

# EXHIBIT

## "A"

### City of Round Rock Agreement for Architectural Services for City of Round Rock A Fire Station at 1401 and 1405 Lisa Rae Drive with Wiginton Hooker Jeffry, PC

Based upon AIA Document B141 - 1997  
1997 Edition - Electronic Format  
Standard Form of Agreement between Owner and Architect

AGREEMENT made as of the \_\_\_\_\_ (\_\_\_\_) day of the month of February in the year Two Thousand Fifteen.

BETWEEN the Architect's client identified as the City or the Owner:

City of Round Rock  
221 East Main Street  
Round Rock, Williamson and Travis Counties, Texas 78664

and the Architect:

Wiginton Hooker Jeffry, PC  
209 East Riverside Drive  
Austin, Texas 78704

For the following Project:

Professional architectural services and design services related to the construction of a Round Rock Fire Station at 1401 and 1405 Lisa Rae Drive, Round Rock, Texas.

Professional services for this Project shall include but not be limited to, Schematic Design, Design Development, Construction Documents, Bidding Phase and Construction Observation.

The Owner and the Architect agree as follows:

#### ARTICLE 1.1 INITIAL INFORMATION

1.1.1 This Agreement is based on the following information and assumptions.

The Architect shall furnish the delineated services, including but not limited to meeting with the Owner's representatives and others designated by the Owner to determine needs and requirements; rendering professional consultation and advice; furnishing all necessary design and contract administration services for the referenced Project; and providing other specialized services.

Architectural services shall include the submittal of plans for Texas Accessibility Standards (TAS) review, which is a requirement of federal law to comply with the ADA if the construction budget exceeds \$50,000.

#### 1.1.2 PROJECT PARAMETERS

1.1.2.1 The objective or use is:

The referenced Project consists of professional planning, design, and construction services related to the following:

New construction of a Round Rock Fire Station at 1401 and 1405 Lisa Rae Drive.

1.1.2.2 The physical parameters are:

The Fire Station is planned to be built at 1401 and 1405 Lisa Rae Drive, Round Rock, Texas.

1.1.2.3 The Owner's Program is:

The program of development shall include but not be limited to the following elements: Schematic Design Phase, Design Development Phase, Construction Documents Phase, Bidding Phase and Construction Administration Phase. The tasks performed as a part of each element shall be as stated in Exhibit "A" attached hereto and incorporated herein for all purposes. The parties agree that elements, or portions thereof, may be omitted by the Owner for reasons including meeting the Project budget.

#### Schedule

Proposed Schedule for the Project is attached as Exhibit B and incorporated herein. The attached Proposed Schedule (Exhibit B) is identical to the Proposed Schedule for the Red Bud Fire Station Project. The Architect shall construct both the Red Bud Fire Station and Lisa Rae Fire Station simultaneously, or if not simultaneously, construction on both Projects shall commence within one month of each other and shall be completed within one month of each other.

The Architect will maintain project schedule in a format acceptable to the City throughout the duration of the Project.

1.1.2.4 The legal parameters are: Not applicable.

1.1.2.5 The financial parameters are as follows:

1. The Fee Schedule relative to this Agreement is as follows:

A. Professional Services

In consideration for the professional services to be performed by the Architect, the City agrees to pay the Architect a total sum not to exceed Two Hundred Thirty-Four Thousand One Hundred Fifty Dollars and no/100 (\$234,150.00). Said sum is a fixed not-to-exceed amount, and shall be paid as delineated in the attached Exhibit "A" which is incorporated herein by reference for all purposes. Such not-to-exceed sum includes amounts paid for Architect's services; and for consultant fees for MEP engineers, structural engineers, civil engineers; for the production of Record Drawings; and for reimbursable expenses, as follows:

B. Reimbursable Expenses Allowance

Payment for reimbursable expenses, including administrative charges and out-of-pocket expenses, shall not exceed the maximum sum of Seven Thousand Dollars and no/100 (\$7,000.00), and such amount is included in the not-to-exceed total fee recited herein.

C. Not-to-exceed total payment for Professional Services and Reimbursable Expenses payable hereunder: Unless subsequently changed by Supplemental Agreement hereto, the Architect's total compensation for services and reimbursables hereunder shall not exceed Two Hundred Thirty-Four Thousand One Hundred Fifty Dollars and no/100 (\$234,150.00). Such amount represents the absolute limit of the City's liability to the Architect unless same shall be changed by additional Supplemental Agreement, and the City shall pay, strictly within the confines of the not-to-exceed sums recited herein, the Architect's professional fees and reimbursable expenses for work done on behalf of the City. No deductions shall be made for the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to the Architect. No additions shall be made to the Architect's compensation based on Project claims, whether paid by the City or denied.

D. Additional Services: Additional services are defined as any services not listed as a basic service including revisions to previously-approved plans that necessitate additional work for the Architect, substantive changes in Project scope, or additional work necessitated by unknown or reasonably unforeseen circumstances. The parties expressly agree that such additional services would be performed under a supplemental agreement negotiated at a time subsequent to this Agreement. Submittals with applications to agencies with jurisdiction (i.e. TCEQ, City) are included as a basic service. Submittal, filing, and review fees charged by authorities having jurisdiction shall be a reimbursable expense.

1.1.2.6 The time parameters are:

Services hereunder shall commence immediately upon receipt by the Architect of this fully-executed Agreement. Completion of design services shall be not later than the date identified in the attached Exhibit "B." Other time parameters or adjustments to time parameters may be determined at a later date by mutual agreement of the parties.

1.1.2.7 The proposed procurement or delivery method for the Project is:

Professional services such as architectural/planning will be engaged by negotiated contract. The general contractor for construction will be selected by a method to be determined.

1.1.2.8 Other parameters are:

Unknown at this time.

### 1.1.3 PROJECT TEAM

1.1.3.1 The Owner's Designated Representatives are:

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

Travis Wilkes  
Building Construction Manager  
City of Round Rock  
212 Commerce Boulevard  
Round Rock, Texas 78664  
Telephone Number (512) 341-3317  
Email Address: [twilkes@roundrocktexas.gov](mailto:twilkes@roundrocktexas.gov)

1.1.3.2 The persons or entities, in addition to the Owner's Designated Representatives, who are required to review the Architect's submittals to the Owner are:

Not designated at this time.

1.1.3.3 The Owner's consultants and contractors are:

Architect of Record / Prime Firm:

Wiginton Hooker Jeffry, P.C.

1.1.3.4 The Architect's Designated Representative is:

Don Greer  
611 South Congress Avenue  
Suite 225  
Austin, Texas 78704

1.1.3.5 The consultants retained at the Architect's expense are identified in Exhibit "A."

1.1.4 Other important initial information is:

Not applicable.

1.1.5 When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 as modified between the Owner and the Contractor. Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and the Architect with consent of the Contractor, which consent shall not be unreasonably withheld. The

Architect consents to the modifications of AIA Document A201, General Conditions of the Contract for Construction, between the Owner and the Contractor.

1.1.6 It is expressly understood and agreed by and between the parties hereto that any alteration in schedule, compensation and Change in Services shall be effected only by Supplemental Agreement hereto. Any such Supplemental Agreement to this Agreement must be duly authorized by appropriate City Council or City Manager action.

## ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES

1.2.1 The Owner and the Architect shall fully cooperate with one another to fulfill all of their respective obligations required under this Agreement. Both parties shall endeavor during the full term hereof to maintain good working relationships among all members of the Project team.

### 1.2.2 OWNER

1.2.2.1 Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within fifteen (15) days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

1.2.2.2 The Owner shall establish and periodically update the budget for the Project, including that portion allocated for the Cost of the Work, the Owner's other costs, and reasonable contingencies related to all costs.

1.2.2.3 The Owner's Designated Representatives identified in Paragraph 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or Owner's Designated Representatives shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

1.2.2.4 The Owner shall furnish the services of consultants other than those designated in Paragraph 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project and are approved by the Owner.

1.2.2.5 Unless otherwise provided in this Agreement, and if requested in writing, the Owner shall furnish or pay for tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

1.2.2.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

1.2.2.7 Each party shall provide prompt written notice to the other if either becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

1.2.2.8 The Owner will furnish building permits 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 the Owner and are not to be included by the Architect in the specifications for the Project. However, the Owner agrees to reimburse the Architect the actual costs of review fees associated with Texas Building Accessibility reviews, and reviews by other authorities having jurisdiction.

1.2.2.9 The Owner will provide the Architect with miscellaneous items such as two (2) copies of the City of Round Rock General and Supplementary Conditions for Building Construction, Wage Rates, Contract and Bond Forms, and such other information and materials as may be necessary and practicable for the orderly and expeditious progress 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.

1.2.2.10 The Owner will provide timely review and response to inquiries in order to maintain an orderly progression.

1.2.2.11 The Owner will furnish relevant design standards and Owner-furnished equipment specifications.

### 1.2.3 ARCHITECT

1.2.3.1 The services performed by the Architect, the Architect's employees and the Architect's consultants shall be as

enumerated in Article 1.4 and as enumerated elsewhere herein, in attached and accompanying documents, in supplemental documents, and in related documents.

1.2.3.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Subparagraph 1.1.2.6 and which may be adjusted, if necessary and approved by the Owner, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or the Owner.

1.2.3.3 The Architect's Designated Representative identified in Paragraph 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

1.2.3.4 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

1.2.3.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

1.2.3.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

1.2.3.7 The Architect shall be entitled to reasonably rely on the accuracy and completeness of services and information furnished by the Owner. Each party shall provide prompt written notice to the other if either becomes aware of any errors, omissions or inconsistencies in such services or information.

## ARTICLE 1.3 TERMS AND CONDITIONS

### 1.3.1 COST OF THE WORK

1.3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed by the Architect.

1.3.1.2 The Cost of the Work shall include the cost at reasonable current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, for the Contractor's overhead and profit.

1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

### 1.3.2 INSTRUMENTS OF SERVICE

1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. All of the Architect's designs and work product under this Agreement, including but not limited to Tracings, Drawings, Estimates, Specifications, Investigations, Studies and other documents, shall be the property of the Owner, to be used as the Owner desires; by execution of this Agreement and in confirmation of the fee for services to be paid under this Agreement, the Architect hereby conveys, transfers and assigns to the Owner all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Project designs and work product developed under this Agreement. Copies may be retained by the Architect. The Architect shall be liable to the Owner for any loss or damage to any such documents while they are in the possession of or while being worked upon by the Architect or anyone connected with the Architect, including agents, employees, consultants or subcontractors. All documents so lost or damaged shall be replaced or restored by the Architect without cost to the Owner. Nothing in this paragraph shall be deemed to include the Architect's standard detail or standard features of overall design, or functional elements of overall design and or individual

design aspects and components the Architect has developed and/or used previously on other projects.

1.3.2.2 Upon execution of this Agreement, the Architect grants to the Owner permission to reproduce the Architect's Instruments of Service for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar permission from the Architect's consultants consistent with this Agreement. If and upon the date the Architect is adjudged in default of this Agreement, the Owner is permitted to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service for the purposes of completing, using and maintaining the Project.

1.3.2.3 The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any permission granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is permitted. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

1.3.2.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations not otherwise provided in this Agreement.

1.3.2.5 All plans and drawings will be prepared and submitted by the Architect to the Owner for approval on a minimum 24-inch by 36-inch or maximum 32-inch by 42-inch drafting sheet, with all lettering processed in ink or pencil and clearly legible when the sheets are reproduced and reduced to half size.

1.3.2.6 Upon completion of the construction of the Project, the Architect shall, within thirty (30) calendar days from receipt of final-as-built mark-ups from the contractor, deliver to the Owner the reproducible Record Drawings and Record Specifications as described supplementally herein. In addition, the Architect shall submit originals of all documents listed under Section 1.3.2.1 modified to actual as-built conditions as provided by the General Contractor.

1.3.2.7 The Architect shall have no liability for changes made to the drawings. Any such change shall be sealed by the architect making that change and shall be appropriately marked to reflect what was changed or modified. To the extent permitted by law, the Owner agrees to indemnify, defend and hold harmless the Architect for any claims, damages, suits and loss of every kind and nature for the unauthorized re-use of the Architect's Instruments of Service.

### 1.3.3 CHANGE IN SERVICES

1.3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing. It is expressly understood and agreed by and between the parties hereto that any alteration in schedule, compensation and Change in Services shall be effected only by Supplemental Agreement hereto. Any such Supplemental Agreement to this contract must be duly authorized by appropriate City Council or City Manager action. It is expressly agreed by the parties that, as to services hereunder, the total sum of \$234,150.00, which includes authorized reimbursable expenses, shall represent the absolute limit of the Owner's liability to the Architect unless same shall be changed by Supplemental Agreement hereto.

1.3.3.2 Changes in Services of the Architect may include a change in the cost of work of more than ten percent (10%) or a change in the size of the building of more than ten percent (10%) as defined in Exhibit "A," if the increase is authorized by the Owner.

### 1.3.4 MEDIATION

1.3.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with lien notice or filing deadlines prior to resolution of the matter by mediation.

1.3.4.2 The Owner and the Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation. Request for mediation shall be filed in writing with the other party to this Agreement, and mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

1.3.4.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### 1.3.5 ARBITRATION

1.3.5.1 The Owner and the Architect hereby expressly agree that no claims or disputes between the Owner and the Architect arising out of or relating to the contract documents or a breach thereof shall be decided by any arbitration proceeding, including, without limitation, any proceeding under the Federal Arbitration Act (9 U.S.C. Section 1-14) or any applicable state arbitration statute, except that in the event that the Owner is subject to an arbitration proceeding related to the Project, the Architect consents to be joined in the arbitration proceeding if the Architect's presence is required or requested by the Owner for complete relief to be accorded in the arbitration proceeding.

### 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

1.3.6.1 The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Paragraph 1.3.8.

### 1.3.7 MISCELLANEOUS PROVISIONS

1.3.7.1 This Agreement shall be governed by the laws of the state of Texas, and venue shall lie in Williamson County, Texas.

1.3.7.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, as modified between the Owner and the Contractor.

1.3.7.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

1.3.7.4 To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document, A201, General Conditions of the Contract for Construction, as modified between the Owner and the Contractor. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

1.3.7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Architect.

1.3.7.6 Unless otherwise provided in this Agreement, the Architect and the Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

1.3.7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

1.3.7.8 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least fourteen (14) days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

1.3.7.9 The Owner and the Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with

respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

### 1.3.8 TERMINATION OR SUSPENSION

1.3.8.1 If the Owner fails to make payments to the Architect in substantial compliance with this Agreement, such failure may be considered substantial nonperformance and cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give fifteen (15) days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused by the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all non-disputed sums due prior to suspension. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

1.3.8.2 In connection with the work outlined in this Agreement, it is agreed and fully understood by the Architect that the Owner may cancel or indefinitely suspend further work hereunder or terminate this contract either for cause or for the convenience of the Owner, upon fifteen (15) days' written notice to the Architect, with the understanding that immediately upon receipt of said notice all work and labor being performed under this Agreement shall cease. The Architect shall invoice the Owner for all work satisfactorily 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. All plans, field surveys, maps, cross sections and other data, designs and work related to the Project shall become the property of the Owner upon termination of this Agreement, and shall be promptly delivered to the Owner in a reasonably organized form without restriction on future use. Should the Owner subsequently contract with a new architect for continuation of services on the Project, the Architect shall cooperate in providing information.

1.3.8.3 Nothing contained in Section 1.3.8.2 immediately above shall require the Owner to pay for any work which is unsatisfactory as determined by the Owner's representative or which is not submitted in compliance with the terms of this Agreement. The Owner shall not be required to make any payments to the Architect when the Architect is in default under this contract, nor shall this section constitute a waiver of any right, at law or at equity, which the Owner may have if the Architect is in default, including the right to bring legal action for damages or to force specific performance of this Agreement.

### 1.3.9 PAYMENTS TO ARCHITECT

1.3.9.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

1.3.9.2 Reimbursable Expenses, in an amount not to exceed \$7,000.00, are *included* in the not-to-exceed sum for compensation for the Architect's services and include expenses incurred by the Architect and the Architect's employees and consultants directly related to the Project, as identified in the following clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 reimbursable expenses as designated in Paragraph 1.5.5.; and
- .5 other similar direct Project-related expenditures.

1.3.9.3 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representatives at mutually convenient times.

1.3.9.4 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

## ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

**1.4.1 Enumeration of Parts of the Agreement.** This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Architect. This Agreement comprises the documents listed below.

**1.4.1.1** Standard Form of Agreement between Owner and Architect with Standard Form of Architect's Services, AIA Document B141-1997, as herein amended.

**1.4.1.2** Other documents as follows:

Exhibit "A" supplementing the Scope of Services;

Exhibit "B" proposed Project Schedule;

"Supplemental Agreement No. I" supplementing Standard Form of Agreement between Owner and Architect with Standard Form of Architect's Services, AIA Document B141-1997.

**1.4.2 Special Terms and Conditions.** Special terms and conditions that modify this Agreement are as follows:

Americans with Disabilities Act (ADA) and Texas Accessibility Standards (TAS) provide that it is a violation of ADA/TAS to design and construct a facility for first occupancy later than January 26, 1993 that does not meet the accessibility and usability requirements of the ADA/TAS except where an entity can demonstrate that it is structurally impractical to meet such requirements. The Architect will use its best professional efforts to interpret and meet applicable ADA/TAS requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project.

## ARTICLE 1.5 COMPENSATION

**1.5.1** For the Architect's services as described herein, compensation shall be computed as follows:

The Architect's total compensation for services hereunder shall not exceed the sum of \$234,150.00, which sum includes authorized reimbursable expenses.

**1.5.2** If the services of the Architect are changed as described in Subparagraph 1.3.3.1, the Architect's compensation may be adjusted.

**1.5.3** For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of one (1.00) times the amounts billed to the Architect for such services.

**1.5.4** For Reimbursable Expenses as described in Subparagraph 1.3.9.2, and any other items included in Paragraph 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of one (1.00) times the expenses incurred by the Architect, and the Architect's employees and consultants.

**1.5.5** Other Reimbursable Expenses, if any, are as follows: None

**1.5.6** The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

**1.5.7** An initial payment of Zero and No/100 Dollars (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

**1.5.8** Payments are due and payable thirty (30) days from the date of the Architect's invoice, or not later than the time period required under the Texas Prompt Payment Act, whichever is later. Non-disputed amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

Payments hereunder shall be made in accordance with the Prompt Payment Act.

This Agreement entered into as of the day and year first written above.

**OWNER**

**CITY OF ROUND ROCK, TEXAS**

By: \_\_\_\_\_

Mayor, Alan McGraw

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

**ATTEST:**

By: \_\_\_\_\_

Sara L. White, City Clerk

**ARCHITECT**

**WIGINTON HOOKER JEFFRY, PC**

By: \_\_\_\_\_



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

2.9.2015

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

By: \_\_\_\_\_

Stephan L. Sheets, City Attorney



# W H J A R C H I T E C T S

611 S. Congress Avenue, Suite 225 Austin, Texas 78704 ph 512.447.1418 fx 512 448.0102 www.whjarch.com

February 6, 2015

Travis Wilkes  
Building Construction Manager  
General Services Division, City of Round Rock  
212 Commerce Blvd.  
Round Rock, Texas 78664

via e-mail: [twilkes@roundrocktexas.gov](mailto:twilkes@roundrocktexas.gov)

Re: Proposal for Fire Station Prototype Adaption at 1401 and 1405 Lisa Rae Drive

Dear Travis:

At your request, Wiginton Hooker Jeffry (WHJ) offers a proposal for professional design services for the site adaption of the fire station prototype at 1401 and 1405 Lisa Rae Drive. This proposal replaces the one issued on November 4.

For the site adapt of the prototype for the Lisa Rae location, WHJ will provide the following services for a fixed fee: Civil, Architectural, Structural, Mechanical, Electrical, and Plumbing. The scope is the same as what is defined in our Agreement dated September 11, 2014 (Resolution R-2014-1771 and as modified on December 9, 2014 (Resolution R-2014-2061), with the exception of programming, which will not be required. The fee is based on a building size not to exceed 11,232 square feet and a construction budget of not more than \$4,019,296, which includes site development costs, construction cost escalation, and design contingency. A discount (approximately 38%) has been applied based on the following assumptions:

1. Lisa Rae station design will be substantially the same as the prototype design, with no more than 5% difference (including architectural, structural, and MEP designs).
2. The Red Bud and Lisa Rae stations will be bid at the same time as a single package.
3. The two stations will be awarded to a single General Contractor.
4. The two stations will be constructed simultaneously or the second station will start construction within one month of the first and be completed within one month of the first station's completion.

**Exhibit "A"**

The fee for the Lisa Rae station is structured as follows:

Schematic Design	\$38,000
Design Development	\$62,600
Construction Documents	\$54,500
Bidding/ Negotiation	\$7,800
Construction Administration	\$61,250
<i>Subtotal:</i>	<b>\$224,150</b>
Record Drawings (Allowance)	\$3,000
<u>Reimbursables (Allowance)</u>	<u>\$7,000</u>
Total Not to Exceed	<b>\$234,150</b>

If the City requires landscape architecture services for the Lisa Rae site, the fee is an additional \$8,527.

The reimbursable expenses allowance is based on the number of sets of documents delineated in the contract. I expect that there will be additional savings to the City on Reimbursable expenses because of the projects following a parallel design and construction path. It also assumes that shop drawings and product data submittals will be exchanged electronically.

The fee for Record Drawings will be treated as a not-to-exceed allowance that will be charged on an hourly basis for actual services provided. It assumes a maximum of 20 hours of work. When the Contractor submits "as-built" documents, if it is determined that more than 20 hours will be necessary, the Architect shall negotiate an additional services fee with the City.

The design fee is based on a condensed Schematic Design process. The Architect will modify the prototype design as required for minor program changes and site conditions and review the concept with City staff. Staff will provide comments, the Architect will make adjustments if necessary, and staff will approve the design. This approval shall serve as the basis for further development for the remainder of Design Development and Construction Document phases. Substantive changes initiated by the City after this approval are subject to an additional services supplemental agreement, per section 1.1.2.5.1.D of the contract.

The project team remains the same:

Architect

Wiginton Hooker Jeffry, P.C.  
Attention: Don Greer  
611 S. Congress Avenue  
Suite 225  
Austin, Texas 78704

**Exhibit "A"**

Civil Engineer (and Landscape Architect, if required)

Halff Associates, Inc.  
Attention: Don Pool  
Two Sierra Way, Suite 105  
Georgetown, Texas 78626

Structural Engineer

Engineering 360, Inc.  
Attention: Larry Fisher  
2300 Greenhill Drive, Suite 500  
Round Rock, Texas 78664

Mechanical/ Electrical/ Plumbing Engineers

Hendrix Consulting Engineers:  
Attention: Buck Hendrix  
115 E. Main Street  
Round Rock, Texas 78664

We look forward to continuing our work with the City of Round Rock. Please contact us if you have any questions or concerns.

Sincerely,



Don Greer, AIA, LEED AP  
Vice President

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas. TBAE may be contacted at: 333 Guadalupe, Suite 2-350; Austin, Texas 78701; 512-305-9000; [www.tbae.state.tx.us](http://www.tbae.state.tx.us)

**Exhibit "A"**

Total \$182,000 (Arch / MEP / Struct only)		Set Fee (i.e. not a percentage)			Totals
		20%	12%	Half	
		WHJ	HCE	360	
SD	\$38,000	\$25,840	\$7,600	\$4,560	
DD	\$45,000	\$30,600	\$9,000	\$5,400	\$62,600
CD	\$39,000	\$25,520	\$7,800	\$4,680	\$54,500
BN	\$6,000	\$4,080	\$1,200	\$720	\$7,800
CA	\$54,000	\$36,720	\$10,800	\$6,480	\$61,250
	\$182,000	\$123,760	\$36,400	\$21,840	\$224,150
Total Project Fee		\$182,000			
		\$224,150			

## Exhibit "A"

NOTE:  
Character in week days (M-F)  
Unless noted otherwise

## Exhibit B – Proposed Project Schedule for City of Round Rock -- Lisa Rae Fire Station

WIGINTON HOOKER JEFFRY ARCHITECTS

ID	Task Name	Duration	Start	End	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14	Jan 15	Feb 15	Mar 15	Apr 15	May 15	Jun 15	Jul 15	Aug 15	
1	<b>SOUTHEAST FIRE STATION</b>	370 days	Tue 7/29/14	Mon 3/15/15														
2	<b>CONTRACTING/ADMINISTRATIVE</b>	12 days	Tue 7/29/14	Mon 8/14/14														
3	Fire Station Properties Selected	0 days	Tue 7/29/14	Tue 7/29/14														
4	Negotiate Contract / City Attorney Review	20 days	Wed 7/30/14	Thur 8/11/14														
5	Permit Applications	1 day	Friday 7/31/14	Thur 8/1/14														
6	Cts Investigation (Separate Contract)	1 day	Friday 7/31/14	Mon 8/4/14														
7	Review Notice to Proceed	1 day	Mon 8/11/14	Mon 8/11/14														
8	<b>PRE-DESIGN</b>	23 days																
9	<b> SITE INVESTIGATION (Separate Contract)</b>	1 day																
10	Review Purchase Order to Architects Work	1 day	En 8/5/14	Fr 8/8/14														
11	Visit Site	1 day	Mon 8/11/14	Mon 8/11/14														
12	Assess GIS Data																	
13	Review topographic and boundary survey																	
14	Determine availability, quantity and quality of existing site utilities																	
15	Determine Zoning requirements and Building Setbacks																	
16	Evaluate drainage, erosion control and storm water detention/quality requirements																	
17	Product conceptual site plan for each site																	
18	<b> NEEDS ASSESSMENT / PROGRAMMING</b>	13 days																
19	Hold Kick-off Programming Meeting with Client	2 days																
20	Determine space requirements and equipment	1 day																
21	Develop space program / room data sheets	10 days																
22	Submit & Review Draft Program with Client	1 day																
23	Client Review of Draft Program	5 days																
24	Review Comments - Modify Program if Required	3 days																
25	Present Final Program to Client	1 day																
26	Obtain Client Authorization to Proceed to Schematic Design	1 day																
27	<b> DESIGN PHASE</b>	16 days																
28	<b>SCHEMATIC DESIGN</b>	16 days																
29	Conduct Program & Consultants	1 day																
30	Perform a Site Utilization Analysis	1 day																
31	Conform applicable building codes	1 day																
32	Prepare Information for Zoning	2 days																
33	Hold Kick-off Schematic Design Meeting with Client	1 day																
34	Develop a Conceptual Floor Plan / Site Plan	5 days																
35	Calculate areas and analyze plan efficiency	1 day																
36	Conform Floor Plan Compliance with Program	1 day																
37	Review Preliminary Design and Building Systems with Consultants	1 day																
38	Modify Floor Plan to meet engineering requirements	1 day																
39	Perform a Site Layout with Access, Parking, Utilities, Setbacks, etc.	1 day																
40	Analyze Site Layout with Access, Parking, Utilities, Setbacks, etc.	1 day																
41	Program Review Drawings with City Planning, Fire Marshal, etc.	1 day																
42	Geotechnical Investigation Underway	15 days																
43	Review Site Plan with City Planning, Fire Marshal, etc.	1 day																
44	Modify Site Plan, Access, Utilities, Setbacks, etc.	2 days																
45	Develop Three-Dimensional Models / Sketches / Elevations	5 days																
46	Prepare a Sample / Color Board of Exterior Materials	2 days																
47	Develop Design Concepts with Client	1 day																
48	Modify Concept if Required	3 days																
49	Develop Schematic Design	5 days																
50	Review Schematic Design with Client	1 day																
51	Issue Final Schematic Design Documents	1 day																
52	Present Final Schematic Design and Obtain Approval to Proceed with DO	1 day																
53	<b> DESIGN DEVELOPMENT</b>	30 days																
54	Conduct Design Development Program	2 days																
55	Review & Add Client's DO Comments	4 days																
56	Develop List of Required Deliverables	2 days																
57	Develop Team Task Responsibilities	2 days																
58	Conduct Design Development Kick-off meeting with Consultants	1 day																
59	Develop DO Drawings and Specifications	30 days																
60	Develop List of Alternatives (if Required)	1 day																
61	Develop List of Alternatives (if Required)	3 days																
62	Prepare Material Color Boards	5 days																
63	Review & Make Color Code Drawings & DO Drawings w/ Client	1 day																
64	Verify Client Requested Equipment	0 days																
65	Client Review	5 days																

Date Entered

Page 1 of 2

Task

Duration

Start

End

Mon 7/29/14

Tue 7/29/14

Wed 7/30/14

Thu 7/31/14

Fri 8/1/14

Sat 8/2/14

Sun 8/3/14

Mon 8/4/14

Tue 8/5/14

Wed 8/6/14

Thu 8/7/14

Fri 8/8/14

Mon 8/11/14

Tue 8/12/14

Wed 8/13/14

Thu 8/14/14

Fri 8/15/14

Sat 8/16/14

Sun 8/17/14

Mon 8/18/14

Tue 8/19/14

Wed 8/20/14

Thu 8/21/14

Mon 8/25/14

Tue 8/26/14

Wed 8/27/14

Thu 8/28/14

Fri 8/29/14

Sat 8/30/14

Sun 8/31/14

Mon 9/1/14

Tue 9/2/14

Wed 9/3/14

Thu 9/4/14

Mon 9/8/14

Tue 9/9/14

Wed 9/10/14

Thu 9/11/14

Fri 9/12/14

Sat 9/13/14

Sun 9/14/14

Mon 9/15/14

Tue 9/16/14

Wed 9/17/14

Thu 9/18/14

Mon 9/22/14

Tue 9/23/14

Wed 9/24/14

Thu 9/25/14

Fri 9/26/14

Sat 9/27/14

Sun 9/28/14

Mon 9/29/14

Tue 9/30/14

Wed 10/1/14

Thu 10/2/14

Mon 10/6/14

Tue 10/7/14

Wed 10/8/14

Thu 10/9/14

Fri 10/10/14

Sat 10/11/14

Sun 10/12/14

Mon 10/13/14

Tue 10/14/14

Wed 10/15/14

Thu 10/16/14

Mon 10/20/14

Tue 10/21/14

Wed 10/22/14

Thu 10/23/14

Fri 10/24/14

Sat 10/25/14

Sun 10/26/14

Mon 10/27/14

Tue 10/28/14

Wed 10/29/14

Thu 10/30/14

Mon 10/27/14

Tue 10/28/14

Wed 10/29/14

Thu 10/30/14

Fri 10/31/14

Sat 11/1/14

Sun 11/2/14

Mon 11/3/14

Tue 11/4/14

Wed 11/5/14

Thu 11/6/14

Mon 11/10/14

Tue 11/11/14

Wed 11/12/14

Thu 11/13/14

Fri 11/14/14

Sat 11/15/14

Sun 11/16/14

NOTE:  
Duration is week days (M-F)  
unless noted otherwise.

## Exhibit B – Proposed Project Schedule for City of Round Rock -- Lisa Rae Fire Station

WIGINTON HOOKER JEFFRY ARCHITECTS

ID	Task Name	Start	End	Duration	Comments
60	Review Client's Project Scope & Requirements	2013-08-14	2013-08-14	0 days	
61	Review Client's Requirements	2013-08-14	2013-08-14	0 days	
62	Review Client's Requirements	2013-08-14	2013-08-14	0 days	
63	Update Building Code, zoning and accessibility analysis	2013-08-14	2013-08-14	0 days	
64	Conduct consultant coordination meetings	2013-08-14	2013-08-14	0 days	
65	MCP Engineers finalize equipment selections	2013-08-14	2013-08-14	0 days	
73	Develop CD Cost Estimate & Consultant Review of Estimate	2013-08-14	2013-08-14	0 days	
75	CC Review of Documents - All Team Members	2013-08-14	2013-08-14	0 days	
76	Client's Final CD Documents & Review with Client	2013-08-14	2013-08-14	0 days	
77	Owner Review	2013-08-14	2013-08-14	0 days	
78	Review Client's Comments & Agree to Proceed with CD's	2013-08-14	2013-08-14	0 days	
<b>CONSTRUCTION DOCUMENTS</b>					
80	Review & Address Client's CD Comments	2013-08-14	2013-08-14	4 days	
81	Develop Client's Final CD's	2013-08-14	2013-08-14	2 days	
82	Develop Team Task Responses	2013-08-14	2013-08-14	2 days	
83	Conduct CD Kickoff Meeting	2013-08-14	2013-08-14	1 day	
84	Develop CD Drawings and Specifications	2013-08-14	2013-08-14	27 days	
85	Conduct Consultant Coordination Meetings	2013-08-14	2013-08-14	12 days	
86	Develop CD Cost Estimate & Consultant Review of Estimate	2013-08-14	2013-08-14	0 days	
87	CC Review of Documents - All Team Members	2013-08-14	2013-08-14	0 days	
88	Client's Final CD Documents & Review with Client	2013-08-14	2013-08-14	0 days	
89	Owner Review	2013-08-14	2013-08-14	0 days	
90	Review Client's Comments & Agree to Proceed with CD's	2013-08-14	2013-08-14	0 days	
91	Client Review - 50% Set	2013-08-14	2013-08-14	4 days	
92	Client Meeting - Present 50% Review Comments	2013-08-14	2013-08-14	1 day	
93	Update Bid Alternatives	2013-08-14	2013-08-14	3 days	
94	Determine Alternatives & Unit Prices	2013-08-14	2013-08-14	3 days	
95	Approve and Finalize Client's Bid Document, Wage Rates & Insurance	2013-08-14	2013-08-14	4 days	
96	Verify Form of General Conditions to be Used by Client	2013-08-14	2013-08-14	4 days	
97	Update Code & Accessibility Compliance	2013-08-14	2013-08-14	5 days	
98	Review Work w/Regulatory Agencies	2013-08-14	2013-08-14	3 days	
99	Develop CD Cost Estimate & Consultant Review of Estimate	2013-08-14	2013-08-14	10 days	
100	CC Review of Documents - All Team Members	2013-08-14	2013-08-14	0 days	
101	Client's Final CD Documents & Review with Client	2013-08-14	2013-08-14	0 days	
102	Owner Review	2013-08-14	2013-08-14	0 days	
103	Modify Documents as Required	2013-08-14	2013-08-14	4 days	
104	Submits & Delays Client Approval - PERMITTING, BD AND AWARD	2013-08-14	2013-08-14	1 day	
<b>PERMITTING, BD AND AWARD</b>					
105	Obtain Owner Approval to Bid	2013-08-14	2013-08-14	1 day	
107	Post Advertisements to Bid	2013-08-14	2013-08-14	10 days	
108	Submit for code review and permitting	2013-08-14	2013-08-14	20 days	
109	Release Contract Documents to bidders	2013-08-14	2013-08-14	3 days	
110	Acceptance of Contract	2013-08-14	2013-08-14	17 days	
111	Request for Substitution Request Processing	2013-08-14	2013-08-14	1 day	
112	Receive Bids	2013-08-14	2013-08-14	5 days	
113	Evaluate Bids	2013-08-14	2013-08-14	6 days	
114	Prepare Contract	2013-08-14	2013-08-14	10 days	
115	Contract Approves Contract	2013-08-14	2013-08-14	0 days	
<b>CONSTRUCTION PHASE (Calendar Days)</b>					
117	Contractor Issues Notice To Proceed	2013-08-14	2013-08-14	1 day	
118	Mobile onto Job Site	2013-08-14	2013-08-14	10 days	
119	Initial Site Construction	2013-08-14	2013-08-14	1 day	
120	Construction	2013-08-14	2013-08-14	300 days	
121	Substantial Completion	2013-08-14	2013-08-14	1 day	
122	Final Completion (Completion of Punchlist Items)	2013-08-14	2013-08-14	29 days	
123	Owner's Punchlist	2013-08-14	2013-08-14	15 days	
<b>CONSTRUCTION PHASE (Calendar Days)</b>					
<b>PERMITTING, BD AND AWARD</b>					
124	Obtain Owner Approval to Bid Project Place	2013-08-14	2013-08-14	1 day	
125	Advertisements to Bid	2013-08-14	2013-08-14	10 days	
126	Submit for code review and permitting	2013-08-14	2013-08-14	20 days	
127	Release Contract Documents to bidders	2013-08-14	2013-08-14	3 days	
128	Acceptance of Contract	2013-08-14	2013-08-14	17 days	
129	Request Processing	2013-08-14	2013-08-14	1 day	
130	Receive Bids	2013-08-14	2013-08-14	5 days	
131	Prepare Contract	2013-08-14	2013-08-14	6 days	
132	Council Approves Contract	2013-08-14	2013-08-14	0 days	
<b>Construction</b>					
<b>Contractor Issues Notice To Proceed</b>					
<b>Mobile onto Job Site</b>					
<b>Pre-Construction Conference</b>					
<b>Construction</b>					

**SUPPLEMENTAL AGREEMENT NO. 1**

**CITY OF ROUND ROCK**

§

**STATE OF TEXAS**

§

**COUNTY OF WILLIAMSON**  
**COUNTY OF TRAVIS**

§  
§

**KNOW ALL BY THESE PRESENTS:**

This document is entitled Supplemental Agreement No. 1, and it supplements "City of Round Rock Agreement for Architectural Services for a Round Rock Fire Station with Wiginton Hooker Jeffry, P.C." for the following Project:

Professional architectural services and design services related to the following: construction of a new Fire Station on City-owned property located at 1401 and 1405 Lisa Rae Drive, Round Rock, Texas.

Professional services for this Project shall include, but not be limited to, Schematic Design, Design Development, Construction Documents, Bidding, and Construction Observation. Architect shall be the Architect of Record, and shall be in charge of coordination of consultants.

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 February, 2015, 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 WIGINTON HOOKER JEFFRY, P.C., with offices located at 611 South Congress Avenue, Suite 225, Austin, Texas 78704 (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 described project (hereinafter called 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, document production, bidding-related services, and construction observation services related to the Project. Total compensation for Architect's services under this Agreement shall not exceed the following: \$234,150.00, *including* reimbursable expenses in an amount not to exceed \$7,000.00.

**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, all as previously and hereinafter stipulated and within the limits the City has budgeted or will budget therefor; 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 not exceed Three Hundred Twenty-Eight Thousand Four Hundred Forty Dollars and no/100 **\$234,150.00**, *including* a not-to-exceed amount of Seven Thousand Dollars and no/100 (**\$7,000.00**) 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 complete planning, civil, architectural, design, structural, mechanical/electrical/plumbing engineering services, document production, bidding-related services, and construction observation services, and such other services as may be necessary to assist the City in the design and construction of the Project, within the limits the City has budgeted or will budget therefor, and in compliance with the Project Facility Program, which is hereby made a part of this Agreement for all purposes. 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 perform all work hereunder in a manner satisfactory and acceptable to the City, represented by its City Manager or his designee, hereinafter referred to as "Director." A Performance Schedule shall be agreed to by Architect and Director, and Architect agrees to use its best efforts to complete all services hereunder in accordance with such Performance Schedule. All services shall be performed to the highest professional standard.

**2.02 Schematic Design Phase.** Architect shall provide the following Schematic Design Phase Services: as delineated in the Agreement this document supplements.

**2.03 Design Documents Phase.** Architect shall provide the following Design Documents Phase

Services: as delineated in the Agreement this document supplements and herein, and as follows:

- (1) Architect shall prepare Design Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work, said Design Documents to include adequate specifications for elements of the Project for consideration and approval by Director. Five (5) copies each of said documents will be submitted to City, each consisting of drawings and other documents to fix and describe the size, cross sections and character of the Project as to architectural, structural, mechanical and electrical systems, materials, and such other essentials as may be necessary and appropriate. Said documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. Said documents shall include outline specifications that identify major materials and systems and establish in general their quality levels. The Design Document Phase shall be completed within the agreed Performance Schedule.

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

- (1) Architect shall prepare from the approved Design Development Documents and updated budget for the Cost of the Work, for consideration of and approval by Director, Construction Documents, which documents shall set forth in detail the requirements of the entire Project, including the necessary bidding information prepared in such a way to allow City, if it so desires, to advertise for the award of one or more contracts for the construction and completion of the entire Project, or any phase thereof, and Architect shall assist City in preparation of the Bidding Forms, shall utilize without modification City's standard General and Supplementary General Conditions, and shall draft all 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 bidding requirements and sample forms. City shall provide all standard documents for Architect to include in the Project Manual.
- (2) Architect shall file five (5) complete sets of proposed Construction Documents with Director for review and official approval prior to the advertisement of bids for the construction of the Project, and within the agreed Performance Schedule following approval of the Design Documents. Following approval, Architect shall prepare and have on hand additional sets as needed for bidding purposes. Should additional sets be required, Architect will be reimbursed for same as an eligible reimbursable expense, upon approval in advance by City. Architect shall also file with Director at said time, the following items:
  - (a) Tracing of the Project Title Sheet, signed by Architect, with seal affixed. (This tracing shall be returned to Architect to print contract documents when the signatures of City officials have been properly affixed).
  - (b) Four (4) unbound copies of the approved Project Construction Manual for

subsequent binding with signed construction contracts. The Project Construction Manual shall include General and Supplementary General Conditions; Specifications and Special Provisions; Advertisement, Instructions to Bidders and Bid Proposal Form; City's Bid Bond, Contract, Performance and Payment Bond Forms; approved Wage Rates; Federal regulations if applicable to the Project; and other required documents for construction of the Project.

- (3) Architect shall be solely responsible for obtaining the prior 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 for this approval shall be paid by Architect as a reimbursable expense.

**2.05 Bidding and/or Negotiation Phase.** Architect shall provide the following Bidding/Negotiation Services: as delineated in the Agreement this document supplements and herein, and as follows:

Following City's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, Architect shall assist City in awarding a construction contract following legal public bid requirements. Architect shall arrange for procuring the reproduction of Bidding Documents, distributing same to prospective bidders, and maintaining records. Owner shall be responsible for payment for the costs of reproduction of such documents, either directly or through reimbursement to Architect. During the bid process, Architect shall assist City as follows:

- (1) Jointly conducting pre-bid conferences, including on-site visits as required, to endeavor to assure that bidders understand the Construction Documents, the various on-site conditions, and the coordination and scheduling requirements.
- (2) Preparing responses to questions from prospective bidders, and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the required form of addenda to Contract Documents.
- (3) Assisting in the opening of bids, tabulation and evaluation of bids received, and advising on award of the contract.
- (4) Jointly conducting pre-award conferences where necessary.

Architect's assistance to City shall include submitting written reviews and recommendations for awards based upon the acceptability of bids; and, if required by City, more detailed analyses of specific bids. Reviews shall also consider the responsiveness of bids and their conformity with Bid Documents.

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

The Construction Phase will commence with the award of the first Construction Contract and will terminate following the final one-year warranty inspection of the completed Project, correction of all defects in Project materials and workmanship, and resolution of all Project-related claims and disputes. During the Construction Phase, Architect shall provide the following services:

- (1) Architect shall provide administration of the Construction Contract as set forth in the

Construction Documents, specifically the General and Supplementary General Conditions. Architect's assigned authority thereunder will not be substantially 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 and 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 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, all of City's instructions to its Contractors will be issued 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, during construction, adequate and competent on-site construction observation, periodically visiting the site to the extent necessary to personally familiarize itself with the progress and quality of the work, and to determine if the work is proceeding in substantial 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 when any observed actions or omissions are undertaken by the Contractor which are not in the best interests of City and the Project.
- (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 its best efforts to promptly review and approve or reject 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. Architect shall establish and implement precise procedures, to be approved by City's Director, for expediting the processing and approval of these submissions without delay. Prompt review by Architect of submissions is of prime importance to City and an absolute necessity under the time constraints of the Project.
- (15) Architect shall prepare Change Orders and/or Construction Change Directives to the construction contract, in six (6) copies, after review and approval by 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 Record Construction Drawings showing significant changes in the work during the construction process and final location of mechanical and electrical service lines and outlets, based upon marked-up prints of drawings and other data furnished by the Contractor to Architect. Architect shall provide Record Construction Specifications which will identify the changes in the specifications on a sheet, which sheet will be inserted at the beginning of each section to which they pertain.
- (20) Architect shall obtain from the Contractor and forward to Owner the following: (1) consent of surety or sureties, if any, of reduction in or partial release of retainage or the making of final payment; and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying Owner against liens.

**2.07 Warranty Phase.** 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 City, the Subconsultants and of each prime contractor engaged on the Project. Architect shall then prepare a list of work which needs to be done by each prime contractor to satisfy that prime contractor's warranty obligations to City. For any non-warranty involvement of Architect, payments shall be made based upon the Hourly Rate Schedule contained in this Agreement.

**2.08 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.

**2.09 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. Where City Council or City Manager authorization is required, Architect shall not proceed until the appropriate Resolution or directive for such Additional Services has been delivered. 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, discrepancy, or budget overruns in the work of Architect, 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 of the Contractor's Notice to Proceed, whichever occurs first.
- (5) Performing more than two (2) reviews of each 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. City shall examine documents submitted by Architect and render decisions pertaining thereto promptly to avoid unreasonable delay in the orderly progress 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 Miscellaneous items.** City will also provide Architect with such items as two (2) copies of the 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.** The fixed limit of total Budgeted Construction Cost for this Project has not been fully ascertained as of the date of making of these Contract Documents. Architect, in consultation with City, shall determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, and will make reasonable adjustments in the scope of the Project to bring it within the limits when fixed. With City approval, Architect may also include in the Contract Documents alternate bids to adjust the construction cost to the fixed limit. If the lowest responsible bid is within the fixed limit of total Budgeted Construction Cost for the Project is still less than the fixed limit of total Budgeted Construction Cost for the Project, City shall pay Architect fees for Basic Services in accordance with this Agreement.

**4.02 Procedures if Bid(s) Exceed Budgeted Construction Costs.** If the lowest responsible bid exceeds its portion of the fixed limit of total Budgeted Construction Cost for the Project, City at its option may either (1) give written approval of an increase in such fixed limit, with no obligation to increase Architect's fee, or (2) authorize rebidding within a reasonable time, or (3) cooperate in revising the Project scope and quality as required to reduce the Probable Construction Cost. In the case of (3), if the lowest responsible bid exceeds the Budgeted Construction Cost by more than ten (10%), Architect, without additional charge, shall immediately modify the Drawings and Specifications as necessary to bring the Project cost within the budgeted fixed limit, or within any higher fixed limit subsequently authorized by City. Providing this service shall be the limit of Architect's responsibility in this regard,

and having done so, Architect shall be entitled to his fees in accordance with this Agreement. If the lowest responsible bid is within ten percent (10%) of the Budgeted Construction Cost, the Architect shall, upon the City's request and as an Additional Service, make revisions to Drawings and Specifications to reduce the Probable Construction Cost. However, when the excess is due to changes initiated by Architect in scope, basic systems or the kinds and quality of materials, finishes or equipment, Architect shall make revisions at no additional cost to City.

## ARTICLE V REIMBURSABLE EXPENSES

**5.01 Reimbursable Expenses.** Reimbursable Expenses are *included* in the total not-to-exceed fee delineated in the Agreement this document supplements and herein, and include actual expenditures at actual costs made by Architects, their employees, or their consultants in the interest of the Project.

**5.02 Travel, phone, postage, reproduction, etc.** The following shall be reimbursable and included in the total not-to exceed fee: reasonable transportation and living expenses of principals and employees when traveling in connection with the Project outside of Round Rock, Texas, essential long distance calls and telegrams, fees paid for the securing of approval of authorities having jurisdiction over the Project, postage, and reproduction of Drawings and Specifications, excluding copies for Architect's office use.

**5.03 Overtime.** If authorized in advance by City, the expense of extraordinary overtime work, not due to Architect delays, requiring higher than regular rates, and renderings, slides, photographs or models for the City's use shall be reimbursable.

**5.04 Texas Department of Licensing and Regulation fees.** Any fees charged to Architect by the Texas Department of Licensing and Regulation for review and approval of design or development documents shall be reimbursable.

**5.05 Texas Natural Resource Conservation Commission fees.** Any related fees charged to Architect by the Texas Commission on Environmental Quality shall be reimbursable.

**5.06 Special Consultants.** If the employment of special consultants for specialized design services is authorized by City, (for example, special lighting and landscape consultants, special soil mechanics engineers, communications consultants, etc.), fees for other than normally required architectural, structural, mechanical, electrical and civil engineering services and the Basic Services hereinbefore defined, shall be reimbursable.

## 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.

**6.02 Reimbursable Expenses.** Payments for authorized Reimbursable Expenses for Architect, as hereinbefore referred to and in an amount not to exceed \$7,000.00, 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 satisfactorily 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. 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. 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 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. 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 or be occasioned by Architect's breach of any of the terms or provisions of this Agreement, or by any negligent act or omission of Architect, his officers, agents, associates, employees or subconsultants, in the performance of this Agreement; except that 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.** Without limiting any of the other obligations or liabilities of Architect, 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. As an alternative, Architect may include its subconsultants as additional insureds on its own coverages as prescribed under these requirements. Architect's certificate of insurance shall note in such event that the subconsultants are included as additional insureds and that the Architect agrees to provide Workers' Compensation coverage for the subconsultants and their employees.

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. 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, and resolution of any outstanding Project-related claims or disputes.

**12.02 Project Performance Schedule.** Architect understands that the Project Performance Schedule is of critical importance, and agrees to undertake all necessary efforts to expedite the performance of services required herein, so that construction of the Project will be commenced as scheduled. In this regard, Architect shall proceed with sufficient qualified personnel and consultants necessary to fully and timely accomplish all services required under this Agreement in the highest professional manner.

**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.** 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.

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

**14.01 Time is of the Essence.** Architect understands and agrees that time is of the essence and that any failure of Architect to complete the services for each phase of this Agreement within the agreed Project Performance Schedule will constitute a material breach of this Agreement. Architect shall be fully responsible for its delays or for failures to use his best efforts in accordance with the terms of this Contract. Where damage is caused to City due to Architect's failure to perform in these circumstances, City may withhold, to the extent of such damage, Architect's payments hereunder without waiver of any of City's additional legal rights or remedies.

**14.02 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.

**14.03 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.

**14.04 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.

**14.05 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.

**14.06 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:

Stephan L. Sheets, 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:

Wiginton Hooker Jeffry, PC  
Don Greer  
611 South Congress Avenue  
Suite 225  
Austin, Texas 78704

[Signatures appear 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 February \_\_\_\_\_, 2015, and Wiginton Hooker Jeffry, P.C., 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**

**WIGINTON HOOKER JEFFRY, P.C.**

By: \_\_\_\_\_  
Alan McGraw, Mayor

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

By: \_\_\_\_\_  
  
Date: 2.9.2015

**ATTEST:**

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

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

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

THE TEXAS BOARD OF ARCHITECTURAL EXAMINERS, P.O. BOX 12337, AUSTIN, TEXAS 78711-2337 OR 333 GUADALUPE, SUITE 2-350, AUSTIN, TEXAS 78701-3942, TELEPHONE (512) 305-9000, HAS JURISDICTION OVER INDIVIDUALS LICENSED UNDER THE ARCHITECTS' REGISTRATION LAW, TEXAS CIVIL STATUTES, ARTICLE 249a.