

**EXHIBIT**  
**"A"**

**CITY OF ROUND ROCK AGREEMENT FOR BACKSTOP  
NETTING REPAIR SERVICES AT OLD SETTLERS PARK  
WITH  
RITTER, BOTKIN PRIME CONSTRUCTION COMPANY, INC.**

**THE STATE OF TEXAS**

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**CITY OF ROUND ROCK**

**KNOW ALL BY THESE PRESENTS:**

**COUNTY OF WILLIAMSON**

**COUNTY OF TRAVIS**

THAT THIS AGREEMENT for the Old Settlers Park backstop netting repair services for Field 1 and Field 2, and for related goods and services (referred to herein as the "Agreement"), is made and entered into on this the \_\_\_\_\_ day of the month of \_\_\_\_\_, 2021 by and between the **CITY OF ROUND ROCK**, a Texas home-rule municipality, whose offices are located at 221 East Main Street, Round Rock, Texas 78664-5299 (referred to herein as the "City"), and **RITTER, BOTKIN PRIME CONSTRUCTION COMPANY, INC.**, whose offices are located at 20907 Martin Lane, Pflugerville, Texas 78660 (referred to herein as "Services Provider").

**RECITALS:**

WHEREAS, City desires to purchase services related to the Old Settlers backstop netting repairs for Field 1 and Field 2; and

WHEREAS, the repairs as set forth herein are the result of unforeseen damage to City property; and

WHEREAS, Section 252.022(2) of the Local Government Code exempts procurements necessary because of unforeseen damage to public machinery, equipment, or other property from competitive bidding requirements; and

WHEREAS, City desires to purchase the repair services necessary because of unforeseen damage from Services Provider; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

## 1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Services Provider whereby City is obligated to buy specified services and Services Provider is obligated to sell same. The Agreement includes any exhibits, addenda, and/or amendments thereto.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods** mean the specified supplies, materials, commodities, or equipment.

F. **Services** mean work performed to meet a demand or effort by Services Provider to comply with promised delivery dates, specifications, and technical assistance specified.

## 2.01 EFFECTIVE DATE AND TERM

A. 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.

B. This Agreement shall terminate upon the successful completion of the repairs of the backstop netting for Field 1 and Field 2 at Old Settlers Park as described in Exhibit "A," attached hereto and incorporated herein by reference for all purposes.

C. City reserves the right to review the relationship with Services Provider at any time, and may elect to terminate this Agreement with or without cause or may elect to continue.

## 3.01 CONTRACT DOCUMENTS AND EXHIBITS

The goods and services which are the subject matter of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the Contract Documents. Any inconsistencies or conflicts in the contract documents shall be resolved by giving preference to the terms and conditions of this Agreement.

#### **4.01 SCOPE OF WORK**

Services Provider shall satisfactorily provide all goods and complete all services described in Services Provider's Proposal attached as Exhibit "A."

This Agreement shall evidence the entire understanding and agreement between the parties and shall supersede any prior proposals, correspondence or discussions.

Services Provider shall satisfactorily provide all deliverables and services described in Exhibit "A" within the contract term specified. A change in the Scope of Services must be negotiated and agreed to in all relevant details, and must be embodied in a valid Supplemental Agreement as described herein.

#### **5.01 CONTRACT AMOUNT**

The City agrees to pay the amount set forth in Exhibit "A" to Services Provider for the goods and services set forth herein and as described in the attached Exhibit "A."

#### **6.01 INVOICES**

All invoices shall include, at a minimum, the following information:

- A. Name and address of Services Provider;
- B. Purchase Order Number;
- C. Description and quantity of items received or services provided; and
- D. Delivery or performance dates.

#### **7.01 NON-APPROPRIATION AND FISCAL FUNDING**

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

#### **8.01 PROMPT PAYMENT POLICY**

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Services Provider will be made within thirty (30) days of the day on which City receives the performance, supplies, materials, equipment, and/or deliverables, or 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 the performance and/or deliverables or services, whichever is later.

Services Provider 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); however, this Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Services Provider, a contractor, subcontractor or supplier about the goods delivered or the service performed that cause 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 Services Provider 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
- D. Invoices are not mailed to City in strict accordance with instructions, if any, on the purchase order or the Agreement or other such contractual agreement.

#### **9.01 GRATUITIES AND BRIBES**

City may, by written notice to Services Provider, cancel this Agreement without liability to Services Provider if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Services Provider or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Services Provider may be subject to penalties stated in Title 8 of the Texas Penal Code.

#### **10.01 TAXES**

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Services Provider’s charges.

#### **11.01 ORDERS PLACED WITH ALTERNATE SERVICES PROVIDERS**

If Services Provider cannot provide the goods as specified, City reserves the right and option to obtain the products from another supplier or suppliers.

#### **12.01 CITY’S REPRESENTATIVE**

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

Katie Baker  
Manager - Parks Development  
301 West Bagdad, Suite 250  
Round Rock, Texas 78664  
(512) 348-3941

### **13.01 INSURANCE**

Services Provider shall meet all City of Round Rock Insurance Requirements set forth at: [http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr\\_insurance\\_07.20112.pdf](http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf)

### **14.01 RIGHT TO ASSURANCE**

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

### **15.01 DEFAULT**

If Services Provider abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Services Provider agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Services Provider shall be declared in default of this Agreement if it does any of the following:

- A. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- B. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- B. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

### **16.01 TERMINATION AND SUSPENSION**

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Services Provider.

B. In the event of any default by Services Provider, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Services Provider.

C. Services Provider has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City, or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Services Provider, Services Provider shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Services Provider shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Services Provider that portion of the charges, if undisputed. The parties agree that Services Provider is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

#### **17.01 INDEMNIFICATION**

Services Provider shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Services Provider, or Services Provider's agents, employees or subcontractors, in the performance of Services Provider's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Services Provider (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

#### **18.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES**

A. Services Provider, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2271, 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 Services Provider verifies that Services Provider does not boycott Israel and will not boycott Israel during the term of this Agreement.

**19.01 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 shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

**20.01 NOTICES**

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

1. When delivered personally to the recipient’s address as stated in this Agreement;  
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 Services Provider:**

Ritter, Botkin Prime Construction Company, Inc.  
20907 Martin Lane  
Pflugerville, Texas 78660

**Notice to City:**

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
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Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Services Provider.

**21.01 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 the State of Texas.

**22.01 EXCLUSIVE AGREEMENT**

This document, and all appended documents, constitutes the entire Agreement between Services Provider and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

### **23.01 DISPUTE RESOLUTION**

City and Services Provider 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.

### **24.01 SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or 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 or 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 section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

### **25.01 MISCELLANEOUS PROVISIONS**

**Standard of Care.** Services Provider represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

**Time is of the Essence.** Services Provider understands and agrees that time is of the essence and that any failure of Services Provider to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Services Provider shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Services Provider's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

**Force Majeure.** Neither City nor Services Provider shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given and all reasonable efforts undertaken to mitigate its effects.

**Multiple Counterparts.** This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures on the following page.]




IN WITNESS WHEREOF, City and Services Provider have executed this Agreement on the dates indicated.

**City of Round Rock, Texas**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**Ritter, Botkin Prime Construction Company, Inc.**

By:  \_\_\_\_\_  
Printed Name: Brian Ritter  
Title: President  
Date Signed: 8-10-21

**Attest:**

By: \_\_\_\_\_  
Sara L. White, City Clerk

**For City, Approved as to Form:**

By: \_\_\_\_\_  
Stephan L. Sheets, City Attorney



# PRIME CONSTRUCTION COMPANY, INC.

[WWW.PCCIUSA.COM](http://WWW.PCCIUSA.COM)

20907 Martin Ln Pflugerville, TX 78660

(office) 512.244.7799

(fax) 512.990.9886

## WORK PROPOSAL

DATE: June 5, 2021

### PROPOSAL SUBMITTED TO:

Baker, Katie  
City of Round Rock Parks and Recreation

### WORK TO BE PERFORMED AT

Old Settlers Park Adult Recreation Complex

### DESCRIPTION

- Remove and reinstall existing backstops at field 1 and field 2
  - Utilizing new 4" O.D. SS40 or equal backstop posts, 3-1/2" O.D. SS40 or equal sleeve posts
  - Use existing pole locations and quantities

### INCLUSIONS

- Remove existing backstop netting and cabling system, set aside for re-use
- Cut existing 4" O.D. posts a few inches above grade
  - Include 45 degree bevel cut
- Slide 3-1/2" O.D. posts inside of existing 4" O.D. post stub ups with approximately 8' exposed above grade
  - Include pre-welding a bead between the interior pipe sleeve and the existing inground pipe.
- Install new 4" O.D. posts over 3-1/2" sleeve, weld existing 4" O.D. stub up to new 4" O.D. backstop posts
  - Include 45 degree bevel cut at bottom
- Install new eyelets per original plan
  - Include putting eyelets on the center/middle posts for all four base line center poles
- Reinstall existing netting and cross ropes
- All, labor, materials, and equipment
- 1yr workmanship warranty

### EXCLUSIONS

- Surveying
- Damage to infield and/or adjacent concrete due to normal use of equipment or manpower
- Any warranty other than workmanship
- Underground utilities not marked by TX 811 ONE CALL
- Payment or Performance bonds

**\$67,910.00**