

EXHIBIT

"A"



**CITY OF ROUND ROCK
CONTRACT FOR ENGINEERING SERVICES
FOR EROSION, STABILIZATION AND RESTORATION
WORK AUTHORIZATION**

FIRM: **FREESE AND NICHOLS, INC.** ("Engineer")
ADDRESS: **10431 Morado Circle, Building 5, Suite 300, Austin, TX 79729**

THE STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

THIS CONTRACT FOR ENGINEERING SERVICES ("Contract") is made and entered into to be effective on _____, 2020 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 Engineer, and such Contract is for the purpose of contracting for professional engineering 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 engineers; and

WHEREAS, City and Engineer desire to contract for such professional engineering services; and

WHEREAS, City and Engineer 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 agreements hereinafter contained to be kept and performed by the respective parties hereto, it is agreed as follows:

CONTRACT DOCUMENTS

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

ARTICLE 1 **CITY SERVICES**

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

ARTICLE 2 **ENGINEERING SERVICES**

Engineer shall perform Engineering Services as identified in Exhibit B entitled “Engineering Services.”

Engineer shall perform the Engineering Services in accordance with a Work Schedule to be agreed upon between City and Engineer as part of the Work Authorization provided in Article 7 herein, “Work Authorization.” Such Work Schedule shall contain a complete schedule so that the Engineering Services included in the Work Authorization 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 Engineer of all Engineering Services. Should the review times or Engineering Services take longer than shown on the Work Schedule, through no fault of Engineer, Engineer may submit a timely written request for additional time, which shall be subject to the approval of the City Manager.

ARTICLE 3 **CONTRACT TERM**

(1) Term. This Agreement shall be from the date hereof and shall terminate at the close of business on the 10th day of the month of September, 2022, or as otherwise terminated as provided in Article 20 entitled “Termination.” Any Engineering Services performed or costs incurred after the date of termination shall not be eligible for reimbursement. Engineer shall notify City in writing as soon as possible if he/she/it determines, or reasonably anticipates, that the Engineering Services will not be completed in accordance with the Work Schedule.

(2) Work Schedule. Engineer acknowledges that the Work Schedule is of critical importance, and agrees to undertake all necessary efforts to expedite the performance of Engineering Services required herein so that the services will be commenced and completed as scheduled. In this regard, and subject to adjustments in the Work Schedule as provided in Article 2 herein, Engineer shall proceed with sufficient qualified personnel and consultants necessary to fully and timely accomplish all Engineering Services required under this Contract in a professional manner.

(3) Work Authorization. After execution of this Contract, Engineer shall not proceed with Engineering Services until authorized in writing by City to proceed as provided in Article 7.

ARTICLE 4 **COMPENSATION**

City shall pay and Engineer agrees to accept the amount shown below as full compensation for all engineering services performed and to be performed under this Contract.

Engineer shall be paid on the basis of actual hours worked by employees performing work associated with this Contract, in accordance with the Fee Schedule attached hereto as Exhibit C. Payment of monies due for the Engineer's subconsultant's services, if any, shall be based on the actual amount billed to the Engineer by the subconsultant.

The maximum amount payable under this Contract, without modification of this Contract as provided herein, is the sum of One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00). Engineer shall prepare and submit to City monthly progress reports in sufficient detail to support the progress of the work and to support invoices requesting monthly payment. Any preferred format of City for such monthly progress reports shall be identified in Exhibit B entitled "Engineering Services". Satisfactory progress of work shall be an absolute condition of payment.

The maximum amount payable herein may be adjusted for additional work requested and performed only if approved by written Supplemental Agreement.

ARTICLE 5 **METHOD OF PAYMENT**

Payments to Engineer shall be made while Engineering Services are in progress. Engineer shall prepare and submit to City, not more frequently than once a month, an invoice showing Engineering Services performed. This submittal shall also include a progress assessment report in a form acceptable to City.

Payments shall be made by City based upon Engineering 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 Engineering Services performed. Engineer has the responsibility to submit proof to City, adequate and sufficient in its determination, that Engineering Services 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 Engineer 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, payment to Engineer will be made within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which City receives a correct invoice for services, whichever is later. Engineer may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply in the event:

- A. There is a bona fide dispute between City and Engineer concerning the supplies, materials, or equipment delivered or the services performed that causes the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Engineer and a subcontractor or between a subcontractor and its supplier concerning supplies, materials, or equipment delivered or the Engineering Services performed which causes the payment to be late; or
- D. The invoice is not mailed to City in strict accordance with instructions, if any, on the purchase order, or this Contract or other such contractual agreement.

City shall document to Engineer 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
WORK AUTHORIZATION

The Engineer shall not proceed with any task listed on Exhibit B until the City has issued a written Work Authorization regarding such task. The City shall not be responsible for work performed or costs incurred by Engineer related to any task for which a Work Authorization has not been issued.

ARTICLE 8
PROJECT TEAM

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

Federico Sanchez, P.E.
Project Manager
3400 Sunrise Road
Round Rock, TX 78665
Telephone Number (512) 218-6609
Fax Number (512) 218-5536
Email Address fsanchez@roundrocktexas.gov

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

Engineer's Designated Representative for purposes of this Contract is as follows:

Will Huff, P.E.
Stormwater Engineer/Project Manager
10431 Morado Circle, Building 5, Suite 300
Austin, TX 79729
Telephone Number (512) 617-3195
Fax Number (512) 617-3101
Email Address Will.Huff@freese.com

ARTICLE 9

PROGRESS EVALUATION

Engineer shall, from time to time during the progress of the Engineering Services, confer with City at City's election. Engineer 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 Engineering Services. At the request of City or Engineer, conferences shall be provided at Engineer'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 Engineering Services.

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

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

- (1) Problems, delays, adverse conditions which may materially affect the ability to meet the objectives of the Work Schedule, or preclude the attainment of Engineering 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 Engineering Services, but not to terminate this Contract, then such suspension may be effected by City giving Engineer 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 Engineering 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 Engineering Services. Such sixty-day notice may be waived in writing by agreement and signature of both parties. If this Contract is suspended for more than thirty (30) days, Engineer shall have the option of terminating this Contract.

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

ARTICLE 11

ADDITIONAL ENGINEERING SERVICES

If Engineer forms a reasonable opinion that any work he/she/it has been directed to perform is beyond the scope of this Contract 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 Engineer and a written Supplemental Contract will be executed between the parties as provided in Article 13. Engineer shall not perform any proposed additional work nor incur any additional costs prior to the execution, by both parties, of a written Supplemental Contract. City shall not be responsible for actions by Engineer nor for any costs incurred by Engineer relating to additional work not directly associated with the performance of the Engineering Services authorized in this Contract or any amendments thereto.

ARTICLE 12

CHANGES IN ENGINEERING SERVICES

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

Engineer shall make revisions to Engineering 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 Engineering Services.

ARTICLE 13

SUPPLEMENTAL CONTRACTS

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

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

ARTICLE 14

USE OF DOCUMENTS

All documents, including but not limited to drawings, specifications and data or programs stored electronically, (hereinafter referred to as "Instruments of Service") prepared by Engineer and its subcontractors are related exclusively to the services described in this Contract and are intended to be used with respect to this Contract. However, it is expressly understood and agreed by and between the parties hereto that all of Engineer's designs under this Contract (including but not limited to tracings, drawings, estimates, specifications, investigations, studies and other documents, completed or partially completed), shall be the property of City to be thereafter used in any lawful manner as City elects. Any such subsequent use made of documents by City shall be at City's sole risk and without liability to Engineer, and, to the extent permitted by law, City shall hold harmless Engineer from all claims, damages, losses and expenses, resulting therefrom. Any modification of the plans will be evidenced on the plans and be signed and sealed by a licensed professional prior to re-use of modified plans.

By execution of this Contract and in confirmation of the fee for services to be paid under this Contract, Engineer hereby conveys, transfers and assigns to City all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in any designs and work product developed under this Contract. Copies may be retained by Engineer. Engineer shall be liable to City for any loss or damage to any such documents while they are in the possession of or while being worked upon by Engineer or anyone connected with Engineer, including agents, employees, Engineers or subcontractors. All documents so lost or damaged shall be replaced or restored by Engineer without cost to City.

Upon execution of this Contract, Engineer grants to City permission to reproduce Engineer's work and documents for purposes of constructing, using and maintaining infrastructure or facilities for which said work and documents were prepared, provided that City shall comply with its obligations, including prompt payment of all sums when due, under this Contract. Engineer shall obtain similar permission from Engineer's subcontractors consistent with this Contract. If and upon the date Engineer is adjudged in default of this Contract, City is permitted to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the work and documents for the

purposes of completing, using and maintaining infrastructure or facilities for which said work and documents were prepared.

City shall not assign, delegate, sublicense, pledge or otherwise transfer any permission granted herein to another party without the prior written agreement of Engineer. However, City shall be permitted to authorize a contractor, subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of work for the City. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes is permitted. Any unauthorized use of the Instruments of Service shall be at City's sole risk and without liability to Engineer and its Engineers.

Prior to Engineer providing to City any Instruments of Service in electronic form or City providing to Engineer any electronic data for incorporation into the Instruments of Service, City and Engineer shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations not otherwise provided in this Contract. Any electronic files are provided by Engineer for the convenience of City, and use of them is at City's sole risk. In the case of any defects in electronic files or any discrepancies between them and any hardcopy of the same documents prepared by Engineer, the hardcopy shall prevail. Only printed copies of documents conveyed by Engineer shall be relied upon.

Engineer shall have no liability for changes made to Engineer's Instruments of Service by other engineers subsequent to the completion and delivery of the Instruments of Service to the City. Any such change shall be sealed by the engineer making that change and shall be appropriately marked to reflect what was changed or modified.

ARTICLE 15

PERSONNEL, EQUIPMENT AND MATERIAL

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

ARTICLE 16

SUBCONTRACTING

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

ARTICLE 17
EVALUATION OF ENGINEERING SERVICES

City, or any authorized representatives of it, shall have the right at all reasonable times to review or otherwise evaluate the Engineering 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 Engineer or a subcontractor, then Engineer 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

All applicable study reports shall be submitted in preliminary form for approval by City before any final report is issued. City's comments on Engineer's preliminary reports shall be addressed in any final report.

ARTICLE 19
VIOLATION OF CONTRACT TERMS/BREACH OF CONTRACT

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

ARTICLE 20
TERMINATION

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

Should City terminate this Contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to Engineer. In determining the value of the Engineering Services performed by Engineer prior to termination, City shall be the sole judge. Should City terminate this Contract 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 Engineer defaults in the performance of this Contract or if City terminates this Contract for fault on the part of Engineer, then City shall give consideration to the actual costs incurred by Engineer in performing the Engineering Services to the date of default, the amount of Engineering Services required which was satisfactorily completed to date of default, the value of the Engineering Services which are usable to City, the reasonable and necessary cost to City of employing another firm to complete the Engineering Services required and the time required to do so, and other factors which affect the value to City of the Engineering Services performed at the time of default.

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

Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurements made by Engineer in support of the Engineering Services under this Contract.

ARTICLE 21

COMPLIANCE WITH LAWS

(1) Compliance. Engineer 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 Contract, including without limitation, minimum/maximum salary and wage statutes and regulations, and licensing laws and regulations. Engineer shall furnish City with satisfactory proof of his/her/its compliance.

Engineer shall further obtain all permits and licenses required in the performance of the Engineering Services contracted for herein.

(2) Taxes. Engineer will pay all taxes, if any, required by law arising by virtue of the Engineering 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.

(3) As required by Chapter 2270, Government Code, Engineer hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

ARTICLE 22

INDEMNIFICATION

Engineer shall save and hold City harmless from all liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by Engineer, Engineer's agent, or another entity over which Engineer exercises control. Engineer shall also save and hold City harmless from any and all expenses, including but not limited to reasonable attorneys' fees which may be incurred by City in litigation or otherwise defending claims or liabilities which may be imposed on City to the extent resulting from such negligent activities by Engineer, its agents, or employees.

ARTICLE 23

ENGINEER'S RESPONSIBILITIES

Engineer shall be responsible for the accuracy of his/her/its Engineering 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 Engineer's responsibilities for all questions arising from design errors and/or omissions. Engineer 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 any construction project or maintenance performed pursuant to the Engineering Services provided under this Contract has been satisfactorily completed.

ARTICLE 24

ENGINEER'S SEAL

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

ARTICLE 25

NON-COLLUSION, FINANCIAL INTEREST PROHIBITED

(1) Non-collusion. Engineer warrants that he/she/it has not employed or retained any company or persons, other than a bona fide employee working solely for Engineer, to solicit or secure this Contract, and that he/she/it has not paid or agreed to pay any company or engineer any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City reserves and shall have the right to annul this Contract without liability or, in its discretion and at its sole election, to deduct from the contract 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. Engineer covenants and represents that Engineer, 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 any construction project or maintenance performed pursuant to the Engineering Services provided under this Contract.

ARTICLE 26 **INSURANCE**

(1) Insurance. Engineer, at Engineer's sole cost, shall purchase and maintain during the entire term while this Contract 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 City. Engineer 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 Engineer, Engineer shall require each subconsultant performing work under this Contract to maintain during the term of this Contract, 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).

Engineer shall obtain and monitor the certificates of insurance from each subconsultant in order to assure compliance with the insurance requirements. Engineer must retain the certificates of insurance for the duration of this Contract, 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 Engineer shall be borne solely by Engineer, with certificates of insurance evidencing such minimum coverage in force to be filed with City. Such Certificates of Insurance are evidenced as Exhibit D herein entitled "Certificates of Insurance."

ARTICLE 27
COPYRIGHTS

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

ARTICLE 28
SUCCESSORS AND ASSIGNS

This Contract shall be binding upon and inure to the benefit of the parties hereto, their successors, lawful assigns, and legal representatives. Engineer may not assign, sublet or transfer any interest in this Contract, 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 Contract 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 Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE 30
PRIOR AGREEMENTS SUPERSEDED

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

ARTICLE 31
ENGINEER'S ACCOUNTING RECORDS

Records pertaining to this Contract, and records of accounts between City and Engineer, 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 Contract.

ARTICLE 32
NOTICES

All notices to either party by the other required under this Contract 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

Engineer:

Will Huff, P.E.
Stormwater Engineer/Project Manager
10431 Morado Circle, Building 5, Suite 300
Austin, TX 79729

ARTICLE 33
GENERAL PROVISIONS

(1) Time is of the Essence. The Services shall be performed expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer. Engineer understands and agrees that time is of the essence and that any failure of Engineer to complete the Engineering Services for each phase of this Contract within the agreed Work Schedule may constitute a material breach of this Contract. Engineer 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 Contract and the Engineer's standard of performance as defined herein. Where damage is caused to City due to Engineer's negligent failure to perform City may accordingly withhold, to the extent of such damage, Engineer's payments hereunder without waiver of any of City's additional legal rights or remedies. Any determination to withhold or set off shall be made in good faith and with written notice to Engineer provided, however, Engineer shall have fourteen (14) calendar days from receipt of the notice to submit a plan for cure reasonably acceptable to City.

(2) Force Majeure. Neither City nor Engineer shall be deemed in violation of this Contract 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 Contract 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 Contract 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 engineering, consulting and related services performed or furnished by Engineer and its employees under this Contract will be the care and skill ordinarily used by members of Engineer's profession practicing under the same or similar circumstances at the same time and in the same locality. Excepting Articles 25 and 34 herein, Engineer makes no warranties, express or implied, under this Contract or otherwise, in connection with the Engineering Services.

(5) Opinion of Probable Cost. Any opinions of probable project cost or probable construction cost provided by Engineer are made on the basis of information available to Engineer and on the basis of Engineer's experience and qualifications and represents its judgment as an experienced and qualified professional engineer. However, since Engineer 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, Engineer does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost Engineer prepares.

(6) Opinions and Determinations. Where the terms of this Contract 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 Engineer hereby represents and warrants that the signatory is an officer of the organization for which he/she has executed this Contract and that he/she has full and complete authority to enter into this Contract on behalf of the firm. The above-stated representations and warranties are made for the purpose of inducing City to enter into this Contract.

IN WITNESS WHEREOF, the City of Round Rock has caused this Contract to be signed in its corporate name by its duly authorized City Manager or Mayor, as has Engineer, signing by and through 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.

[signature page follows]

CITY OF ROUND ROCK, TEXAS

APPROVED AS TO FORM:

By: _____
Craig Morgan, Mayor

Stephan L. Sheets, City Attorney

ATTEST:

By: _____
Sara L. White, City Clerk

FREESE AND NICHOLS, INC.

By: _____
Signature of Principal
Printed Name: _____

LIST OF EXHIBITS ATTACHED

- | | |
|---------------|---------------------------|
| (1) Exhibit A | City Services |
| (2) Exhibit B | Engineering Services |
| (3) Exhibit C | Fee Schedule |
| (4) Exhibit D | Certificates of Insurance |

EXHIBIT A

City Services

The City will provide the following information and other assistance to the Engineer (Freese & Nichols, Inc.) that the City deems appropriate and necessary:

1. Any readily available pertinent existing information relating to the services to be performed by the Engineer; 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 Engineer in the course of the Engineer's performance of services.
3. Timely review of deliverables that have been properly completed and submitted by the Engineer; and timely provisions of comments, if any, to the Engineer resulting from said reviews.

EXHIBIT B

Engineering Services

1. PROJECT PURPOSE

The purpose of the project is to evaluate and/or design stream stabilization projects, overseeing construction, and monitoring repaired sites for creeks and channels with erosion issues that include but not limited to threatening channel banks, public utilities, and/or private property.

2. GENERAL SCOPE OF WORK

The services shown below in the “Scope of Services” are representative of the types of services contemplated on the Contract. It is not considered an exhaustive list of all engineering services that are possible under the Contract nor does it guarantee that all of the services will be requested or required.

Scope of Services:

Project Management

1. Project Management/Administration - This task includes routine communication with the City; managing manpower, budgets, and schedules; invoicing; implementing and monitoring of QA/QC efforts; and other general management activities associated with a particular Work Authorization.
2. Project Meetings and Status Reports - FNI will attend meetings with the City to review progress and upcoming work as needed and issue meeting minutes. FNI will also submit status reports to the City at agreed upon intervals documenting progress, budget, and schedule.

Preliminary Engineering (as authorized)

1. Data Acquisition - This task will include a site visit to obtain rough field measurements and the collection of various data such as existing plans, models, LiDAR contour data, and easement documents.
2. Preliminary Design - FNI will develop and review the design solution alternatives for creeks and channels with erosion issues with the City. FNI will use the information found during Data Acquisition in order to examine the feasibility of alternative designs and materials and to present the City with recommendations.
3. Hydrologic and Hydraulic Analysis – If there is no existing hydrologic and hydraulic modeling or analysis that encompasses the project area, FNI will develop the models or perform the analysis to generate data necessary for the analysis and design of repairs (flows, velocity, shear stress). Hydrologic and hydraulic analyses will be coordinated with the CITY to determine the appropriate methodology and level of detail.

4. Preliminary Design Report/Technical Memorandum - The Preliminary Design will be documented in a written report that will include:
 - a. Description of the problem
 - b. Method of analysis
 - c. Description of existing conditions
 - d. Description of proposed design alternatives
 - e. Engineer's estimate of probable construction cost for each option
5. Deliverables - An electronic copy of the Preliminary Design Report will be submitted in a format acceptable to the City.

Design Services (as authorized)

1. Data Acquisition - This task will include site visits and may include surveying and geotechnical services.
2. Sediment/Erosion Analysis – FNI will complete a geomorphic assessment of the project reach to determine channel morphology including current and potential bank failures, erosion, incision, areas of aggradation and degradation, riparian canopy, and debris jams. Analysis will include an excess shear stress analysis, incipient motion analysis, scout analysis, and estimate of the equilibrium slope of the channel. The data and analysis will be summarized in a technical memorandum and will include recommendations for the stabilization.
3. Plans Preparation - FNI will further refine the selected alternatives for stabilization and riparian restoration based on feedback and comments provided by the City. If necessary, updates to the hydraulic modeling will be incorporated into the plans as they progress towards the 100% PS&E.
4. Technical Specifications - Technical Specifications will be based on the City's Standard Specifications and be supplemented where necessary. This scope of services includes preparation of a City Bid Form and Technical Specifications Amendments to be included in a standard Project Manual, but does not include preparation of an entire Project Manual.
5. Submittal Preparation - FNI will prepare electronic copies of the Plans Preparations for the interim and 100% PS&E submittal. For the 100% submittal, this shall include a copy of any hydrologic and hydraulic modeling along with any spreadsheets used in the preparation of the technical analysis.
6. Engineer's Estimate of Probable Construction Costs - Upon completion of design an Engineer's Estimate of Probable Construction Costs will be developed and included with the final submittal package.
7. QA/QC of Contract Documents - FNI will conduct full Project Design Team technical reviews prior to each submittal for both the Preliminary Design and Design Phase services.
8. Final Design Report - FNI will incorporate the final plans design into the Preliminary Design Report.

9. Deliverables - Deliverables will include 1 original plus 3 copies of the construction plans, produced on 22" x 34" sheets, three sets of technical specification amendments, and the Engineer's Estimate.

Construction Services (as authorized)

1. Bid Phase Services – Assist the City in advertising the project for award as requested. Services may include distributing construction documents and maintaining plan holder list, attending the pre-bid conference and bid-opening, answering contractor questions and issue addenda if needed, and providing a bid-tabulation and recommendation for award.
2. Construction Phase Services – Upon completion of bid phase services provide construction phase services as requested. FNI can provide a range of services from periodic site visits, to general construction representation, to full-time on-site resident representation.

Post Construction Monitoring (as authorized)

1. Work with the City to establish monitoring plan for repaired sites to include type of documentation, frequency of monitoring visits, and duration of the post construction monitoring.

3. KEY PERSONNEL

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

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

| NAME | TITLE | CLASSIFICATION |
|------------------------|------------------------------------|-----------------------|
| John New, P.E. | Principal | Professional 6 |
| Jay Scanlon, P.E. | Senior Advisor | Professional 6 |
| Bryan Dick, P.E. | Senior Stream Restoration Engineer | Professional 6 |
| Marc Miller, P.E. | Senior Geotechnical Engineer | Professional 5 |
| Ian Jewel | Senior Fluvial Geomorphologist | Professional 4 |
| Kim Patak, P.E. | Senior H&H/Design Engineer | Professional 5 |
| Will Huff, P.E. | Project Manager | Professional 4 |
| George Fowler, P.E. | Stream Restoration Engineer | Professional 4 |
| Blaine Laechelin, P.E. | H&H Engineer | Professional 4 |
| Hande Gerkus-Harris | Geotechnical Engineer | Professional 3 |
| Kaylyn Hudson | EIT | Professional 2 |
| Stephen Norair | Fluvial Geomorphologist | Professional 3 |
| Tom Dixon | Permitting/Restoration Lead | Professional 5 |
| Thad Purcell | Construction Services | Const. Manager 4 |

EXHIBIT C

Fee Schedule

Hourly rates to be billed on a time and materials basis per Attachment D:

*Rates may be amended once between Jan. 1, 2021 and Dec. 31, 2021, not to exceed a 3% increase.

COMPENSATION

ATTACHMENT D

Hourly rates to be billed on a time and materials basis per the following rates:

| <u>Position</u> | <u>Hourly Rate</u> |
|-------------------------------|--------------------|
| Professional - 1 | 113 |
| Professional - 2 | 137 |
| Professional - 3 | 156 |
| Professional - 4 | 178 |
| Professional - 5 | 209 |
| Professional - 6 | 240 |
| Construction Manager - 1 | 91 |
| Construction Manager - 2 | 117 |
| Construction Manager - 3 | 138 |
| Construction Manager - 4 | 173 |
| CAD Technician/Designer - 1 | 96 |
| CAD Technician/Designer - 2 | 126 |
| CAD Technician/Designer - 3 | 153 |
| Corporate Project Support - 1 | 92 |
| Corporate Project Support - 2 | 111 |
| Corporate Project Support - 3 | 148 |
| Intern/ Coop | 57 |
| Senior Advisor | 175 |

Rates for In-House Services and Equipment

| <u>Mileage</u> | <u>Bulk Printing and Reproduction</u> | | <u>Equipment</u> | |
|--------------------------|---------------------------------------|----------------|------------------|--|
| Standard IRS Rates | | <u>B&W</u> | <u>Color</u> | Valve Crew Vehicle (hour) \$75 |
| | Small Format (per copy) | \$0.10 | \$0.25 | Pressure Data Logger (each) \$100 |
| | Large Format (per sq. ft.) | | | Water Quality Meter (per day) \$100 |
| <u>Technology Charge</u> | Bond | \$0.25 | \$0.75 | Microscope (each) \$150 |
| waived | Glossy / Mylar | \$0.75 | \$1.25 | Pressure Recorder (per day) \$200 |
| | Vinyl / Adhesive | \$1.50 | \$2.00 | Ultrasonic Thickness Gauge (per day) \$275 |
| | | | | Coating Inspection Kit (per day) \$275 |
| | Mounting (per sq. ft.) | \$2.00 | | Flushing / Cfactor (each) \$500 |
| | Binding (per binding) | \$0.25 | | Backpack Electrofisher (each) \$1,000 |

Survey Grade Standard

| | | |
|-----------------|-------|-------|
| Drone (per day) | \$200 | \$100 |
| GPS (per day) | \$150 | \$50 |

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.0. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.0. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

***Rates may be amended once between Jan. 1, 2021 and Dec. 31, 2021, not to exceed a 3% increase.**

2022015

EXHIBIT D

Certificate of Insurance

Attached Behind This Page



FREEAND-02

KGODWIN

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/29/2020

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).

| | | | |
|---|---|--|--------------------------------------|
| PRODUCER Ames & Gough 8300 Greensboro Drive Suite 980 McLean, VA 22102 | CONTACT NAME: PHONE (A/C, No, Ext): (703) 827-2277 | | FAX (A/C, No): (703) 827-2279 |
| | E-MAIL ADDRESS: admin@amesgough.com | | |
| INSURER(S) AFFORDING COVERAGE | | | NAIC # |
| INSURED Freese and Nichols, Inc. 4055 International Plaza Suite 200 Fort Worth, TX 76109 | INSURER A : Hartford Underwriters Insurance Company A+ (XV) | | 30104 |
| | INSURER B : Twin City Fire Insurance Company A+ (XV) | | 29459 |
| | INSURER C : Hartford Casualty Insurance Company A+ (XV) | | 29424 |
| | INSURER D : Trumbull Insurance Company A+ (XV) | | 27120 |
| | INSURER E : Continental Casualty Company (CNA) A, XV | | 20443 |
| INSURER F : | | | |

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

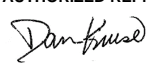
| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|-----------|------------|---------------------|-------------------------|-------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER: | | | 42UUNNI6224 | 10/23/2019 | 10/23/2020 | 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 | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY | | | 42UENNI6305 | 10/23/2019 | 10/23/2020 | 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"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000 | | | 42XHUBI1257 | 10/23/2019 | 10/23/2020 | EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ |
| D | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below | | N/A | 42WBCU2821 | 10/23/2019 | 10/23/2020 | <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 |
| E | Professional Liab. | | | AEH008214422 | 10/23/2019 | 10/23/2020 | Per Claim 5,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 RE: EROSION, STABILIZATION, AND RESTORATION PROJECTS

The City of Round Rock and its employees, officers, officials, agents, and volunteers are included as Additional Insured with respect to General Liability, Auto Liability, and Umbrella Liability when required by written contract. General Liability, Auto Liability and Umbrella Liability are primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured and when required by written contract. General Liability, Auto Liability, Umbrella Liability and Workers Compensation policies include a Waiver of Subrogation in favor of the Additional Insured where permissible by state law and when required by written contract. 30-day Notice of Cancellation will be issued for the General Liability, Auto Liability, Umbrella Liability and Workers Compensation policies in accordance with policy terms and conditions.

CERTIFICATE HOLDER

CANCELLATION

| | |
|--|--|
| City of Round Rock 221 E Main Street Round Rock, TX 78664 | 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  |