

EXHIBIT
"A"

**City of Round Rock Agreement
for Architectural Services for
City of Round Rock
Public Library Project
With
PGAL, Inc.**

AGREEMENT made as of the _____ (_____) day of the month of January 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:

PGAL, Inc.
3030 LBJ Freeway, Suite 1220
Dallas, Texas 75234

For the following Project:

Professional architectural services and design services related to the construction of a new City of Round Rock Public Library.

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. 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:

Construction of a new City of Round Rock Public Library consisting of an approximately sixty thousand (60,000) square foot facility and a parking garage to accommodate approximately three hundred (300) vehicles.

1.1.2.2 The physical parameters are:

The Project is to be located on City-owned property at North Mays Street adjacent to the south bank of Brushy Creek in 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: Confirm Project Program and Space Requirements, 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 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:

1. The Fee Schedule relative to this Agreement is set forth in Exhibit "A," incorporated herein for all purposes, and is as follows:

A. Professional Services

In consideration for the professional services to be performed by the Architect, the Owner agrees to pay the Architect a total sum not to exceed **Two Million Five Hundred Fifty-Three Thousand and no/100 Dollars (\$2,553,000.00)**. 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; for consultant fees for MEP engineers, structural engineers, civil engineers, 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 **Eighty-Five Thousand and no/100 Dollars (\$85,000.00)**, and such amount is ***not included*** in the not-to-exceed total fee for Professional Services of **\$2,553,000.00**. Reimbursable expenses shall be paid as set forth herein and as in Exhibit "B."

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” as described in Exhibit “A” may be performed at the sole request of the Owner in an amount not-to-exceed One Hundred Thousand and No/100 Dollars (\$100,000.00). The Additional Services amount is ***not included*** in the not-to-exceed total fee for Professional Services of **\$2,553,000.00.** Any additional services not included in the \$100,000.00 contingency shall 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: Competitive Sealed Proposal.

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

Richard Will, 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:

PGAL, Inc.

Consultants:

To be submitted to Owner and approved by Owner.

1.1.3.3 The Architect's Designated Representative is:

PGAL, Inc
Jeff D. Bulla, AIA, LEED AP
3030 LBJ Freeway, Suite 1220
Dallas, Texas 75234

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 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.

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 Facility Program, 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, 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 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; 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.

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.

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 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 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 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 **\$85,000.00**, are *not 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

Exhibit "B" Reimbursable Expense Allocation

"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 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.

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

[Signatures on the following page.]

OWNER

ARCHITECT

CITY OF ROUND ROCK, TEXAS

PGAL, Inc.

By: _____
Mayor, Craig Morgan

By: JEFF D. PHILLA M

Date: _____

Date: January 9, 2018

ATTEST:

By: _____
Sara L. White, City Clerk

FOR CITY, APPROVED AS TO FORM:

By: _____
Stephan L. Sheets, City Attorney



January 4, 2018

Letter of Proposal for Professional Architectural & Engineering Services for the CITY OF ROUND ROCK PUBLIC LIBRARY

This Letter of Proposal is for professional architectural services by **PGAL** (the "Architect") for the **City of Round Rock** (the "City" and "Owner") for the new **Round Rock Public Library** – (the "Project").

1.0 PROJECT SCOPE

1.1. The Project scope includes comprehensive needs assessment, program development, design and construction administration for a new Public Library and Parking Garage to be located on City property at North Mays Street adjacent to the south bank of Brushy Creek.

1.2. The initial project information is established by the City's Statement of Work, revised September 27, 2017, which anticipates "a five-story, sixty-thousand (60,000) square foot facility consisting of three (3) levels that are twenty-thousand (20,000) square feet each and a two (2) story parking garage to accommodate approximately three-hundred (300) vehicles." For the purposes of this initial Proposal, the Statement of Work is modified as follows:

1.2.1 Although the currently designated budget for the Cost of Work is \$20,000,000, the assumed Cost of Work is as follows:

60,000 SF	\$20,500,000
300 parking spaces x \$22,000 per space =	\$5,400,000
Total rough estimate =	\$25,900,000

1.2.2 The Site is assumed to consist of the originally proposed site at 500 North Mays plus the additional site of 416/420 North Mays as well as the 2 potential RRISD parcels located adjacent to the west property line.

1.3. The project delivery method will utilize a general contractor selected using a Request for Competitive Sealed Proposals.

2.0 ARCHITECTURAL SERVICES

The Architect shall collaborate with the City as needed to provide the following professional services:

2.1 Discovery and Programming – The Architect and Library Consultant will work with the City to provide the following services:

2.1.1 Kick Off Meeting: We will review the contents and recommendations of the previously completed Needs Assessment, then meet with the Library and City staff to discuss those findings to ascertain their current relevancy. Working with the City, we will develop the stakeholder and

Exhibit "A"

community engagement strategy and schedule desired tours of other Libraries.

- 2.1.2 Optional - Pertinent Library Projects Listening Tour:** If desired, the Architect and Library Consultant will tour with City staff other recent and pertinent libraries that offer compelling similarities and opportunities to study design strategies that could inform the design of the RRPL. Not only will this allow City staff and other participants to form a shared vision for the new facility, it will allow everyone to develop a common understanding about current “state of the art” projects, observe what works and what doesn’t, and form a common background of experience that we all can draw from (and refer to) throughout.
- 2.1.3 City Stakeholder Meetings:** We will hold a series of meetings over a two-day period to interview staff, Board, and other City departments as needed to determine programming needs and preferences. This will include a presentation and interactive discussion on library trends and best practices.
- 2.1.4 Community Input Meetings:** We will facilitate up to 4 such meetings (Children, Seniors, Teens, Open Forum) over a two-day period to determine the community’s needs and preferences. This will also include a presentation and interactive discussion on library trends and best practices.
- 2.1.5 Program Development Meeting:** We will meet with the Library and City staff to review the findings and begin the development of an initial program.
- 2.1.6 Written Program:** We will create a written program of requirements listing the proposed activities and spaces, quantity and size, outdoor amenities, and other desired features. This will be submitted initially as a Rough Draft to the City’s Project Team for review and necessary revisions. Working with the City, we will develop Room Data Sheets for every proposed space in the facility, to be filled out by the City. These will be “live” documents available for continual updating during the evolution of the project up to and including the Design Development phase. The written Program will include:
- Site and building goals, challenges and opportunities
 - Descriptions of programs and services
 - Quantified list of spaces and their respective sizes
 - Collection and Technology Data
 - Functional adjacency requirements
 - Amenities, ambiance and atmosphere
 - Opportunities for branding and establishing identity
 - HVAC, electrical and other building systems criteria
 - Furniture and equipment required
 - Custodial and maintenance issues
 - Sustainable design goals and preferences
 - Security requirements
 - Other operational requirements
 - Room Data Sheets

- 2.1.7 Adjacency and Stacking Charrette:** We will hold a design charrette (a participatory, actual design session) with the City Project Team and other stakeholders if desired. This would take 2-3 hours. We will provide a “kit of parts” (program space cutouts to scale) and a site/building plan at the same scale, and engage them in the actual design of a new Library. It will allow the Project Team to set priorities, make compromises, and help determine a number of critical adjacency and vertical stacking relationships, public/private separation issues, operational strategies, relative location of spaces, etc.
- 2.1.8 Initial Construction Cost Estimate:** At the conclusion of Programming, we will present budget scenarios with total square footage options times unit costs (\$/SF), based on research and experience with similar facilities. These scenarios will include budgets for sitework and “soft” costs and will give the City some flexibility in establishing or confirming an acceptable budget before design begins.
- 2.1.9 Final Program Report:** We will compile the above information into a written, bound Final Program Report along with an Executive Summary slideshow presentation that we can deliver to the Board, City Council or other stakeholders as desired. We have include one day of such presentations.

2.2 Schematic Design – Continuing to work interactively with the City, the Architect will provide these services:

- 2.2.1 Multiple Site/Floor Plan Options:** Based on the approved Program and the results of the Charrette, the Architect will develop multiple (at least 3) conceptual site/floor plan design options to review with the City. These will include stacked and “unstacked” options for the arrangement of the parking garage. We will meet with the City’s Project Team to present those alternatives. In a workshop setting, we will compare the benefits and liabilities of each option so that you will be able to make informed decisions about the concepts that will serve you best. If necessary, we will develop subsequent options for your review and approval.
- 2.2.2 Multiple 3D Options:** Thereafter, we will further refine the selected scheme in plan and develop multiple (at least 3) 3-D design options for review with the City and stakeholders as desired. These options may explore different architectural styles for the building facades with regard to the project’s relationship to the architectural context of Round Rock, its history and downtown as well as the library’s role as an institution setting a standard for the next several decades.
- 2.2.3 Furniture & Shelving Test Fit:** We will refine the floor plan by providing FF&E layouts in more detail for review and approval.
- 2.2.4 Schematic Design Package:** A schematic design package will be provided for final review and approval by the City and will include:
- Site Plan in color
 - Floor Plans in color, with furniture and equipment layouts
 - 3-D Revit model showing exterior massing and materials
 - Exterior elevations

- Computer 3-D Renderings of exterior views (at least 3)
- Computer 3-D Rendering of primary interior view
- Preliminary Finish Schedule
- Basis of Design Narrative for MEP and IT systems
- Project Cost Estimate

2.3 Design Development – The Architect will prepare Design Development documents for the City’s approval to illustrate more detailed development of the approved Schematic Design in order to establish and describe the size, scope, character, material composition, systems, and other features. This phase will include the integration of the various structural and MEP systems. Deliverables will include site plan, floor plans, RCP’s, sections, elevations, finish schedules, diagrammatic layouts of the building systems, preliminary specifications, preliminary Civil, Landscape, Structural, MEP and IT drawings, other details to describe the size and character of the Project, and an updated Cost Estimate. During this phase, the Architect will meet with the City bi-weekly (in person or via WebEx or similar remote conferencing as mutually determined) to facilitate project development and schedule adherence

2.4 Construction Documents - The Architect will prepare detailed Construction Documents, including drawings and specifications to be used for bidding and construction. The Architect will select interior finishes, patterns and colors, and prepare a presentation board for approval by the City. There will be interim review submittals at 50% and 90% completion, including the use of shared Bluebeam Revu collaboration for redlines and comments. An updated Cost Estimate will be provided with the 90% interim submittal. The Architect will meet with the City bi-weekly (in person or via WebEx or similar remote conferencing as mutually determined) to facilitate project development and schedule adherence.

2.5 Bidding and Contract Award – In this phase, the Architect will work with the City to craft the Request for Competitive Sealed Proposals to establish the City’s priorities for evaluation and selection of the general contractor, including development of an itemized bid breakdown form and unit cost schedules. We will issue the construction documents for bidding, address and issue addenda as required to clarify the Construction Documents and design intent. We will assist the City in review and scoring of the proposals, interviews of up to 3 proposers, selection of the Contractor, and final contract negotiations.

2.6 Construction Administration – The Architect will provide general administration of the Contract between the Owner and the Construction Manager as set forth in the current version of AIA Document A201.

2.6.1 We will provide ongoing attendance at twice-monthly Progress Meetings, review submittals, process Applications for Payment, and all other duties described in the General Conditions of the Contract. We also make periodic visits during construction to observe the progress, craftsmanship, and quality of materials.

2.6.2 At approximately 11 months after Substantial Completion, the Architect will provide a project “walk-through” with the City and

Contractor to identify any warranty related items that must be addressed.

2.6.3 The Architect will provide the Revit model to the Contractor at the commencement of the Construction phase to facilitate coordination, construction submittals and submission of the As-Built Documentation. The Contractor will be responsible to utilize this model to take the Level of Development to the degree of complexity and detail established by the City in the RFCSP for final submission to the City for facility maintenance and as-built documentation.

2.6.4 The Architect shall provide Construction Phase services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- Up to 2 reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor.
- Up to fifty-four (54) visits to the site by the Architect over the duration of the Project during construction, including attendance at twice monthly construction Progress Meetings, to review the progress and quality of work and to determine if work is proceeding in accordance with the Contract Documents.
- Up to two (2) observations 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.
- Up to one (1) observations for any portion of the Work to determine final completion.
- Up to sixty (60) days after the date of Substantial Completion of the Work or the originally scheduled date of Substantial Completion, whichever is earlier.

2.7 Building Information Modeling: The building will be designed utilizing using Autodesk Revit® Architecture Building Information Modeling (BIM) software to a 300 Level of Development. BIM shall be limited to overall building massing indicative of area, height, orientation and materials modeled in three dimensions or represented by other data and its use is restricted to the Architect and its Consultants for the purposes of internal coordination and conceptual presentation to the Owner. No other party may rely on the accuracy of the 3D Model for purposes beyond conceptual representation. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk.

2.8 FF&E Design & Procurement Assistance – The Architect and Interior Designer will provide the following services for the design and procurement of the furniture and shelving:

- Refine selected furniture layout.
- Provide chair and fabric samples for owner selection.
- Furniture showroom tours for office/workroom furniture.

- Provide furniture and equipment specification and schedules for bidding and/or state contract purchasing.
- Power/data/technology coordination
- Provide drawings and specifications for custom end panels
- Provide bid documents, answer questions and review bid and contract proposals
- Review shop drawings and answer questions during CA.
- Provide thematic design services for teen and/or children's areas.
- Coordinate installation schedule of furniture with general contractor and vendors.
- Participate in (2) punch list for FFE.
- Furniture specifications divided into appropriate bid/government contract schedules and coordinated with FFE specialist.
- Deliverables:
 - Furniture floor plans
 - Specification binder
 - Binder with fabric and finish selections
 - Cost estimates by area and schedule
 - Bid documents and/or proposals

2.9 Signage and Graphics – The Architect will provide design services to produce custom design, themed signage and graphics for the Project. Deliverables will include plans, schedules, elevations, illumination / electrical power requirements, detail drawings and specifications of interior and exterior signage and graphics.

2.10 Civil Engineering and Surveying – The Architect will provide Civil Engineering and Surveying services in accordance with Attachment A - 2P Consultants Civil & Surveying Proposal 01-05-18.

2.11 Landscape Architectural Design – The Architect will provide Landscape Architectural Design services in accordance with Attachment B – Coleman Landscape Architecture Proposal 12-20-17.

2.12 Technology Consulting – The Architect will provide design consulting services for Audio-Visual Systems, Structured Cabling Systems, and Building Security in accordance with Attachment C – Sextant Group Technology & Acoustics Proposal 01-04-18. Although not included at this time, the Acoustical Consulting Services listed in Attachment C may be provided as an Additional Service.

2.13 Cost Estimating – The Architect will provide Construction Cost Estimating services in accordance with Attachment D – APR Cost Estimating Proposal 12-19-17.

2.14 Commissioning – The Architect will provide “3rd Party” MEP Commissioning services in compliance with the fundamental requirements of the IECC 2015 as described in Attachment E - WSP Commissioning Proposal, 11-29-17, Article 2.0 Scope of Work: IECC 2015 MEP Commissioning (Cx) Services. Although not included at this time, any of the optional Commissioning Services listed in Attachment E may be provided as an Additional Service.

2.15 Project Management Commitment – The Project will be managed by PGAL Principal Jeff Bulla, AIA, LEED AP, who will lead the design team effort from notice-to-proceed to final completion. Mr. Bulla will substantially participate in all phases as follows:

- Programming and Needs Assessment: Although the Library Consultant, Maureen Arndt / 720 Design will lead this phase, Mr. Bulla will participate in a majority, if not all, programming sessions.
- Schematic Design and Design Development: Mr. Bulla will lead this phase and participate in all SD phase owner meetings and at least 75% of the DD meetings.
- Construction Documents: Mr. Bulla will participate in at least 60% of all CD phase owner meetings.
- Construction Administration: It is anticipated that Mr. Bulla will participate in at least one third of the CA phase progress meetings with the intention of attending the end-of-month pay application review meetings on a regular basis.

3.0 SCHEDULE

The Architect proposes the following design schedule, exclusive of any Client review time:

Discovery and Programming:	2 months
Schematic Design:	4 months
Design Development:	4 months
<u>Construction Documents:</u>	<u>8 months</u>
Total Design Duration:	18 months

A more in depth, deliverables-driven project schedule will be developed and reviewed with the Client prior to commencement of the Discovery and Programming Phase.

4.0 PROFESSIONAL FEES

4.1. For the services described, the Client shall compensate the Architect as follows:

Services	Total
Discovery & Programming	\$58,500
Architectural, Structural and MEP Design	\$2,029,335
FF&E Design & Procurement Assistance	\$116,000
Signage and Graphics	\$21,000
Civil Engineering and Surveying	\$132,000
Landscape Architecture	\$53,150
Technology Consulting	\$85,150
Cost Estimating	\$34,515
Commissioning	\$23,350
Total Professional Fees	\$2,553,000

4.2. Optional Fee for Pertinent Library Projects Listening Tour: Should the Client desire to tour pertinent library projects with the Architect and Library Consultant, the Architect shall be compensated the following total amount per day plus reimbursable expenses:

Add: \$3,080

4.3. Optional Fee for Elevated Roof Garden: Should the final Schematic Design consist of an elevated roof garden, the following additional fee shall be added to provide for the additional coordination, water-proofing and drainage system design:

Add: \$35,000

4.4. Optional Fee for Acoustical Consulting: Should the final Schematic Design necessitate a need for specialized acoustical consulting as described in Attachment C - Sextant Group Technology & Acoustics Proposal 01-04-18, the following additional fee shall be added:

Add: \$15,000

4.5. Optional Fees for Optional Commissioning Services: Should the Client desire, the following services may be added as described in Attachment E - WSP Commissioning Proposal:

Option #1 – Enhanced MEP Commissioning: Add: \$6,550

Option #2 – Base Envelope Commissioning: Add: \$18,000

Option #3 – Enhanced Envelope Commissioning: Add \$21,500

5.0 REIMBURSABLE EXPENSES

5.1. The Client shall reimburse the Architect and sub-consultants for actual expenditures made by the Architect in the interest of the Project. Reimbursable Expenses shall include:

5.1.1. Transportation to and from the Project location including automobile mileage at prevailing rates, tolls and parking costs;

5.1.2. Out-of-town travel and subsistence;

5.1.3. Travel and subsistence related for the Pertinent Library Projects Listening Tour;

5.1.4. Reproductions, plots, reprographic services, standard form documents, postage, courier or express mail services required for the delivery of Instruments of Service;

5.1.5. Telecommunications expenses related to conference or video conferences such as GoToMeetings or WebEx;

5.1.6. Fees paid for securing approval of authorities having jurisdiction over the Project.

6.0 ADDITIONAL SERVICES

- 6.1 Additional Owner Requested Site Visits:** Should additional Site visits be required during construction by the Architect, these will be charged at \$450 for Austin-based personnel. Additional visits by the Architect's Consultants will be charged at their hourly rates.
- 6.2 Compensation for Additional Services:** Compensation for other Additional Services shall be negotiated on a lump sum basis or provide on an hourly basis in accordance with the Consultant's current billing rate.
- 6.3 Scope Revisions:** Following prior written authorization and approval of Client, Architect shall be compensated to make revisions in drawings, specifications or other documents when such revisions are:
- necessitated by inconsistencies with approvals or instructions previously given by the Client, including revisions made necessary by adjustments in the Client's program or Project budget;
 - required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents;
 - necessitated because of significant changes in the Project and authorized by written Change Orders including, but not limited to, size, quality, complexity, the Client's schedule, or the method of bidding or negotiating and contracting for construction;
 - providing any other services not included herein or not customarily furnished in accordance with generally accepted architectural practice.
- 6.4** To the extent the Architect's services are affected, the Architect shall be compensated for Additional Services if the services covered by this Agreement have not been completed within Forty (40) months of the date of this Agreement, through no fault of the Architect.

7.0 EXCLUDED SERVICES

It is agreed that the following services are not included herein at this time. If required, they may be added as an Additional Service:

- LEED Certification
- Items specifically exempted in attached Consultant Proposals
- Environmental Assessment
- Traffic Impact Studies
- Geotechnical investigation
- Materials Testing
- As-built drawings

8.0 MISCELLANEOUS PROVISIONS

- 8.1 Project Contingency:** The Owner and the Architect agree that this is a one of a kind Project that constitutes a number of unique variables including but not limited to the site and setting, local environment, the context, program, budget, stakeholders involved, the set of consultants and team assembled, the Contractor, jurisdiction, timeframe, etc. Increased costs and changes may be required because of possible omissions, ambiguities or inconsistencies in the

drawings and specifications prepared by the Architect; therefore, the final design and construction costs of the project may exceed the estimated or bid cost. The Owner agrees to set aside a reserve in the amount of 5% of the cost of the Project as a Contingency to be used, as required, to pay for any such increased costs and changes. The Owner further agrees to make no claim by way of direct or third-party action against the Architect or its consultants with respect to any increased costs within the Contingency because of such changes or because of claims made by the Contractor relating to such changes.

- 8.2 Statement of Jurisdiction:** In accordance with requirements of the Texas Board of Architectural Examiners (TBAE), the Architect makes the following Statement of Jurisdiction: "The TBAE has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas". The Board may be contacted as follows: 1) By mail: Texas Board of Architectural Examiners, P.O. Box 12337 Austin, TX 78711-2337; 2) In person: 333 Guadalupe, Suite 2-350 Austin, TX 78701-3942; 3) By telephone: 512/305-9000; 4) By fax: 512/305-8900; or 5) Via website: www.tbae.state.tx.us.

ROUND ROCK PUBLIC LIBRARY
REIMBURSABLE EXPENSE ESTIMATE
 December 21, 2017

Typical Reimbursables:	Quantity	Cost Estimate	Extension	Assumptions
Printing for coordination, meetings, etc.			10,000	Bid documents issued electronically
Courier Fees (Client / Various Consultants)			1,000	
AIA Standard Documents			250	
TDLR Plan Review Fee			1,255	
TDLR Inspection Fee			1,055	
Subtotal			\$13,560	

	No. of Trips	IRS Std. Mileage	Extension
PGAL Dallas Staff Mileage		380 Mi @ 0.545	
Discovery and Programming	6	207	1,243
Schematic Design	6	207	1,243
Design Development	6	207	1,243
Construction Documents	6	207	1,243
Construction Admin. (1 x montly for 18 months)	18	207	3,728
Punch List and Closeout Trips	4	207	828
Additional Trips as needed	5	207	1,036
Subtotal	51		\$10,562

PGAL Dallas Overnight Travel Expenses	Item Cost	Quantity	Extension	
PGAL Dallas Round Rock Overnight Stay	\$200.00	10	\$2,000.00	Assumes meetings start at 9:00 am or later
Pertinent Library Projects Listening Tour	\$800.00	3	\$2,400.00	Assumes flight, hotel and food
Subtotal			\$4,400.00	

Sub-Consultant Reimbursables	Item Cost	Quantity	Extension	
720 Design			\$20,000.00	
720 Design Pertinent Library Projects Listening Tour	\$800.00	3	\$2,400.00	Assumes flight, hotel and food
Peal and Associates			\$0.00	
RLG Consulting Engineers			\$2,750.00	
Reed, Wells, Benson and Company			\$2,000.00	
The Sextant Group			\$11,600.00	
Coleman and Associates			\$4,000.00	will not include mileage
Aguirre Project Resources			\$0.00	
WSP USA Buildings Inc.			\$11,000.00	
Subtotal			\$53,750.00	

TOTAL ESTIMATE			\$82,272	Max Reimb = \$85,000
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Exhibit "B"

SUPPLEMENTAL AGREEMENT NO. 1

CITY OF ROUND ROCK

§

STATE OF TEXAS

§

KNOW ALL BY THESE PRESENTS:

§

COUNTY OF WILLIAMSON

§

COUNTY OF TRAVIS

§

§

This document is entitled Supplemental Agreement No. 1, and it supplements “City of Round Rock Agreement for Architectural Services for City of Round Rock Public Library Project with PGAL, Inc.” for the following Project:

Professional architectural services and design services related to the following:

Construction of a new City of Round Rock Public Library consisting of an approximately sixty thousand (60,000) square foot building with a parking garage to accommodate approximately three hundred (300) vehicles.

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 January, 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 PGAL, Inc., with offices located at 3030 LBJ Freeway, Suite 1220, Dallas, Texas 75234 (hereinafter referred to as “Architect”).

WITNESSETH:

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

WHEREAS, total compensation for Architect’s services under this Agreement shall not exceed the following: **\$2,553,000.00**,

WHEREAS, payment for reimbursable expenses shall not exceed the maximum sum of **\$85,000.00** and is *not included* in the total compensation for services of \$2,553,000.00; and

WHEREAS, City may, at its sole discretion, request additional services not included in the scope of the Agreement in an amount not-to-exceed **\$100,000.00**, which amount is *not included* in the total compensation for services of \$2,553,000.00; 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, 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 **Two Million Five Hundred Fifty-Three Thousand and No/100 Dollars (\$2,553,000.00)**, *not including* a not-to-exceed amount of **Eighty-Five Thousand and No/100 Dollars (\$85,000.00)** 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, 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, 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 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. 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 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 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 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 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.
- (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 Design Documents.

- (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 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 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 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, 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(1) 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. Architect shall not proceed until the appropriate Resolution or directive for such Additional Services has been delivered from the City Council or City Manager if the Additional Services are in excess of **One Hundred Thousand Dollars and No/100 (\$100,000.00)**. 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 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. 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 *not 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.

6.02 Reimbursable Expenses. Payments for authorized Reimbursable Expenses for Architect, as hereinbefore referred to and in an amount not to exceed **\$85,000.00**, 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.

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

PGAL, Inc.
3030 LBJ Freeway, Suite 1220
Dallas, Texas 75234

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 January 25, 2018, and PGAL, 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

PGAL, Inc.

By: _____
Craig Morgan, Mayor

By: JEFF D. MULLA M

Date: _____

Date: January 9, 2018

ATTEST:

By: _____
Sara L. White, City Clerk

FOR CITY, APPROVED AS TO FORM:

By: _____
Stephan L. Sheets, City Attorney