552.4225	FAX (A/C, No): 866.550.4082
	E-MAIL ADDRESS: carly.underwood@greyling.com	
INSURED POWER Engineers, Inc. 3940 Glenbrook Drive; P.O. Box 1066 Hailey, ID 83333	INSURER(S) AFFORDING COVERAGE	
	INSURER A : National Union Fire Ins. Co.	NAIC # 19445
	INSURER B : Travelers Prop Casualty Co of America	25674
	INSURER C : New Hampshire Ins. Co.	23841
	INSURER D : Syndicate 2623/623 at Lloyd's	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER: 18-19

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			5268183	04/01/2018	04/01/2019	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$25,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			4489679 (AOS) 4489678 (MA)	04/01/2018 04/01/2018	04/01/2019 04/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$0			ZUP91M2763618NF	04/01/2018	04/01/2019	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	015893717 (AOS) 015893718 (CA) 015893720 (ME)	04/01/2018 04/01/2018 04/01/2018	04/01/2019 04/01/2019 04/01/2019	<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
D	Professional Liab incl. Pollution			W13B97180601	04/01/2018	04/01/2019	Per Claim \$5,000,000 Aggregate \$5,000,000

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

The City of Round Rock is named as an Additional Insured on the above referenced liability policies with the exception of workers compensation & professional liability where required by written contract. Should any of the above described policies be cancelled by the issuing insurer before the expiration date thereof, 30 days' written notice (except 10 days for nonpayment of premium) will be provided to the Certificate Holder.

CERTIFICATE HOLDER**CANCELLATION**

City of Round Rock City Manager 221 East Main Street Round Rock, TX 78664-0000	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 