

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

**City of Round Rock Agreement  
for Architectural Services for  
City of Round Rock  
Prototype and Site Adaptation for Fire Station No. 3  
With  
McKinney Architects, Inc.**

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**AGREEMENT** made as of the \_\_\_\_\_ (\_\_\_\_) day of the month of \_\_\_\_\_ in the year Two Thousand Eighteen (2018).

**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:

McKinney Architects, Inc.  
1301 East Seventh Street  
Austin, Texas 78702

For the following Project:

Prototype update and site adaptation for the Fire Station No. 3 Project to be located at 221 Sundance Parkway, Round Rock, Texas.

Professional services for this Project shall include but not be limited to Prototype Update and Site Adaptation, 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 \$50,000.00. Owner shall pay the fees related to the submittal of plans for TAS review.

**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:

Prototype update and site adaptation for the Fire Station No. 3 Project to be located at 221 Sundance Parkway, Round Rock, Texas.

**1.1.2.2** The physical parameters are:

The Project is to be located on City-owned property at 221 Sundance Parkway, Round Rock, Texas in the La Frontera development.

**1.1.2.3** The Owner's Program is:

The program of development shall include but not be limited to the following elements: Confirm Project Program and Space Requirements, Prototype Update and Site Adaptation, 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 and Project requirements.

**Schedule**

Initial proposed schedule for the Project is incorporated in the Scope of Services attached as Exhibit "A." The Architect will maintain a detailed project schedule in Microsoft Project or in an alternative format approved by the Owner throughout the duration of the Project which will be attached as Exhibit "A" and incorporated herein for all purposes.

**1.1.2.4** The financial parameters are as follows:

I. The fees payable to the Architect are as follows:

The City's total liability for payments pursuant to this Agreement shall not exceed One Hundred Thousand Thirty-Two Thousand Five Hundred and No/100 (**\$132,500.00**).

A. **Professional Services**

In consideration for the professional services to be performed by the Architect, the Owner agrees to pay the Architect as detailed in the Architect's Proposal Letter dated July 18, 2018 and revised on August 12, 2018, which is attached as Exhibit "A" and incorporated herein for all purposes. Where stipulated sums are indicated in Exhibit "A," such not-to-exceed sum includes amount paid for Architect's services and ADA consultants as needed.

B. **Reimbursable Expenses Allowance**

Payment for reimbursable expenses, including administrative charges and out-of pocket expenses, shall not exceed the maximum sum of **Six Thousand and no/100 Dollars (\$6,000.00)**, and such amount is *included* in the not-to-exceed total of **\$132,500.00**. Reimbursable expenses shall be paid as set forth herein and as in Exhibit "A."

Travel reimbursements may be made for meals, travel, lodging as follows:

- (1) all travel shall be in coach and not in business class;
- (2) toll road charges if provided with documentation of the date and time the toll charges were incurred;
- (3) lodging shall be in a standard room in a hotel located within Round Rock's City limits; and
- (4) meals shall be reimbursed at an amount not-to-exceed \$50.00 per day. This amount includes tips.

Travel reimbursements shall only apply to travel in excess of forty (40) miles. Architect is responsible for providing all receipts to Owner for the reimbursement of items set forth above. Receipts shall be provided to the Owner within sixty (60) days of the expenditure to qualify for reimbursement and shall provide enough detail for the Owner to determine the requested reimbursements meet the criteria set forth herein. It shall be in the sole discretion of the Owner to determine if expenses submitted by Architect are reasonable and qualify for reimbursement pursuant to the terms of the Agreement.

Cost of personal entertainment, amusements, alcoholic beverages, traffic citations, personal items or illegal activities will not be reimbursed. Expenses due to vacations or personal trips in conjunction with travel are not reimbursable. Adequate travel time is allowed, but travel expenses are not paid for absences not required by Owner business.

C. Additional Services

Additional services are defined as any services not included as part of the scope of work of the project 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 "Additional Services" shall only be performed under a supplemental agreement negotiated at a time subsequent to this Agreement.

**1.1.2.5** The time parameters are:

Services hereunder shall commence within ten (10) days upon receipt by the Architect of a Notice to Proceed from the Owner. Completion date shall be agreed upon by Owner and Architect and shall be incorporated in Exhibit "A." Other time parameters or adjustments to time parameters may be determined at a later date by mutual agreement of the parties.

**1.1.2.6** The proposed procurement or delivery method for the Project is: To be determined by Owner.

Professional services such as architectural/engineering will be engaged by negotiated contract.

**1.1.3 PROJECT TEAM**

**1.1.3.1** The Owner's Designated Representatives are:

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

Matthew Smith, Project Manager  
General Services Department  
City of Round Rock  
212 Commerce Boulevard  
Round Rock, Texas 78664

**1.1.3.2** The Owner's consultants and contractors are:

Architect of Record / Prime Firm:

McKinney York

Consultants:

To be determined by Owner.

**1.1.3.3** The Architect's Designated Representative is:

McKinney Architects, Inc.  
Patricia Hunt  
1301 East Seventh Street  
Austin, Texas 78702

**1.1.3.4** The consultants retained at the Architect's expense shall be submitted to and approved by Owner.

**1.1.4** 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.

**1.1.5** 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 reasonably 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.

**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 1.1.3.1 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 may furnish the services of consultants other than those designated in Paragraph 1.1.3.2 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 or a change in the scope of the Project. Any service furnished by the Architect at the Owner's request must be 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, which 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.

**1.2.2.9** Owner agrees to pay the actual costs of review fees associated with Texas Building Accessibility reviews, reviews by other authorities having jurisdiction, and any other required filing fees.

**1.2.2.10** The Owner will provide the Architect with miscellaneous items such as the Project Prototype (including fully editable electronic plans and specifications in their native format used to produce prototype Fire Station No. 8), a list of requested changes to the Project Prototype, one digital copy 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.

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

**1.2.2.12** Any information related to design standards and Owner-furnished equipment specifications not provided pursuant to Section 1.2.2.10 above and desired by the Architect from the Owner must be requested by the Architect in writing during the initial Phase of the Project.

### **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.

**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 ("Standard of Care"). The Architect shall submit for the Owner's approval a detailed schedule in Microsoft Project or an approved alternative format for the performance of the Architect's services which initially shall be consistent with the time periods established in Exhibit "A" 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 1.1.3.3 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 written 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 or compromise the performance of the approved schedule for 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 by the Owner. 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; upon completion of services provided by the Architect under 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 provided that Owner has made payment to Architect for all sums owed under the 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.

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. Upon termination of the 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 or additional projects. IN THE EVENT OWNER USES THE ARCHITECT'S INSTRUMENTS OF SERVICE WITHOUT RETAINING THE ARCHITECT ON THE PROJECT OR ANY OTHER PROJECT, THE OWNER RELEASES THE ARCHITECT AND ITS CONSULTANT(S) FROM ALL CLAIMS AND CAUSES OF ACTION ARISING FROM SUCH USES. ADDITIONALLY, IN THE EVENT THAT THE OWNER TERMINATES THE ARCHITECT FOR CONVENIENCE OR WITHOUT CAUSE AFTER THE ARCHITECT SEALS THE CONSTRUCTION DOCUMENTS BUT BEFORE COMPLETION OF THE CONSTRUCTION PHASE, OWNER AGREE TO HIRE A COMPETENT PROFESSIONAL TO PERFORM CONSTRUCTION PHASE SERVICES IN ACCORDANCE WITH TBAE RULE SECTION 1.217. OWNER ACKNOWLEDGES THAT FAILURE TO ENGAGE ARCHITECT TO PERFORM FULL CONSTRUCTION PHASE SERVICES CARRIES WITH IT ASSOCIATED RISKS BOTH TO THE OWNER AND ARCHITECT. SUCH RISKS INCLUDE, WITHOUT LIMITATION THE INABILITY OF THE ARCHITECT TO BECOME GENERALLY FAMILIAR WITH THE PRGRESS AND QUALITY OF THE WORK PERFORMED BY CONTRACTOR, TO REJECT WORK NOT IN ACCORDANCE

WITH THE CONTRACT DOCUMENTS, TO CLARIFY OR RESPOND TO CONTRACTOR'S QUESTIONS CONCERNING INTERPRETATION OF THE INSTRUMENTS OF SERVICE, OR TO MAKE APPROPRIATE REVISIONS OR MODIFICATIONS TO THE ARCHITECT'S INSTRUMENTS OF SERVICE.

**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 and Architect 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 digitally by the Architect to the Owner for approval on a minimum 24-inch by 36-inch format, 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.

### **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 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 Section 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** 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.

**1.3.7.3** To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other. The Owner, 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.

**1.3.7.4** 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.

**1.3.7.5** 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.

**1.3.7.6** 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.

**1.3.7.7** 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 seven (7) 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.

**1.3.7.8** 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.

**1.3.7.9** All Exhibits to the Contract are incorporated herein as a part of the Contract. Any inconsistencies or conflicts in Contract and Exhibits shall be resolved by giving preference to pages one (1) through nine (9) of the Contract.

**1.3.7.10.** In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract. The signatory executing this Agreement on behalf of Architect verifies Architect does not boycott Israel and will not boycott Israel during the term of this Agreement.

### **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 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 completed and shall be compensated in accordance with the terms of this Agreement for all work accomplished prior to the receipt of said notice. No amount shall be due for lost or anticipated profits. Upon payment in full for all services performed by the Architect, 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, subject to any record-keeping requirements imposed on the Architect by the TBAE or other similar authority. 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 disputed 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 shall be made monthly upon presentation of the Architect's statement of services.

**1.3.9.2** Reimbursable Expenses, in an amount not to exceed **\$6,000.00**, are *included* in the not-to-exceed sum for compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's employees and consultants directly related to the Project, as described in 1.1.2.4.B.

**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 promptly provided to the Owner or the Owner's authorized representatives.

**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** Architectural Services Agreement between Owner and Architect.

**1.4.1.2** Other documents as follows:

Exhibit "A" Proposal

"Supplemental Agreement No. 1" supplementing Architectural Services Agreement between Owner and Architect.

**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 in accordance with the Standard of Care 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** 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 and in format requested by the Owner.

**1.5.2** 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.

**ARTICLE 1.6 STATEMENT OF JURISDICTION**

**1.6.1** The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701, telephone (512) 305-9000, has jurisdiction over complaints regarding the professional practice of persons registered as architects of Texas.

[Signatures on the following page.]

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

**OWNER**

**ARCHITECT**

**CITY OF ROUND ROCK, TEXAS**

**MCKINNEY ARCHITECTS, Inc.**

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

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

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

Date: 9.6.18 \_\_\_\_\_

**ATTEST:**

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

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

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



July 18, 2018 (REV 3 8/12/18)

Mr. Chad McDowell  
General Services Director  
City of Round Rock  
General Services Department  
212 Commerce Blvd.  
Round Rock, Texas 78664

**Re: Proposal for Professional Services for  
Prototype Update and Site Adaptation for Fire Station #3 – La Frontera  
221 Sundance Parkway, Round Rock, TX 78681**

Dear Mr. Wilkes:

McKinney York Architects (MYA), is pleased to provide this proposal for Prototype Update and Site Adaptation Phase Services, Construction Documents, Bidding, and Construction Observation. in the development of an updated prototype fire station and construction new fire station located at 221 Sundance Parkway based on that updated prototype for the City of Round Rock, General Construction Services. MYA intends to utilize Patricia Hunt as the Project manager and project Architect for the project. Ms. Hunt will be supported by other MYA staff and her work will be overseen and directed by principal, Al York, FAIA. Richard Wilson, AIA will provide QA/QC reviews of the work product before they are released in accordance with MYA's standard practices.

**THE SCOPE OF WORK INCLUDED IN THIS PROPOSAL INCLUDES THE FOLLOWING:**

**Basic Services:**

As described in Article II of the attached edited Supplemental Agreement No. 1.

**Assumptions underlying the proposal:**

One meeting and document submission per project milestone is included in this proposal. Attendance at additional design meetings or Owner coordination meetings by the Architect shall be additional services on an hourly basis.

Construction services will be procured via Competitive Sealed Bid through city of Round Rock General Services. Based on our current understanding of the Projects, we anticipate the construction schedule to be approximately 50 weeks of duration. Attendance at one pre-proposal meeting, one punch list, and one final walk through are included in this proposal. Attendance at additional punch lists or walk throughs shall be additional services on an hourly basis.

The following consultants are included in the proposal under basic services:

- Registered Accessibility Specialist (RAS) for review of contract documents and compliance with Texas Accessibility Standards. Services will include a preliminary review of the updated prototype, an official review of the Construction Documents, and an official inspection upon Project completion.

LEED certification will not be a goal of this project; however, common practices for energy efficiency and a healthy building will be followed.

Owner will provide complete CAD/ BIM drawings of the prototype building for Architect. In addition, the Owner will provide copies of construction documents for the previous prototypes constructed including original construction, any modifications or changes to the drawings during construction, and proposed modifications to the building for architect. The project manager has approved the use of AutoCAD 2018/ Revit 2017 for this renovation project.

### SCHEDULE OF COMPENSATION

Professional Services shall be compensated as follows.

■ Prototype Update & Site Adaptation <i>a stipulated sum of</i>	\$18,000
■ Construction Documents <i>a stipulated sum of</i>	\$41,000
■ Bid & Contract Negotiation <i>Hourly NTE</i>	\$7,000
■ Construction Administration <i>Hourly NTE</i>	\$60,000
■ TOTAL	\$126,500

*Hourly rates shall be at the MYA's normal hourly rates. MYA's current rate schedule is attached. Those rates are valid through the end of the current calendar year and will be adjusted annually in accordance with MYA's standard practice. MYA agrees to limit annual adjustments to no more than 8% per year. All of MYA's efforts in furtherance of the contracted services, including travel to and from meetings and site visits, will be billed at the stipulated hourly rates.*

*Hourly NTE represent authorization for MYA to perform services for a fee up to the allowance amount. MYA's services beyond the allowance amount require a contract amendment signed by the City of Round Rock. Notwithstanding any other provisions of the agreement, MYA shall have no obligation to perform services beyond the allowance amount unless MYA Architect is compensated for the additional effort at the Architect's then current hourly rates or in some other in a manner acceptable to MYA as noted in the letter from Richard Will of August 13, 2018. Authorization to perform services beyond the NTE amounts shall be undertaken as an Additional Service as provided for in the agreement.*

### REIMBURSABLE EXPENSES

Reimbursable expenses are as defined in the AGREEMENT. MYA will not exceed the Reimbursable Expenses without written agreement from the Owner. MYA shall be under no obligation to provide services, items, or incur other expenses defined as Reimbursable Expenses in the AGREEMENT in excess of the budget defined below notwithstanding other provisions of the AGREEMENT. *Architect acknowledges that mileage to and from the Architect's Austin office and meetings and construction observations visits in Williamson County is not to be reimbursed.*

■ Reimbursable Expenses	\$6,000
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## ADDITIONAL SERVICES

Any and all additional services will require the written consent of all parties and will be subject to the requirements of the AGREEMENT.

Work not specifically identified above, including architectural or other services in connection to additions and / or revisions to the project scope and program shall be considered a change in service and shall be compensated on a mutually agreeable negotiated basis.

## SCHEDULE OF COMPLETION OF SERVICES

Subject to the responsiveness and diligence of the Owner, Owner's other consultants, Owner's contractors the Architect will endeavor, consistent with prudent practice to observe the following schedule.

- |                                      |   |
|--------------------------------------|---|
| ■ Prototype Update & Site Adaptation | 30 days from Notice to proceed                  |
| ■ Construction Documents             | 75 days from approval of prior phase submission |
| ■ Bid & Contract Negotiation         | TBD   |
| ■ Construction Administration        | 60 weeks from start of construction             |

## RESPONSIBILITY OF OTHERS

In accordance with accepted professional practice it is the responsibility of the Owner to provide the Architect with complete and accurate information concerning known existing physical and legal condition of the site that are beyond the scope of the professional services described in this document. Certain unusual or unforeseeable conditions not identifiable by visual observation may materially alter the scope of the project in a manner not provided for in this contract. Likewise, active or pending legal disputes involving property ownership, environmental status, easement rights, governmental or departmental jurisdiction or similar matters may complicate the project in a manner that could not reasonably be anticipated at this time. Any change to the scope of the project required by such conditions as are listed above, or any duplication of services necessitated thereby as well as duplication of work necessitated by the City's request for changes to previously approved documents or prior instructions or directions, may be considered grounds for contract modification or an additional services agreement.

Owner will provide the following:

- Land Title, Topographic and Tree Survey, foundation and pavement design recommendations of a geotechnical engineer familiar with the area and its soils.
- The diligent, cooperating, coordinated services of all design discipline consultants necessary for the Project.
- Those items described as Owner's responsibility in the edited Agreement and Supplement thereto.

The following are not included in this proposal and shall be provided by additional services if requested by the Owner:

- Constructability Services
- Hazardous Material Abatement Services
- Commissioning Services
- TPDES Consultant Services or Civil Engineering to prepare SWPPP or permit documentation required for TCEQ
- As-Built Drawings and Specifications
- Mechanical, Electrical and Plumbing Engineering Services
- Civil Engineering Services
- Telecommunications Consultant services
- Audio Visual/Data Consultant services
- Security Planning Consultant Services
- Graphics/Wayfinding Planning services
- Lighting Consultant services
- Exhibit Design Consultant services
- Interior Design Services for furniture, fixtures, and equipment
- Food Service Design Consultant services
- Art Procurement Consulting services
- Surveying Services
- Geotechnical Services
- Landscape Architect, Irrigation Consultant, or Arborist Services
- Code Check for project related building areas outside the defined limits of the project assignment
- Landmark Public Arts Program participation and/or coordination
- LEED certification, verification and/or coordination beyond compliance with the PMCS Green Building Design Guidelines for Small Renovations
- Elevator modernization or upgrades
- Design services for multiple packages for design or construction.
- Coordination with additional consultant services not included in this document below whether by Owner's consultants or consultants added to our work, including survey services.

MCKINNEY YORK ARCHITECTS IS A HUB CERTIFIED WOMAN OWNED FIRM.

BELOW IS A LIST OF SUB-PROFESSIONAL SERVICE PROVIDERS WE PLAN TO USE ON THIS PROJECT, WHOSE FEES ARE INCLUDED ABOVE.

- Development Associates – Registered Accessibility Specialist.

## ACCEPTANCE

If you find this proposal acceptable, please complete the edited versions of the City of Round Rock Architectural Services Agreement for City of Round Rock and Supplement No. 1 to attached hereto. The executed agreements will be returned to you for final authorization and the issuance of the notice to proceed.

Respectfully submitted,



Charles A York, FAIA  
PRINCIPAL

CC: Matthew Smith

ATTACHMENTS: Edited City of Round Rock Agreement for Architectural Services for City of  
Round Rock  
Edited Supplemental Agreement No. 1  
MYA 2018 Fee Schedule





## 2018 FEE SCHEDULE

Clerical I	\$90/hr
Clerical II	\$110/hr
Clerical III	\$130/hr
Intern	\$90/hr
Designer I	\$100/hr
Designer II	\$110/hr
Architect III / Designer III	\$120/hr
Architect IV/ Designer IV	\$130/hr
Architect V	\$140/hr
Architect VI	\$150/hr
Architect VII	\$170/hr
Architect VIII	\$190/hr
Architect IX	\$210/hr
Partner	\$170/hr
Principals	\$220/hr
Founding Principal	\$220/hr

Note: This fee schedule is effective through December 31, 2018. Rates will be adjusted each January to reflect changes in employee costs.

\*The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas.

Texas Board of Architectural Examiners - P.O. Box 12337 - Austin, TX 78711 - 2337-512-305-9000 - [www.tbae.state.tx.us](http://www.tbae.state.tx.us)

**SUPPLEMENTAL AGREEMENT NO. 1**

<b>CITY OF ROUND ROCK</b>	§	
	§	
<b>STATE OF TEXAS</b>	§	<b>KNOW ALL BY THESE PRESENTS:</b>
	§	
<b>COUNTY OF WILLIAMSON</b>	§	
<b>COUNTY OF TRAVIS</b>	§	

This document is entitled Supplemental Agreement No. 1, and it supplements “City of Round Rock Agreement for Architectural Services for City of Round Rock Prototype and Site Adaption for Fire Station No. 3 with McKinney Architects, Inc.” for the following Project:

Professional architectural services and design services related to the following:

Construction of a new City of Round Fire Station No. 3 to be located at 221 Sundance Parkway, Round Rock, Texas.

Professional services for this Project shall include, but not be limited to, Prototype Update and Site Adaption Phase Services, 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 \_\_\_\_\_, 2018, and likewise is by and between the same parties, those being the CITY OF ROUND ROCK, a home-rule municipal corporation of Williamson and Travis Counties, Texas (hereinafter referred to as “City” and/or “Owner”) and McKinney Architects, Inc., with offices located at 1301 East Seventh Street, Austin, Texas 78702 (hereinafter referred to as “Architect”).

**WITNESSETH:**

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

**WHEREAS**, the City’s total liability for payments pursuant to this Agreement shall not exceed **One Hundred Thirty-Two Thousand Five Hundred and No/100 Dollars (\$132,500.00)**; and

**WHEREAS**, payment for reimbursable expenses shall not exceed the maximum sum of **\$6,000.00** and is *included* in the total compensation for services of \$132,500.00; and

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

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

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

**ARTICLE I**  
**SCOPE OF SERVICES AND COMPENSATION**

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

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

Unless subsequently changed by additional Supplemental Agreement to this Agreement, duly authorized by City Council Resolution or City Manager action, Architect's total compensation hereunder shall not exceed **One Hundred Thirty-Two Thousand Five Hundred and No/100 Dollars (\$132,500.00)**, including a not-to-exceed amount of **Six Thousand and No/100 Dollars (\$6,000.00)** 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, project program and space requirements, 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. Architect agrees that upon execution of this Agreement, it will submit to City within ten (10) days a list of all additional consultants it intends to utilize, not previously identified in Architect's proposal, delineating their respective tasks. All of Architect's consultants shall be subject to the approval of the City through its City Manager, and City reserves the right to reject any consultant. Architect shall coordinate its services with the City, represented by its City Manager or his designee, hereinafter referred to as "Director." A Performance Schedule in Microsoft Project or an alternative program approved by the City, shall be agreed upon by Architect and the City, 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.** Schematic Design Phase Services are not included in this Agreement.

**2.03 Prototype Update and Site Adaptation Phase.** Architect shall provide the following Prototype Update and Site Adaption Phase Services: as delineated in the Agreement this document supplements and herein, and as follows:

- (1) Architect shall update the Prototype and adapt that Prototype to a specific site, as applicable, said Prototype to include adequate specifications for elements of the Project for consideration and approval by the City. One (1) digital copy each of said documents shall 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 Prototype Update and Site Adaptation 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 Prototype Update and Site Adaptation Phase Documents, for consideration of and approval by the City, 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 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.
- (2) Architect shall provide the City a digital copy of a complete set of proposed Construction Documents 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 Prototype Update and Site Adaptation Phase Documents.
- (3) Architect shall be solely responsible for submitting the Architect's Instruments of Service for approval of the Texas Department of Licensing and Regulation prior to submittal of all Construction Documents to City for approval. Any fees charged by the Department for this approval shall be paid by the City.

**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, Architect shall assist City in awarding a construction contract following legal public bid requirements. Architect shall transmit Construction Documents to the Owner for reproduction and distribution. 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 assist the bidders with an understanding of the Construction Documents, the various on-site conditions, and the coordination and scheduling requirements.
- (2) Preparing responses to questions from prospective bidders, 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. Architect's role during the Bidding and/or Negotiation Phase shall be limited to advising and consulting with the City, and the City retains all responsibility for the actual selection of the Contractor.

**2.06 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 substantial deviations from the Contract Documents and most recent construction schedule submitted by the Contractor. However, Architect will not be responsible for the Contractor's failure to perform work in accordance with requirements of the Contract Documents. Architect will be responsible for Architect's acts or omissions, but will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the work.
- (7) Architect will at all times have access to the work wherever it is in preparation or in progress.
- (8) Owner will endeavor to communicate with the Contractor through Architect about matters arising out of or relating to the Contract Documents. Communications by and with Architect's subconsultants will be through Architect.
- (9) Architect, as a representative of City, shall advise and consult with Director and will keep City informed in writing through him of the progress of the Project, including percent complete on a monthly basis, during the Construction Phase; and after issuance of the "work order" to proceed with the work, 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 on-site construction observation, periodically visiting the site to the extent necessary to familiarize itself with the progress and quality of the work, and to determine if the work observed 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 Architect observes actions or omissions by the

Contractor which are not in accordance with the Contract Documents.

- (11) Based on such observations at the site and on the Contractor's Application and Certificate for Payment, Architect shall determine, monthly, the amount owing to the Contractor and shall certify and forward the Contractor's Application and Certificate for Payment to Director for approval and payment. These certifications shall constitute a representation by Architect to City, based on observations at the site and other data comprising the application for payment, that the work has progressed to the point indicated; that to the best of Architect's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning whole upon substantial completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to Project completion, and to any specific qualifications stated in the Certificate); and that the Contractor is entitled to payment in the amount certified.
- (12) Architect shall have authority to reject work which does not conform to the Contract Documents. Whenever Architect considers it necessary or advisable, Architect will have authority to require inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed or completed. However, neither this authority of Architect nor a decision made in good faith either to exercise or not exercise such authority shall give rise to a duty or responsibility of Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the work.
- (13) Architect shall make recommendations on all claims and disputes of City or the Contractor relating to the execution and progress of the work or the interpretation of the Contract Documents, based upon such review and analysis by Architect as may reasonably be required. In the event of litigation, where Architect is named as an additional party with the City, such assistance will include the availability of knowledgeable witnesses in the employ of Architect for expert testimony.
- (14) Architect shall use commercially reasonable efforts to promptly review and approve or reject submittals required by the Contract documents (including shop drawings, product data and samples and other submissions of the Contractor) for conformance only with the design concept of the Project and with the information given in the Contract Documents. Architect shall establish and implement precise procedures, to be approved by City's Director, for expediting the processing and approval of these submissions. Prompt review by Architect of submissions is of prime importance to City and an absolute necessity under the time constraints of the Project, and Architect shall be strictly held to the Standard of Care in the Agreement.
- (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 As-Designed Record Construction Drawings, which include or attach significant design changes 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 As-Designed Record Construction Specifications which will identify the design 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; and (3) as-built record documents.

**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. Architect shall not proceed until the appropriate Resolution or directive for such Additional Services has been delivered from the City Council or City Manager. The following services are not covered under Article II, which defines and outlines Architect's Basic Services. If any of these Additional Services are



authorized in writing by Director in advance of their performance, they shall be paid for in the manner agreed to at the time of authorization.

- (1) Preparing Change Orders and supporting data and/or revising previously approved plans when the changes in approved Plans and Specifications are required by the City. If changes are required to be made because of error, oversight, clarification, 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 or the Contractor's Notice to Proceed, whichever occurs first.
- (5) Performing more than two (2) reviews of any shop drawing, product data item, sample or similar submittal from the Contractor.
- (6) Providing more than twenty-four (24) site visits/construction meetings over the duration of the Project.
- (7) Providing more than two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
- (8) Providing more than one (1) inspection for any portion of the Work to determine Final Completion.

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

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

**3.02 Designate representatives.** City shall designate, when necessary, representatives authorized to act in its behalf. 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 Fees.** City shall pay for fees required for Architect's submittal and approval of documents as set forth in the Agreement this document supplements.

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

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

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

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

**5.01 Reimbursable Expenses.** Reimbursable Expenses are *included* in the total not-to-exceed services fee delineated in the Agreement this document supplements and herein, and include the actual expenditures and actual costs set forth in the Agreement this document supplements.

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

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

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

**6.02 Reimbursable Expenses.** Payments for authorized Reimbursable Expenses for Architect, as hereinbefore referred to and in an amount not to exceed **\$6,000.00**, 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 completed and shall be compensated in accordance with the terms of this Agreement for all work accomplished prior to the receipt of said notice. No amount shall be due for lost or anticipated profits. Upon payment in full for all services provided by Architect, all plans, field surveys, maps, cross sections and other data, designs and work related to the Project shall become the property of City upon termination of this Agreement, and shall be promptly delivered to City in a reasonably organized form without restriction on future use, subject to any record-keeping requirements imposed on the Architect by the TBAE or other similar regulatory authority. Should City subsequently contract with a new architect for continuation of services on the Project, Architect shall cooperate in providing information.

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

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

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

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

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

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

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

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

- (1) City promptly notifies Architect in writing of the claim; and
- (2) Architect has control of settlement negotiations.
  - (a) The City Attorney of City shall be kept informed of settlement negotiations, and shall execute any settlement agreement reached by Architect on City's behalf.
  - (b) Architect's indemnification under this section is conditioned on City's agreement that if any of the designs, plans or specifications, become, or in Architect's opinion are likely to become, the subject of such a claim, City will permit Architect, at Architect's option and expense, either to procure the right for City to continue using the designs, plans or specifications or to replace or modify the same so that they become non-infringing; and if neither of the foregoing alternatives is available on terms which are reasonable in Architect's judgment, City, to the extent City is legally able to do so, will cease using the designs, plans or specifications on written request of Architect, in which instance City has the sole option to either require Architect to perform new design work at Architect's sole expense, or to terminate this Agreement.
  - (c) Architect has no liability under this section for any claim of infringement based upon the modification or alteration of the designs, plans or specifications prepared under this Agreement subsequent to the Project by City, or by any engineering consultant subsequently employed by City.
  - (d) The foregoing states the entire obligation of Architect with respect to infringement of patents and copyrights.

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

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

Architect shall obtain and monitor the certificates of insurance from each subconsultant in order to assure compliance with the insurance requirements. Architect must retain the certificates of insurance for the duration of this Agreement, and shall have the responsibility of enforcing these insurance

requirements among its subconsultants. City shall be entitled, upon request and without expense, to receive copies of these certificates of insurance.

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

- (1) Each policy shall require that thirty (30) days prior to the expiration, cancellation, or non-renewal, a notice thereof shall be given to City by certified mail to:

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

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

- (2) Companies issuing the insurance policies shall have no recourse against City for payment of any premiums or assessments for any deductibles which all are at the sole responsibility and risk of Architect.
- (3) The Term “City” or “City of Round Rock” shall include all authorities, Boards, Commissions, Departments, and officers of City and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the City of Round Rock.
- (4) The policy clause “Other Insurance” shall not apply to any insurance coverage currently held by City, to any such future coverage, or to City’s Self-Insured Retentions of whatever nature.

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

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

**11.01 Compliance with Laws.** Architect, its consultants, agents, employees and subcontractors shall comply with all applicable Federal and State Laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by all local, State and National boards, bureaus and agencies as required by the Standard of Care provided in the Agreement. Architect shall further obtain all permits and licenses required in the performance of the professional services contracted for herein.

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

**ARTICLE XII**  
**TERM**

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

**12.02 Project Performance Schedule.** Architect agrees to endeavor to perform its services in a timely manner in connection with the Project Performance Schedule, and agrees to undertake all necessary efforts to expedite the performance of services required herein in accordance with the Standard of Care, so that construction of the Project will be commenced as scheduled. In this regard, Architect shall not be responsible for delays caused by the City, its Contractor, or any other separate consultants.

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

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

**13.02 Confidentiality.** Except as otherwise provided in this Agreement, Architect's reports, evaluations, designs, drawings, data, and all other documentation and work developed by Architect hereunder shall be kept confidential, and shall not be disclosed to any third parties without the prior written consent and approval of City's Director. This provision shall not apply if the work product is ordered to be disclosed by a court or other legal authority.

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

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

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

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

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

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

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

and to:

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:

McKinney Architects, Inc.  
1301 East Seventh Street  
Austin, Texas 78702

**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 \_\_\_\_\_, 2018, and McKinney Architects, Inc. signing by and through its duly authorized representative, thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions of this Contract.

**CITY OF ROUND ROCK, TEXAS**

**MCKINNEY ARCHITECTS, Inc.**

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

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

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

Date: 9-6-18 \_\_\_\_\_

**ATTEST:**

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

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

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