

**SUPPLEMENTAL AGREEMENT NO. 1****CITY OF ROUND ROCK**

§

**STATE OF TEXAS**

§

**KNOW ALL BY THESE PRESENTS:**

§

**COUNTY OF WILLIAMSON**

§

**COUNTY OF TRAVIS**

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This document is entitled Supplemental Agreement No. 1, and it supplements "City of Round Rock Agreement for Architectural Services for City of Round Rock Fire Station No. 10 with McKinney Architects, Inc." for the following Project:

Professional architectural services and design services related to the following:

City of Round Rock Fire Station No. 10

Professional services for this Project shall include, but not be limited to, Design Phase Services, Construction Documents Phase Services, Procurement Phase Services, and Construction Phase Services. Architect shall be the Architect of Record and shall be in charge of coordination of the consultants provided by the Architect. The Architect shall coordinate the work of the Architect with the work of the Owner's other design consultants. The Owner shall require the Owner's other consultants to likewise coordinate their work with the work of the Architect. The Owner shall also require their other design Consultants to coordinate the schedule for the performance of their services with the Architects performance schedule to allow the Architect to efficiently provide their services for their project.

This Supplemental Agreement No. 1 is made and entered into as of the same date of the Agreement it supplements, that being the \_\_\_\_\_ day of \_\_\_\_\_, 2024, and likewise is by and between the same parties, those being the CITY OF ROUND ROCK, a home-rule municipal corporation of Williamson and Travis Counties, Texas (hereinafter referred to as "City" and/or "Owner") and McKinney Architects, Inc., with offices located at 1301 East Seventh Street, Austin, Texas 78702 (hereinafter referred to as "Architect").

**WITNESSETH:**

**WHEREAS**, as is recited in the Agreement this document supplements, City intends to provide services for the design and construction of the Project. Architect's services are desired for purposes including but not limited to being architect of record, coordinating consultants, planning, civil, architectural, design, structural, mechanical/electrical/plumbing engineering services, confirming project program and space requirements, document production, bidding-related services, and construction observation services related to the Project; and

**WHEREAS**, total compensation for Architect's services under this Agreement shall be paid pursuant to Exhibit "A" of the Agreement and shall not exceed: **\$284,200.00**, including reimbursable expenses in an amount not to exceed **\$1,500.00**; and

**WHEREAS**, as is recited in the Agreement this document supplements, City desires to contract with Architect for the delineated professional services, and for the administration of the Construction Contract during construction of the Project; and

**WHEREAS**, as is stipulated in the Agreement this document supplements, Architect has agreed to provide such professional services for the compensation delineated previously and herein;

**NOW, THEREFORE**, City and Architect, in consideration of the terms, covenants and conditions contained in the Agreement this document supplements and herein, hereby agree as follows:

## **ARTICLE I**

### **SCOPE OF SERVICES AND COMPENSATION**

**1.01 Scope.** Architect, as an independent contractor and professional consultant in its relationship with the City, shall perform all professional services for the Project as set forth in the Agreement this document supplements and herein.

**1.02 Compensation.** City shall compensate Architect in accordance with the terms and conditions as recited in the Agreement this document supplements and herein.

Unless subsequently changed by additional Supplemental Agreement to this Agreement, duly authorized by City Council Resolution or City Manager action, Architect's total compensation hereunder shall be paid pursuant to Exhibit "A" of the Agreement and shall not exceed **Two Hundred Eighty-Four Thousand Two Hundred and No/100 Dollars (\$284,200.00)**, *including* a not-to-exceed amount of **One Thousand Five Hundred and No/100 Dollars (\$1,500.00)** for approved Reimbursable Expenses. These amounts represent the absolute limit of City's liability to Architect under this Agreement, unless same shall be changed by additional Supplemental Agreement hereto.

The times and further conditions of payment shall be as described in Article VI hereof.

## **ARTICLE II**

### **ARCHITECT'S SERVICES**

**2.01 Basic Services.** Architect's Basic Services consist generally of the phases described below, and include architectural services, landscape architecture and irrigation services, and structural, mechanical, electrical, and plumbing engineering services. Architect agrees that upon execution of this Agreement, it will submit to City within ten (10) days a list of all additional consultants it intends to utilize, not previously identified in Architect's proposal, delineating their respective tasks. All of Architect's consultants shall be subject to the approval of the City through its City Manager, and City reserves the right to reject any consultant. Architect shall coordinate its services with the City, represented by its City Manager or his designee, hereinafter referred to as "Director."

**2.01.1** The Structural Engineering services provided by the Architect shall be limited solely to those described in the STRUCTURESPE, LLP Professional Services Agreement Fee Proposal to AI York, Principal, McKinney York Architects dated April 22, 2024. The Mechanical, Electrical and Plumbing Engineering Design Services provided by the Architect shall be limited solely to those described in the Aptus Engineers Proposal for Mechanical, Electrical and Plumbing Engineering Design Services for Old

Settlers Fire Station – Fire Station No. 10 | City of Round Rock to Al York, Partner, McKinney York Architects dated April 17, 2024.

**2.02 Design Phase.** Architect shall provide the following Design Documents Phase Services: as delineated in the Agreement this document supplements and herein, and as follows:

**2.02.1** Based on the Project requirements defined by the description of the Program in the Agreement, the Architect shall prepare and present, for the Owner's approval, Design Documents illustrating the scale and relationship of the Project components utilizing the prototype design floor plan modified to accommodate the programmatic changes. The Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections, and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. Because the Revit model that was provided by the Owner as the basis for development of Fire Station No. 3 documents contains substantial discrepancies, it is unsuitable as an efficient base drawing for the updated Fire Station No. 1. As part of this phase, the Architect will begin the construction of a new base Revit model and complete that process in the subsequent Construction Documents Phase.

**2.02.2** The Architect shall have no responsibility for providing cost estimates or opinions of the probable construction cost.

**2.02.3** The Architect shall submit the Design Documents as a single digital copy to the Owner, making a presentation in person or via ZOOM and request the Owner's comments and approval be given at the conclusion of that presentation meeting.

**2.03 Construction Documents Phase.** Architect shall provide the Construction Documents Phase Services as delineated in the Agreement this document supplements, elsewhere herein, and as follows:

**2.03.1** Based on the Owner's approval of the Design Documents, and on the Owner's authorization of any adjustments in the Project requirements, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Architect will complete the reconstruction of the Revit model provided by the Owner to the Architect for the previous Fire Station No. 1 project during this phase. The Owner and Architect acknowledge that, in order to Construct the Project, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with **2.06(15)**.

**2.03.2** The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

**2.03.3** During the development of the Construction Documents, the Architect shall assist the Owner in the in preparation of the Proposal Forms, shall utilize without modification City's standard General and Supplementary General Conditions, and shall draft Special Conditions of the Contract. City's standard form of Contract between City and the Contractor shall also be utilized, along with City's form of Bid Bond, Performance Bond, and Payment Bond. Architect shall also compile the Project Manual that

includes the Conditions of the Contract for Construction and Specifications and may include proposal requirements and sample forms.

**2.03.4** The Architect shall have no responsibility for providing cost estimates or opinions of the probable construction cost.

**2.03.5** Prior to finalizing and sealing the Construction Documents, the Architect shall submit a draft set of the Construction Documents to the Owner labeled '95%' and request the Owner's final comments. Upon receipt of the last of the Owner's review comments the Architect shall finalize the Construction Documents and request the Owner's approval.

**2.03.6** Architect shall provide the City a digital copy (PDF) of a complete set of proposed Construction Documents for review, official approval, and the Owner's submission for Building and other development permits prior to the advertisement of proposals for the construction of the Project, and within the agreed Performance Schedule.

**2.03.7** Architect shall be solely responsible for submitting the Architect's Instruments of Service for approval of the Texas Department of Licensing and Regulation prior to submittal of all Construction Documents to City for approval. Any fees charged by the Department or the independent Registered Accessibility Specialist performing the review on behalf of the Department at the rates established by the Department for this approval shall be initially paid by the Architect who shall be reimbursed by the City. The anticipated cost of these fees is included in the reimbursable expense allowance that is included in the Architects total fee.

**2.04 Procurement Phase.** Architect shall provide the Procurement Services delineated in the Agreement this document supplements, elsewhere herein, and as follows:

**2.04.1** Following City's approval of the Construction Documents, Architect shall assist City in awarding a construction contract following legal public competitive sealed proposal requirements. Architect shall transmit Construction Documents to the Owner in electronic (PDF) format for reproduction and distribution. Owner shall be responsible for payment for the costs of reproduction of such documents. During the procurement process, Architect shall assist City as follows:

- (1) Jointly conducting pre-proposal conferences, including on-site visits as required, to assist the bidders/proposers with an understanding of the Construction Documents, the various on-site conditions, and the coordination and scheduling requirements.
- (2) Preparing responses to questions from prospective bidders/proposers, and providing clarifications and interpretations of the Procurement Documents to all prospective proposers in the required form of addenda to Contract Documents.
- (3) Assisting in the opening of proposals, tabulation and evaluation of proposals received, and advising on award of the contract.
- (4) Jointly conducting pre-award conferences where necessary.
- (5) The Architect shall compile a Conformed Set of Construction Documents at the conclusion of the Procurement Phase incorporating addenda and selected alternates for use by the Contractor during construction.

Architect's assistance to City shall include submitting written reviews and recommendations for awards based upon the acceptability of proposals. Architect's role during the Procurement Phase shall be limited to advising and consulting with the City, and the City retains all responsibility for the actual selection of the Contractor.

**2.05 Construction Phase.** Architect shall provide the following Construction Phase Services as delineated in the Agreement this document supplements, elsewhere herein, and as follows:

The Construction Phase will commence with the award of the first Construction Contract and will terminate following the date the Architect issues the final Certificate of Payment:

- (1) Architect shall provide administration of the Construction Contract as set forth in this Agreement. Architect's assigned authority thereunder will not be modified without Architect's written consent.
- (2) Architect shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents will be in a form prepared or approved by Architect and will include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- (3) If deemed appropriate by Architect, Architect will on Owner's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.
- (4) Interpretations and decisions of Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, Architect will endeavor to secure faithful performance by both Owner and the Contractor, will not show partiality to either, and will not be liable for the results of interpretations or decisions so rendered in good faith.
- (5) Architect shall render initial decisions on claims, disputes or other matters in question between Owner and the Contractor as provided in the Contract Documents. However, Architect's decisions on matters relating to aesthetic effect will be final only if consistent with the intent expressed in the Contract Documents.
- (6) Architect shall report to Owner all known substantial deviations from the Contract Documents and most recent construction schedule submitted by the Contractor. However, Architect will not be responsible for the Contractor's failure to perform work in accordance with requirements of the Contract Documents. Architect will be responsible for Architect's acts or omissions, but will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the work.
- (7) Architect will at all times have access to the work wherever it is in preparation or in progress.

- (8) Owner will endeavor to communicate with the Contractor through Architect about matters arising out of or relating to the Contract Documents. Communications by and with Architect's subconsultants will be through Architect.
- (9) Architect, as a representative of City, shall advise and consult with Director and will keep City informed in writing through him of the progress of the Project, including percent complete on a monthly basis, during the Construction Phase; and after issuance of the "work order" to proceed with the work, City will endeavor to issue instructions to its Contractors through Architect. Architect will have authority to act on behalf of Owner only to the extent provided in this Agreement unless otherwise properly modified by written amendment.
- (10) Architect shall provide on-site construction observation, periodically visiting the site to the extent necessary to familiarize itself with the progress and quality of the work, and to determine, in general, if the work observed is proceeding in a manner indicating that the work, when fully completed, will be in general accordance with the Contract Documents. Architect's site observations may be conducted with Owner's designated representative to check conformance of the work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of work to be completed or corrected. Field Reports of each visit shall be prepared by Architect and submitted to City. Architect shall employ reasonable measures to safeguard City against defects and deficiencies in the work of the Contractor. Architect shall not be responsible for the construction means, methods, techniques, sequences of procedures, nor for the safety precautions and programs employed in connection with the work. However, Architect will immediately inform Director whenever defects and deficiencies in the work are observed, or Architect observes actions or omissions by the Contractor which are not in accordance with the Contract Documents.
- (11) Based on such observations at the site and on the Contractor's Application and Certificate for Payment, Architect shall determine, monthly, the amount owing to the Contractor and shall certify and forward the Contractor's Application and Certificate for Payment to Director for approval and payment. These certifications shall constitute a representation by Architect to City, based on observations at the site and other data comprising the application for payment, that the work has progressed to the point indicated; that to the best of Architect's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning whole upon substantial completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to Project completion, and to any specific qualifications stated in the Certificate); and that the Contractor is entitled to payment in the amount certified.
- (12) Architect shall have authority to reject work which does not conform to the Contract Documents. Whenever Architect considers it necessary or advisable, Architect will have authority to require inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed or completed. However, neither this authority of Architect nor a decision made in good faith either to exercise or not exercise such authority shall give rise to a duty or responsibility of Architect to the Contractor, Subcontractors, material and equipment suppliers, their

agents or employees or other persons or entities performing portions of the work.

- (13) Architect shall make recommendations on all claims and disputes of City or the Contractor relating to the execution and progress of the work or the interpretation of the Contract Documents, based upon such review and analysis by Architect as may reasonably be required. In the event of litigation, where Architect is named as an additional party with the City, such assistance will include the availability of knowledgeable witnesses in the employ of Architect for expert testimony.
- (14) Architect shall use commercially reasonable efforts to promptly review and respond to submittals required by the Contract documents (including shop drawings, product data and samples and other submissions of the Contractor) for conformance only with the design concept of the Project and with the information given in the Contract Documents. Prompt review by Architect of submissions is of prime importance to City, but Architect shall not be held to a higher standard than the Standard of Care in the Agreement.
- (15) Architect shall prepare Change Orders and/or Construction Change Directives to the construction contract, in electronic (PDF) format, after review and approval by the City. Each Change Order shall be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order. Architect's compensation for preparation of Change Orders, if any, shall be determined by Section 2.09(l) below.
- (16) Architect shall conduct inspections to determine the dates of substantial completion and final completion, shall receive written guarantees and related documents assembled by Contractor for submittal with the final Certificate of Payment, and shall prepare and present final Certificate for Payment to Director for City's approval and payment. In addition, Architect shall make inspection of the Project at least thirty (30) days before the expiration of the one (1) year warranty contained in the Contractor's Performance Bond.
- (17) Architect shall conduct regularly scheduled progress meetings with City, the Contractor and major Subcontractors. Minutes of same shall be prepared by Architect with copies submitted to City's Director.
- (18) Architect shall have authority to order minor changes in the construction work, consistent with the Contract Documents, and not involving an adjustment in the Contractor's bid price or an extension of the Project Schedule. Such changes shall be accomplished by Field Order. In addition, Architect may issue written Field Orders which interpret the Plans and Specifications, with copies submitted to City's Director.
- (19) Architect shall assemble and deliver to City a set of reproducible As-Designed Record Construction Drawings, which include or attach significant design changes during the construction process. Architect shall provide As-Designed Record Construction Specifications which will identify the design changes in the specifications on a sheet, which sheet shall be inserted at the beginning of each section to which they pertain.
- (20) Owner shall require the Contractor to submit to Owner the following: (1) consent of surety or sureties, if any, of reduction in or partial release of retaining or the making of

final payment; and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying Owner against liens; and (3) as-built record documents.

**2.06 Warranty Phase.** If requested by the Owner and agreed by the Architect, Architect shall provide the Warranty Phase Services in this Section 2.06 as Additional Services. Architect shall assist Owner in scheduling corrections to be made by the Contractor during the warranty period. During the eleventh month following completion of the prime general contract, Architect will arrange for a warranty inspection tour of the entire Project by authorized representatives of the City, the Subconsultants and of each prime contractor engaged on the Project. For any non-warranty involvement of Architect, payments shall be made based upon the Hourly Rate Schedule contained in this Agreement.

**2.07 Project Representation Beyond Basic Services.** In the event that circumstances should develop whereby continuous, full-time representation at the Project site is required, the conditions under which such representation shall be furnished and the Project Representatives selected, employed and directed shall be governed by an additional written Supplemental Agreement between City and Architect.

**2.08 Additional Services.** Architect shall perform Additional Services, as requested by City, after a not-to-exceed amount has been mutually agreed upon in writing by Director and Architect. Architect shall not proceed until the appropriate Resolution or directive for such Additional Services has been delivered from the City Council or City Manager. The following services are not covered under Article II, which defines and outlines Architect's Basic Services. If any of these Additional Services are authorized in writing by Director in advance of their performance, they shall be paid for in the manner agreed to at the time of authorization.

- (1) Preparing Change Orders and supporting data and/or revising previously approved plans when the changes in approved Plans and Specifications are required by the City. If changes are required to be made because of error, oversight, clarification, or discrepancy in the Construction Documents, City shall not be liable to compensate Architect for Additional Services or expenses in such connection.
- (2) Providing consultation concerning replacement of any Project work damaged by fire or other cause during construction, and furnishing professional services as may be required in connection with the replacement of such work, unless damage was the result of Architect's error.
- (3) Providing other extraordinary professional services over and above the contract requirements, where required and requested by City, including extraordinary professional services which might result if the City decides to "fast-track" the Project.
- (4) Providing construction phase services more than twelve (12) months after the start of construction or the Contractor's Notice to Proceed, whichever occurs first.
- (5) Performing more than two (2) reviews of any shop drawing, product data item, sample or similar submittal from the Contractor.
- (6) Providing more than twenty-four (24) site visits/construction meetings over the duration of the Project.



- (7) Providing more than two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
- (8) Providing more than one (1) inspection for any portion of the Work to determine Final Completion.

### **ARTICLE III** **CITY'S RESPONSIBILITIES**

**3.01 Full information.** City shall provide full information regarding requirements for the Project.

**3.02 Designate representatives.** City shall designate, when necessary, representatives authorized to act in its behalf. Unless otherwise agreed, the Director shall be the City's designated representative. City shall examine documents submitted by Architect and render decisions pertaining thereto promptly to avoid unreasonable delays in the orderly process of Architect's work.

**3.03 Tests and inspections.** City shall furnish, or pay for structural, mechanical, chemical, soil mechanics, and other laboratory tests, reports and inspections as required by law or the Contract Documents.

**3.04 Permits.** City will furnish the building permit without charge. Electrical, plumbing and other trade permits will be the responsibility of the construction contractor. Any charges which may be assessed for tap fees will be paid by City and are not to be included by Architect in the Specifications for the Project.

**3.05 Fees.** City shall pay for fees required for Architect's submittal and approval of documents as set forth in the Agreement this document supplements.

**3.06 Miscellaneous items.** City will also provide Architect with City of Round Rock General and Supplementary General Conditions for Building Construction, Instructions to Bidders, Proposal Forms, Wage Rates, Contract and Bond Forms, Bid Advertisement Form, and such other information and materials as may be necessary and practicable for the orderly and expeditious process of the work and the awarding of the Construction Contract. To the extent practicable, these documents shall be utilized in the preparation of the Construction Documents.

### **ARTICLE IV** **FIXED LIMIT OF TOTAL BUDGETED CONSTRUCTION COST**

**4.01 Budgeted Construction Costs.** Since Owner has provided Architect with a Prototype setting for the established systems and general design elements, Architect has no responsibility for fixed limit of Budgeted Construction Cost.

**ARTICLE V**  
**REIMBURSABLE EXPENSES**

**5.01 Reimbursable Expenses.** Reimbursable Expenses are *included* in the total Fee delineated in the Agreement this document supplements and herein, and include the actual expenditures and actual costs set forth in the Agreement this document supplements.

**ARTICLE VI**  
**PAYMENTS TO THE ARCHITECT**

**6.01 Basic Services.** Payments on account of Architect's Basic Services shall be made monthly in proportion to the degree of completion of each phase, as delineated in the Agreement this document supplements and herein.

As to the Construction Observation Phase fee apportionment, Architect shall invoice for equal monthly payments based upon the contractually-stipulated Construction Period, to the extent applicable.

**6.02 Reimbursable Expenses.** Payments for authorized Reimbursable Expenses for Architect, as hereinbefore referred to and in an amount not to exceed **\$1,500.00**, shall be made following presentation, review and approval of Architect's detailed invoice in triplicate.

**6.03 Deductions.** No deductions shall be made from Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors.

**6.04 Additions.** No additions shall be made to Architect's compensation based upon Project construction claims, whether paid by City or denied.

**6.05 Abandonment.** If any work designed or specified by Architect during any phase or subphase is abandoned or suspended, in whole or in part, Architect is to be paid for the services performed on account of it prior to receipt of written notice from City through its Director of such abandonment or suspension.

**6.06 Invoices.** Architect's invoices to City shall provide complete information and documentation to substantiate Architect's charges, and shall be in a form to be specified by Director. All payments to Architect shall be made on the basis of the invoices submitted by Architect and approved by Director. Such invoices shall conform to the schedule of services and costs in connection therewith set out hereinabove. All Reimbursable Expenses shall be clearly shown. Should additional backup material be requested by Director, Architect shall comply promptly with such request. In this regard, should Director determine it necessary, Architect shall make all records and books relating to this Agreement available to City for inspection and auditing purposes.

**6.07 Payment of Invoices.** City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Architect and to adjust the same to meet the requirements of the Agreement. Following approval of invoices, City will endeavor to pay Architect promptly, but not later than the time period required under the Texas Prompt Payment Act; however, under no circumstances shall Architect be entitled to receive interest on payments which are late because of a good faith dispute between Architect and City or because of amounts which City has a right to withhold under this Agreement or state law.

**6.08 Offsets.** City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Architect, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.

## **ARTICLE VII** **ARCHITECT'S ACCOUNTING RECORDS**

**7.01 Accounting Records.** Records of Architect's Consultant and Reimbursable Expenses pertaining to the Project, and records of accounts between City and Architect shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives at mutually convenient times.

## **ARTICLE VIII** **TERMINATION AND DEFAULT**

**8.01 Termination.** In connection with the work outlined in this Agreement, it is agreed and fully understood by Architect that Director may cancel or indefinitely suspend further work hereunder or terminate this Agreement either for cause or for the convenience of City, upon fifteen (15) days' written notice to Architect, with the understanding that immediately upon receipt of said notice all work and labor being performed under this Agreement shall cease. Architect shall invoice City for all work completed and shall be compensated in accordance with the terms of this Agreement for all work accomplished prior to the receipt of said notice. No amount shall be due for lost or anticipated profits. Upon payment in full for all services provided by Architect, all plans, field surveys, maps, cross sections and other data, designs and work related to the Project shall become the property of City upon termination of this Agreement, and shall be promptly delivered to City in a reasonably organized form without restriction on future use, subject to any record-keeping requirements imposed on the Architect by the TBAE or other similar regulatory authority. Should City subsequently contract with a new architect for continuation of services on the Project, Architect shall cooperate in providing information.

**8.02 Default.** Nothing contained in Section 8.01 above shall require City to pay for any work which is unsatisfactory as determined by Director or which is not submitted in compliance with the terms of this Agreement. City shall not be required to make any disputed payments to Architect when Architect is in default under this Agreement, nor shall this Article constitute a waiver of any right, at law and at equity, which City may have if Architect is in default, including the right to bring legal action for damages or to force specific performance of this Agreement.

## **ARTICLE IX** **GENERAL, SUPPLEMENTARY AND SPECIAL CONDITIONS;** **CONTRACT ADMINISTRATION**

**9.01 General, Supplementary and Special Conditions.** City of Round Rock - Supplementary General Conditions to AIA Document A201, "General Conditions of the Contract for Construction", are to be used by Architect without modification; however, City may, upon prior consultation, approve of any changes that may be necessary for specific cases or instances. Any special conditions pertaining to the Project that are approved by City will be included under the Special Conditions portion of the Construction Documents.

**9.02 Contract Administration.** This Agreement shall be administered on behalf of City by its City Manager, and Architect shall fully comply with any and all instructions from Director that are consistent with the terms of this Agreement. Any dispute arising hereunder shall be submitted to Director, whose decision in the matter shall be final and binding.

**ARTICLE X**  
**RESPONSIBILITY FOR WORK, INDEMNIFICATION AND INSURANCE**

**10.01 Architect's Responsibility for Work.** Approval by City shall not constitute nor be deemed a release of the responsibility and liability of Architect, its employees, subcontractors, agents and consultants for the accuracy and competency of their Designs, Working Drawings, Specifications or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by City for any defect, error or omission in the Designs, Working Drawings, and Specifications or other documents prepared by Architect, his employees, subcontractors, agents and consultants.

**10.02 Indemnification (Damage Claims).** Architect agrees to indemnify and hold City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of any negligent act or omission of Architect, his officers, agents, associates, employees or subconsultants, in the performance of this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both Architect and City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

**10.03 Indemnification (Patent and Copyright Claims).** Architect agrees to completely indemnify and hold harmless City, its officers, agents and employees, against a claim that any of the Designs, Plans or Specifications prepared by Architect, its employees, associates or subconsultants, pursuant to this Agreement infringe a U.S. patent or copyright directly, indirectly or contributorily, regardless of whether or not City is proven to have actively induced or contributed to the infringement. Architect will pay any and all resulting costs, damages and attorney's fees finally awarded, provided that:

- (1) City promptly notifies Architect in writing of the claim; and
- (2) Architect has control of settlement negotiations.
  - (a) The City Attorney of City shall be kept informed of settlement negotiations, and shall execute any settlement agreement reached by Architect on City's behalf.
  - (b) Architect's indemnification under this section is conditioned on City's agreement that if any of the designs, plans or specifications, become, or in Architect's opinion are likely to become, the subject of such a claim, City will permit Architect, at Architect's option and expense, either to procure the right for City to continue using the designs, plans or specifications or to replace or modify the same so that they become non-infringing; and if neither of the foregoing

alternatives is available on terms which are reasonable in Architect's judgment, City, to the extent City is legally able to do so, will cease using the designs, plans or specifications on written request of Architect, in which instance City has the sole option to either require Architect to perform new design work at Architect's sole expense, or to terminate this Agreement.

- (c) Architect has no liability under this section for any claim of infringement based upon the modification or alteration of the designs, plans or specifications prepared under this Agreement subsequent to the Project by City, or by any engineering consultant subsequently employed by City.
- (d) The foregoing states the entire obligation of Architect with respect to infringement of patents and copyrights.

**10.04 Insurance.** Architect, at Architect's sole cost, shall purchase and maintain during the term of this Agreement the minimum professional liability insurance coverage in the amount of One Million Dollars (\$1,000,000.00) from a company authorized to do insurance business in Texas and otherwise acceptable to City. Failure to maintain the minimum insurance coverage during the term of this Agreement shall be considered a material breach of this Agreement.

**10.05 Subconsultant Insurance.** If applicable, Architect shall require each subconsultant performing work under this Agreement to maintain during the term of the Contract, at the subconsultant's own expense, the same stipulated minimum insurance required in Section 10.04 above, including the required provisions and additional policy conditions as shown below in Section 10.06, unless specifically waived by the City Manager.

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

**10.06 Insurance Policy Endorsements.** Each insurance policy under paragraph 10.04 shall include the following conditions by endorsement to the policy:

- (1) Each policy shall require that thirty (30) days prior to the expiration, cancellation, or non-renewal, 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

Architect shall also notify City, within 24 hours of receipt, of any notices of expiration, cancellation, or non-renewal it receives from its insurer.

- (2) Companies issuing the insurance policies shall have no recourse against City for payment of any premiums or assessments for any deductibles which all are at the sole responsibility and risk of Architect.

- (3) The Term "City" or "City of Round Rock" shall include all authorities, Boards, Commissions, Departments, and officers of City and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the City of Round Rock.
- (4) 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.

**10.07 Cost of Insurance.** The cost of all insurance required herein to be secured and maintained by Architect shall be borne solely by Architect, with certificates of insurance evidencing such minimum coverage in force to be filed with the City.

#### **ARTICLE XI** **COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES, ETC.**

**11.01 Compliance with Laws.** Architect, its consultants, agents, employees and subcontractors shall 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 all local, State and National boards, bureaus and agencies as required by the Standard of Care provided in the Agreement. Architect shall further obtain all permits and licenses required in the performance of the professional services contracted for herein.

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

#### **ARTICLE XII** **TERM**

**12.01 Term.** Unless sooner terminated in accordance with the applicable provisions hereof, or extended by mutual agreement approved by City's Director, the term of this Agreement shall be from the date hereof until final completion of the Project and all architectural/engineering and construction administration services in connection therewith, including the final one (1) year warranty inspection.

**12.02 Project Performance Schedule.** Architect agrees to endeavor to perform its services in a reasonably timely manner and in connection with the Project Performance Schedule. However, Architect shall not be responsible for delays caused by the City, its Contractor, or any of their separate consultants.

#### **ARTICLE XIII** **FINANCIAL INTEREST PROHIBITED, CONFIDENTIALITY**

**13.01 Financial Interest Prohibited.** Architect covenants and represents that Architect, its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the Project.

**13.02 Confidentiality.** Except as otherwise provided in this Agreement, Architect's reports, evaluations, designs, drawings, data, and all other documentation and work developed by Architect

hereunder shall be kept confidential, and shall not be disclosed to any third parties without the prior written consent and approval of City's Director. This provision shall not apply if the work product is ordered to be disclosed by a court or other legal authority, or is already in the public domain.

**ARTICLE XIV**  
**GENERAL PROVISIONS**

**14.01 Force Majeure.** Neither City nor Architect 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 or circumstances beyond its control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

**14.02 Assignment.** The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Architect shall not assign, sublet or transfer any interest in this Agreement without prior written authorization of City's Director.

**14.03 Amendments.** This Agreement, representing the entire agreement between the parties, may only be amended or supplemented by mutual agreement of the parties hereto in writing.

**14.04 Enforcement and Venue.** This Agreement shall be enforceable in Round Rock, Williamson County, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

**14.05 Notices.** All notices and correspondence to City by Architect shall be mailed or delivered as follows:

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

and to:

Stephanie L. Sandre, City Attorney  
309 East Main Street  
Round Rock, Texas 78664

All notices and correspondence from City to Architect shall be mailed or delivered to the Architect as follows:

McKinney Architects, Inc.  
Attn: Charles York, FAIA  
1301 East Seventh Street  
Austin, Texas 78702

[Signatures on the following page.]

IN WITNESS WHEREOF, the City of Round Rock has caused this Contract to be signed in its corporate name by its Mayor, duly authorized to execute the same in its behalf by Resolution No. \_\_\_\_\_ approved by the City Council on \_\_\_\_\_, 2024, and McKinney Architects, Inc., dba McKinney York Architects signing by and through its duly authorized representative, thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions of this Contract.

**CITY OF ROUND ROCK, TEXAS**

**MCKINNEY ARCHITECTS, INC., dba  
McKinney York Architects**

By: \_\_\_\_\_  
Craig Morgan, Mayor

By:  \_\_\_\_\_  
Charles A. York, FAIA, Principal

Date: \_\_\_\_\_

Date: 5.29.24

**ATTEST:**

By: \_\_\_\_\_  
Meagan Spinks, City Clerk

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

By: \_\_\_\_\_  
Stephanie L. Sandre, City Attorney



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/20/2024

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).

|   |  |  |   |
|---|--|--|---|
| <b>PRODUCER</b><br><b>USI Southwest</b><br><b>9811 Katy Freeway, Suite 500</b><br><b>Houston, TX 77024</b><br><b>713 490-4600</b>                 |  | <b>CONTACT NAME:</b> <b>Callie Renaud</b><br><b>PHONE (A/C, No, Ext):</b> <b>713 490-4600</b><br><b>FAX (A/C, No):</b> <b>713-490-4700</b><br><b>E-MAIL ADDRESS:</b>   |   |
| <b>INSURED</b><br><b>McKinney Architects, Inc. dba</b><br><b>McKinney York Architects</b><br><b>1301 E. Seventh St</b><br><b>Austin, TX 78702</b> |  | <b>INSURER(S) AFFORDING COVERAGE</b><br><b>INSURER A:</b> Charter Oak Fire Insurance Company<br><b>INSURER B:</b> Travelers Property Cas. Co. of America<br><b>INSURER C:</b> Hartford Ins Co of the Midwest<br><b>INSURER D:</b> Arch Insurance Company<br><b>INSURER E:</b><br><b>INSURER F:</b> | <b>NAIC #</b><br><b>25615</b><br><b>25674</b><br><b>37478</b><br><b>11150</b> |

## 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 INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS  |
|----------|--|-----------|----------|---------------|-------------------------|-------------------------|---|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC<br>OTHER: |           |          | 6803L966671   | 10/16/2023              | 10/16/2024              | EACH OCCURRENCE \$2,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000<br>MED EXP (Any one person) \$5,000<br>PERSONAL & ADV INJURY \$2,000,000<br>GENERAL AGGREGATE \$4,000,000<br>PRODUCTS - COM/OP AGG \$4,000,000<br>\$ |
| A        | AUTOMOBILE LIABILITY<br><input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY<br><input checked="" type="checkbox"/> HIRED AUTOS ONLY<br><input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY<br><input checked="" type="checkbox"/>   |           |          | 6803L966671   | 10/16/2023              | 10/16/2024              | COMBINED SINGLE LIMIT (Ea accident) \$2,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$  |
| B        | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB<br><input type="checkbox"/> CLAIMS-MADE<br>DED <input checked="" type="checkbox"/> RETENTION \$10000   |           |          | CUP4S256098   | 10/16/2023              | 10/16/2024              | EACH OCCURRENCE \$1,000,000<br>AGGREGATE \$1,000,000<br>\$  |
| C        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y / N<br>(Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below  |           | N / A    | 61WBCAH7558   | 05/16/2024              | 05/16/2025              | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER<br>E.L. EACH ACCIDENT \$1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$1,000,000<br>E.L. DISEASE - POLICY LIMIT \$1,000,000                                    |
| D        | Professional Liability   |           |          | PAAEP0157201  | 05/16/2024              | 05/16/2025              | \$2,000,000 per claim<br>\$2,000,000 annl aggr.   |

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

The General Liability and Auto Liability policy(s) includes an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder only when there is a written contract that requires such status, and only with regard to work performed on behalf of the named insured. All policy(s) provide a Blanket Waiver of Subrogation when required by written contract, except as prohibited by law. The General Liability and Auto Liability policy(s) contains a special endorsement with "Primary and (See Attached Descriptions)

## CERTIFICATE HOLDER

## CANCELLATION

City of Round Rock  
 Attn: Richard Will  
 221 East 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

*Callie Renaud*

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