

**EXHIBIT**

**"A"**

**CITY OF ROUND ROCK AGREEMENT FOR  
CONSTRUCTION CONSULTING SERVICES  
WITH  
AKH CONSULTING LLC**

THIS AGREEMENT for Construction Consulting Services for the General Services Department (the "Agreement") is made by and between the CITY OF ROUND ROCK, a Texas home-rule municipal corporation with offices located at 221 East Main Street, Round Rock, Texas 78664-5299 (hereinafter referred to as "City"), and AKH CONSULTING LLC with a mailing address of 16412 Paralee Cove, Austin, Texas 78717 (hereinafter referred to as "Consultant").

**RECITALS:**

**WHEREAS**, City desires to contract for Consultant's assistance in providing advisory services in connection with construction projects for the General Services Department; and

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

**NOW, THEREFORE, WITNESSETH:**

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

**1.0 EFFECTIVE DATE, DURATION, AND TERM**

- A. This Agreement shall be effective on the date this Agreement has been signed by each party hereto ("effective date") 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. The term of this Agreement shall be for thirty-six (36) months from the effective date.

**2.0 SCOPE OF WORK**

The Consultant shall satisfactorily provide the services set forth in the attached Exhibit "A," "Scope of Work." Consultant shall satisfactorily provide all services and deliverables in a professional and workmanlike manner. Consultant's undertakings shall be limited to performing services for the City and/or advising the City concerning those matters on which Consultant has been specifically engaged.

### **3.0 CONSULTING FEE**

- A. The consulting fee shall be **One Hundred and No/100 Dollars (\$100.00) per hour** (“hourly rate”).
- B. The fee paid to Consultant shall not exceed **Two Hundred Eight Thousand and No/100 (\$208,000.00)** per year for a total not-to-exceed amount of **Six Hundred Twenty-Four and No/100 Dollars (\$624,000.00)** for the term of the Agreement.
- C. No reimbursement for travel expenses or any other costs whatsoever are authorized hereunder.
- D. At the end of the first twelve (12) months and then end of each twelve (12) months thereafter for the term of the Agreement, Consultant may request a modification to its hourly rate, which may be granted or denied at the sole discretion of the City.

### **4.0 TERMS OF PAYMENT**

- A. To receive payment, Consultant shall prepare and submit detailed bi-weekly invoices to the City, in accordance with the delineation contained herein, for services rendered. Such invoices shall detail the services performed, along with documentation for each service performed. Payment to Consultant shall be made bi-weekly on the basis of the invoices submitted by Consultant and approved by the City. Such invoices shall conform to the schedule of services and costs in connection therewith.
- B. Should additional backup material be requested by the City relative to service deliverables, Consultant shall comply promptly. In this regard, should the City determine it necessary, Consultant shall make all records and books relating to this Agreement available to the City for inspection and auditing purposes.
- C. The City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Consultant and to adjust same to meet the requirements of this Agreement. Following approval of an invoice, the City shall endeavor to pay Consultant promptly, but no later than the time period required under the Texas Prompt Payment Act described in Section 1.06 herein. Under no circumstances shall Consultant be entitled to receive interest on payments which are late because of a good faith dispute between Consultant and the City or because of amounts which the City has a right to withhold under this Agreement or state law.

### **5.0 SUPPLEMENTAL AGREEMENT**

The terms of this Agreement may be modified by written Supplemental Agreement hereto, duly authorized by City Council or by the City Manager, if the City determines that there

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

## **6.0 PROMPT PAYMENT POLICY**

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by the City to Consultant will be made within thirty (30) days of the date the City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date the City receives a correct invoice for the goods or services, whichever is later. Consultant may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by the City in the event:

- (a) There is a bona fide dispute between the City and Consultant, a contractor, subcontractor, or supplier about the goods delivered or the service performed that cause the payment to be late; or
- (b) There is a bona fide dispute between Consultant and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- (c) The terms of a federal contract, grant, regulation, or statute prevent the City from making a timely payment with federal funds; or
- (d) The invoice is not submitted to the City in strict accordance with any instruction on the purchase order relating to the payment.

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

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

## **8.0 INDEPENDENT CONTRACTOR STATUS**

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

- (1) Consultant has the right to perform services for others during the term hereof.
- (2) Consultant has the sole right to control and direct the means, manner and method by which it performs its services required by this Agreement.
- (3) Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
- (4) Consultant or its employees or subcontractors shall perform services required hereunder, and the City shall not hire, supervise, or pay assistants to help Consultant.
- (5) Neither Consultant nor its employees or subcontractors shall receive training from the City in skills necessary to perform services required by this Agreement.
- (6) City shall not require Consultant or its employees or subcontractors to devote full time to performing the services required by this Agreement.
- (7) Neither Consultant nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the City.

## **9.0 CONFIDENTIALITY; AND MATERIALS OWNERSHIP**

Any and all programs, data, or other materials furnished by the City for use by Consultant in connection with services to be performed under this Agreement, and any and all data and information gathered by Consultant, shall be held in confidence by Consultant as set forth hereunder. Each party agrees to take reasonable measures to preserve the confidentiality of any proprietary or confidential information relative to this Agreement, and to not make any use thereof other than for the performance of this Agreement, provided that no claim may be made for any failure to protect information that occurs more than three (3) years after the end of this Agreement.

**The parties recognize and understand that the City is subject to the Texas Public Information Act and its duties run in accordance therewith.**

All data relating specifically to the City's business and any other information which reasonably should be understood to be confidential to City is confidential information of City. Consultant's proprietary software, tools, methodologies, techniques, ideas, discoveries, inventions, know-how, and any other information which reasonably should be understood to be confidential to Consultant is confidential information of Consultant. The City's confidential information and Consultant's confidential information is collectively referred to as "Confidential Information." Each party shall use Confidential Information of the other party only in furtherance of the purposes of this Agreement and shall not disclose such Confidential Information to any third party without the other party's prior written consent, which consent shall not be unreasonably withheld. Each party agrees to take reasonable measures to protect the confidentiality of the other party's Confidential Information and to advise their employees of the confidential nature of the Confidential Information and of the prohibitions herein.

Notwithstanding anything to the contrary contained herein, neither party shall be obligated to treat as confidential any information disclosed by the other party (the "Disclosing Party") which: (1) is rightfully known to the recipient prior to its disclosure by the Disclosing Party; (2) is released by the Disclosing Party to any other person or entity (including governmental agencies) without restriction; (3) is independently developed by the recipient without any reliance on Confidential Information; or (4) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any non-party. Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief.

Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

Neither the City nor Consultant will be liable to the other for inadvertent or accidental disclosure of Confidential Information if the disclosure occurs notwithstanding the party's exercise of the same level of protection and care that such party customarily uses in safeguarding its own proprietary and confidential information.

Notwithstanding anything to the contrary in this Agreement, the City will own as its sole property all written materials created, developed, gathered, or originally prepared expressly for the City and delivered to the City under the terms of this Agreement; and Consultant shall own any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, or other similar information which may have been discovered, created, developed or derived by Consultant either prior to or as a result of its provision of services under this Agreement.

## **10.0 TERMINATION; DEFAULT**

**Termination:** It is agreed and understood by Consultant that the City may terminate this Agreement for the convenience of the City, upon thirty (30) days' written notice to Consultant, with the understanding that immediately upon receipt of said notice all work being performed under this Agreement shall cease. Consultant shall invoice the City for work satisfactorily completed and shall be compensated in accordance with the terms hereof for work accomplished prior to the receipt of said notice of termination. Consultant shall not be entitled to any lost or anticipated profits for work terminated under this Agreement. Unless otherwise specified in this Agreement, all data, information, and work product related to this project shall become the property of the City upon termination of this Agreement, and shall be promptly delivered to the City in a reasonably organized form without restriction on future use. Should the City subsequently contract with a new consultant for continuation of service on the project, Consultant shall cooperate in providing information.

Termination of this Agreement shall extinguish all rights, duties, and obligations of the City and the terminated party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory or which is not performed in compliance with the terms of this Agreement.

**Default:** Either party may terminate this Agreement, in whole or in part, for default if the Party provides the other Party with written notice of such default and the other fails to satisfactorily cure such default within ten (10) business days of receipt of such notice (or a greater time if agreed upon between the Parties).

If default results in termination of this Agreement, then the City shall give consideration to the actual costs incurred by Consultant in performing the work to the date of default. The cost of the work that is usable to the City, the cost to the City of employing another firm to complete the useable work, and other factors will affect the value to the City of the work performed at the time of default. Neither party shall be entitled to any lost or anticipated profits for work terminated for default hereunder.

The termination of this Agreement for default shall extinguish all rights, duties, and obligations of the terminating Party and the terminated Party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory, or which is not performed in compliance with the terms of this Agreement.

## **11.0 INDEMNIFICATION**

Consultant and the City each agree to indemnify, defend and hold harmless the other from and against amounts payable under any judgment, verdict, court order or settlement for death or bodily injury or the damage to or loss or destruction of any real or tangible property to the extent arising out of the indemnitor's negligence in the performance of this Agreement.

## **12.0 ASSIGNMENT AND DELEGATION**

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

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

- A. Consultant, its consultants, 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. Consultant shall further obtain all permits, licenses, trademarks, or copyrights required in the performance of the services contracted for herein, and same shall belong solely to the City at the expiration of the term of this Agreement.
- 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 a contract. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

## **14.0 APPLICABLE LAW; ENFORCEMENT AND VENUE**

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

## **15.0 DISPUTE RESOLUTION**

If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually selected mediator. If the parties cannot agree on a mediator, the City shall select one mediator and Consultant shall select one mediator and those two mediators shall agree upon a third mediator. Any costs and fees, other than attorney fees,

associated with the mediation shall be shared equally by the parties.

The City and Consultant hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

#### **16.0 FORCE MAJEURE**

Notwithstanding any other provisions hereof to the contrary, no failure, delay or default in performance of any obligation hereunder shall constitute an event of default or breach of this Agreement, only to the extent that such failure to perform, delay or default arises out of causes beyond control and without the fault or negligence of the party otherwise chargeable with failure, delay or default; including but not limited to acts of God, acts of public enemy, civil war, insurrection, riots, fires, floods, explosion, theft, earthquakes, natural disasters or other casualties, strikes or other labor troubles, which in any way restrict the performance under this Agreement by the parties.

Consultant shall not be deemed to be in default of its obligations to the City if its failure to perform or its substantial delay in performance is due to the City's failure to timely provide requested information, data, documentation, or other material necessary for Consultant to perform its obligations hereunder.

#### **17.0 SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion of provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion of provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

#### **18.0 GENERAL AND MISCELLANEOUS**

The section numbers and headings contained herein are provided for convenience only and shall have no substantive effect on construction of this Agreement.

No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver of discharge shall be valid unless in



writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

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

This Agreement may be executed in multiple counterparts, which taken together shall be considered one original. The City agrees to provide Consultant with one fully executed original.

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

**City of Round Rock, Texas**

**AKH Consulting LLC, Consultant**

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

By: Arnie King Hammock  
Printed Name: Arnie King Hammock  
Title: President  
Date Signed: 07/23/2024

**For City, Attest:**

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

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

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

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**Construction Consultant:**

Responsible for overseeing the success of new facility construction and building renovation projects, including project planning and scheduling, production of construction documents and drawings, development of construction guidelines, development and management of construction budgets and cost estimates, and maintaining close working relationships with architects, engineers, and contractors to ensure construction projects are completed on time and within scope and budget.

Duties include, but are not limited to:

- Monitor/control construction through administrative direction of on-site superintendent to ensure quality project is built on schedule within budget.
- Create, oversee, and manage the master progress schedule to meet all time objectives.
- Manage project staff, architects, engineers, general contractors, and at times trade subcontractors to meet scope, budget, schedule, and quality.
- Resolve issues and problems that involve budget, construction, and schedule changes as they develop and as the contract specifies.
- Review plans to resolve plan conflicts and assist in the development of project plans to ensure it is consistent with expectations.
- Assure applications for payment encompass completed work, acceptable to City's quality expectations.
- Supervise completion of punch list and follow-up of all warranty work.
- Set-up and monitor pre-construction activities such as geotechnical and asbestos surveys.
- Forecast, manage, and resolve conflicts using project management tools while operating within project constraints, and monitor changes in construction documents.
- Verify, organize, and compile project closeout documents.