

**EXHIBIT**

**"A"**

**CITY OF ROUND ROCK AGREEMENT FOR  
PROFESSIONAL CONSULTING SERVICES FOR  
STRATEGIC PLAN UPDATE WITH  
LYLE SUMEK ASSOCIATES, INC.**

**THE STATE OF TEXAS**

§

**THE CITY OF ROUND ROCK**

§

**KNOW ALL BY THESE PRESENTS**

§

**COUNTY OF WILLIAMSON**

§

**COUNTY OF TRAVIS**

§

§

THIS AGREEMENT for professional consulting services related to an update of the City's Strategic Plan (the "Agreement") is made by and between the CITY OF ROUND ROCK, a Texas home-rule municipal corporation with offices located at 221 East Main Street, Round Rock, Texas 78664-5299, (the "City") and LYLE SUMEK ASSOCIATES, INC. (the "Consultant").

**RECITALS:**

**WHEREAS**, City desires to contract for Consultant's professional services generally described as consulting services for the creation of a Strategic Plan Update for the City; and

**WHEREAS**, City has determined that there is a need for the delineated services; and

**WHEREAS**, desires to contract for such professional services; and

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

**NOW, THEREFORE, WITNESSETH:**

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

**1.01 EFFECTIVE DATE, DURATION, AND TERM**

This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated or extended as provided herein.

The term of this Agreement shall be for thirty-six (36) months from the effective date hereof. After that term, the Agreement may be renewed for two (2) successive twelve-month periods, under the same terms and conditions, only upon the express written agreement of both parties, and only provided that Consultant has performed each and every contractual obligation

specified in the Agreement.

City reserves the right to review the Agreement at any time, and may elect to terminate the Agreement with or without cause or may elect to continue.

## **2.01 PROPOSAL FOR SERVICES**

Consultant has issued its proposal for services for the tasks delineated therein, such proposal for services being appended to this Agreement as Exhibit "A" titled "Scope of Work," which document is attached hereto and incorporated herein by reference for all purposes.

## **3.01 SCOPE OF SERVICES**

Consultant shall satisfactorily provide all services described herein and as set forth in Exhibit "A." Consultant's undertaking shall be limited to performing services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant shall perform services in accordance with this Agreement, in accordance with the appended proposal for services, and in accordance with due care and prevailing consulting industry standards for comparable services.

## **4.01 LIMITATION TO SCOPE OF SERVICES**

Consultant and City agree that the scope of services to be performed is enumerated in Exhibit "A" and herein, and may not be changed without the express written agreement of the parties. Notwithstanding anything herein to the contrary, the parties agree that City retains absolute discretion and authority for all funding decisions, such to be based solely on criteria accepted by City which may be influenced by but not be dependent on Consultant's work.

## **5.01 CONTRACT AMOUNT**

In consideration for the professional consulting services to be performed by Consultant pursuant to the Scope of Services (Exhibit "A"), City agrees to pay Consultant a total sum not-to-exceed **Thirty Thousand and No/100 Dollars (\$30,000.00)**.

## **6.01 PAYMENT FOR SERVICES; REIMBURSABLES**

**Payment for Services:** In consideration for the professional consulting services to be performed by Consultant, City agrees to pay Consultant in accordance with Exhibit "B" entitled "Cost Proposal," which document is attached hereto and incorporated herein by reference for all purposes, in payment for services and the Scope of Services deliverables as delineated in Exhibit "A," in an amount not-to-exceed **Twenty-Five Thousand and No/100 Dollars (\$25,000.00)**.

**Payment for Reimbursable Expenses:** The City shall reimburse Consultant for reasonable Reimbursable Expenses for travel and office expenses in an amount not to exceed **Five Thousand and No/100 Dollars (\$5,000.00)** which is included as part of the total not-to-exceed fee of **\$30,000.00** recited herein in Section 5.01.

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

**Additions:** No additions shall be made to Consultant's compensation based upon project claims, whether paid by the City or denied.

**Reimbursable Expenses:** Consultant's reasonable costs for travel and office expenses shall be reimbursed in an amount not to exceed Five Thousand and No/100 Dollars (\$5,000.00). This is

## **7.01 INVOICE REQUIREMENTS; TERMS OF PAYMENT**

**Invoices:** To receive payment, Consultant shall prepare and submit detailed invoices to the City, in accordance with the delineation contained herein, for services rendered. Such invoices for professional services shall track the referenced Scope of Work, and shall detail the services performed, along with documentation for each service performed. Payment to Consultant shall be made on the basis of the invoices submitted by Consultant and approved by the City. Such invoices shall conform to the schedule of services and costs in connection therewith.

Should additional backup material be requested by the City relative to service deliverables, Consultant shall comply promptly. In this regard, should the City determine it necessary, Consultant shall make all records and books relating to this Agreement available to the City for inspection and auditing purposes.

**Payment of Invoices:** The City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Consultant and to adjust same to meet the requirements of this Agreement. Following approval of an invoice, the City shall endeavor to pay Consultant promptly, but no later than the time period required under the Texas Prompt Payment Act described in Section 8.01 herein. Under no circumstances shall Consultant be entitled to receive interest on payments which are late because of a good faith dispute between Consultant and the City or because of amounts which the City has a right to withhold under this Agreement or state law. The City shall be responsible for any sales, gross receipts or similar taxes applicable to the services, but not for taxes based upon Consultant's net income.

## **8.01 PROMPT PAYMENT POLICY**

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

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

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

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

#### **10.01 TIMETABLES**

Unless otherwise indicated to Consultant in writing by City, or unless Consultant is unreasonably delayed in the orderly progress of its work by forces beyond Consultant's control, the following timetable structure and deliverable due dates shall apply: commencement shall occur no later than January 5, 2015 and shall be completed no later than August 31, 2015, and work shall be performed in reasonable conformity to Consultant's schedule tendered to City and attached as Exhibit "C."

#### **11.01 SUPPLEMENTAL AGREEMENT**

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



## 12.01 TERMINATION; DEFAULT

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

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

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

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

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

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

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

### **13.01 NON-SOLICITATION**

Except as may be otherwise agreed in writing, during the term of this Agreement and for twelve (12) months thereafter, neither the City nor Consultant shall offer employment to or shall employ any person employed then or within the preceding twelve (12) months by the other or any affiliate of the other if such person was involved, directly or indirectly, in the performance of this Agreement. This provision shall not prohibit the hiring of any person who was solicited solely through a newspaper advertisement or other general solicitation.

### **14.01 CITY'S RESPONSIBILITIES**

**Full information:** The City shall provide full information regarding project requirements. The City shall have the responsibility of providing Consultant with such documentation and information as is reasonably required to enable Consultant to provide the services called for. The City shall require its employees and any third parties who are otherwise assisting, advising or representing the City to cooperate on a timely basis with Consultant in the provision of its services. Consultant may rely upon written information provided by the City and its employees and agents as accurate and complete. Consultant may rely upon any written directives provided by the City or its designated representative concerning provision of services as accurate and complete.

**Required materials:** Consultant's performance requires receipt of all requested information reasonably necessary to provision of services. Consultant agrees, in a timely manner, to provide City with a comprehensive and detailed information request list, if any.

### **15.01 INDEPENDENT CONTRACTOR STATUS**

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

- (1) Consultant has the right to perform services for others during the term hereof.
- (2) Consultant has the sole right to control and direct the means, manner and method by which it performs its services required by this Agreement.
- (3) Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
- (4) Consultant or its employees or subcontractors shall perform services required hereunder, and the City shall not hire, supervise, or pay assistants to help Consultant.

- (5) Neither Consultant nor its employees or subcontractors shall receive training from the City in skills necessary to perform services required by this Agreement.
- (6) City shall not require Consultant or its employees or subcontractors to devote full time to performing the services required by this Agreement.
- (7) Neither Consultant nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the City.

#### **16.01 CONFIDENTIALITY; MATERIALS OWNERSHIP**

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

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

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

Notwithstanding anything to the contrary contained herein, neither party shall be obligated to treat as confidential any information disclosed by the other party (the "Disclosing Party") which: (1) is rightfully known to the recipient prior to its disclosure by the Disclosing Party; (2) is released by the Disclosing Party to any other person or entity (including governmental agencies) without restriction; (3) is independently developed by the recipient without any reliance on Confidential Information; or (4) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any non-party.

Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

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

Notwithstanding anything to the contrary in this Agreement, the City will own as its sole property all written materials created, developed, gathered, or originally prepared expressly for the City and delivered to the City under the terms of this Agreement (the "Deliverables"); and Consultant shall own any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, or other similar information which may have been discovered, created, developed or derived by Consultant either prior to or as a result of its provision of services under this Agreement (other than Deliverables). Consultant's working papers and Consultant's Confidential Information (as described herein) shall belong exclusively to the Consultant. City shall have a non-exclusive, non-transferable license to use Consultant's Confidential Information for City's own internal use and only for the purposes for which they are delivered to the extent that they form part of the Deliverables.

#### **17.01 WARRANTIES**

Consultant represents that all services performed hereunder shall be performed consistent with generally prevailing professional or industry standards, and shall be performed in a professional and workmanlike manner. Consultant shall re-perform any work not in compliance with this representation.

#### **18.01 LIMITATION OF LIABILITY**

Should any of Consultant's services not conform to the requirements of the City or of this Agreement, then and in that event the City shall give written notification to Consultant; thereafter, (a) Consultant shall either promptly re-perform such services to the City's satisfaction

at no additional charge, or (b) if such deficient services cannot be cured within the cure period set forth herein, then this Agreement may be terminated for default.

In no event will Consultant be liable for any loss, damage, cost or expense attributable to negligence, willful misconduct or misrepresentations by the City, its directors, employees or agents.

In no event shall Consultant be liable to the City, by reason of any act or omission relating to the services provided under this Agreement (including the negligence of Consultant), whether a claim be in tort, contract or otherwise, (a) for any consequential, indirect, lost profit, punitive, special or similar damages relating to or arising from the services, or (b) in any event, in the aggregate, for any amount in excess of the total professional fees paid by the City to Consultant under this Agreement, except to the extent determined to have resulted from Consultant's gross negligence, willful misconduct or fraudulent acts relating to the service provided hereunder.

#### **19.01 INDEMNIFICATION**

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

Consultant agrees to indemnify, defend and hold harmless the City from and against any and all amounts payable under any judgment, verdict, court order or settlement for Third Party claims of infringement of any trade secrets, copyrights, trademarks or trade names alleged to have occurred and arising from the deliverables provided by Consultant to the City in connection with the performance of this Agreement. Should the City's use of such deliverables be determined to have infringed, Consultant may, at its option: (i) procure for the City the right to continue using such deliverables provided or (ii) replace or modify them to make their use non-infringing while yielding substantially equivalent results. If neither of the above options is or would be available on a basis that is commercially reasonable, then Consultant may terminate this Agreement, the City shall return such deliverables provided, and Consultant will refund to the City the fees paid for the deliverables provided. This infringement indemnity does not cover claims arising from the combination of such deliverables with products or services not provided by Consultant; the modification of such deliverables by any person other than Consultant; deliverables complying with or based upon (1) designs provided by or at the direction of the City or (2) specifications or other information provided by or at the direction of the City; or use of systems, materials or work performed in a manner not permitted hereunder or by another obligation of the City to Consultant.

The indemnities in this section are contingent upon: (1) the indemnified party promptly notifying the indemnifying party in writing of any claim which gives rise to a claim for indemnification hereunder; (2) the indemnifying party being allowed to participate in the defense and settlement of such claim; and (3) the indemnified party cooperating with all reasonable requests of the indemnifying party (at the indemnifying party's expense) in defending or settling

a claim. The indemnified party shall have the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel.

#### **20.01 ASSIGNMENT AND DELEGATION**

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

#### **21.01 LOCAL, STATE AND FEDERAL TAXES**

Consultant shall pay all income taxes, and FICA (Social Security and Medicare taxes) incurred while performing services under this Agreement. The City will not do the following:

- (1) Withhold FICA from Consultant's payments or make FICA payments on its behalf;
- (2) Make state and/or federal unemployment compensation contributions on Consultant's behalf; or
- (3) Withhold state or federal income tax from any of Consultant's payments.

If requested, the City shall provide Consultant with a certificate from the Texas State Comptroller indicating that the City is a non-profit corporation and not subject to State of Texas Sales and Use Tax.

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

Consultant, its consultants, agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Consultant shall further obtain all permits, licenses, trademarks, or copyrights required in the performance of the services contracted for herein, and same shall belong solely to the City at the expiration of the term of this Agreement.

#### **23.01 FINANCIAL INTEREST PROHIBITED**

Consultant covenants and represents that Consultant, 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 hereunder.

#### **24.01 DESIGNATION OF REPRESENTATIVES**

The City hereby designates the following representative authorized to act in its behalf with regard to this Agreement:

Monique Adams  
Administration Department  
221 E. Main Street  
Round Rock, Texas 78664  
(512) 218-3234

## **25.01 NOTICES**

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- (1) When delivered personally to recipient's address as stated herein; or
- (2) Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

### **Notice to Consultant:**

Lyle Sumek Associates, Inc.  
9 Flagship Court  
Palm Coast, FL 3217-3373

### **Notice to City:**

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

### **AND TO:**

Stephan L. Sheets, City Attorney  
309 East Main Street  
Round Rock, TX 78664

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the City and Consultant.

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

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



## **27.01 EXCLUSIVE AGREEMENT**

The terms and conditions of this Agreement, including exhibits, constitute the entire agreement between the parties and supersede all previous communications, representations, and agreements, either written or oral, with respect to the subject matter hereof. The parties expressly agree that, in the event of any conflict between the terms of this Agreement and any other writing, this Agreement shall prevail. No modifications of this Agreement will be binding on any of the parties unless acknowledged in writing by the duly authorized governing body or representative for each party.

## **28.01 DISPUTE RESOLUTION**

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

## **29.01 SEVERABILITY**

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

## **30.01 STANDARD OF CARE**

Consultant represents that it is specially trained, experienced and competent to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Consultant or designated subconsultants, in a manner acceptable to the City and according to generally accepted business practices.

## **31.01 GRATUITIES AND BRIBES**

City, may by written notice to Consultant, cancel this Agreement without incurring any liability to Consultant if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Consultant or its agents or representatives to any City Officer, employee or elected representative with respect to the performance of this Agreement. In addition, Consultant may be subject to penalties stated in Title 8 of the Texas Penal Code.

### **32.01 RIGHT TO ASSURANCE**

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure an anticipatory repudiation of this Agreement.

### **33.01 MISCELLANEOUS PROVISIONS**

**Time is of the Essence.** Consultant agrees that time is of the essence and that any failure of Consultant to complete the services for each phase of this Agreement within the agreed project schedule may constitute a material breach of this Agreement. Consultant shall be fully responsible for its delays or for failures to use reasonable efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Consultant's failure to perform in these circumstances, City may withhold, to the extent of such damage, Consultant's payments hereunder without a waiver of any of City's additional legal rights or remedies. City shall render decisions pertaining to Consultant's work promptly to avoid unreasonable delays in the orderly progress of Consultant's work.

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

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

**Waiver.** No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver of discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

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

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

City of Round Rock, Texas

Lyle Sumek Associates, Inc.

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

By: *Lyle J. Sumek*  
Printed Name: LYLE J. SUMEK  
Title: PRES / OWNER  
Date Signed: 6/30/15

For City, Attest:

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

For City, Approved as to Form:

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



**2-YEAR PROPOSAL****LEADERSHIP AND STRATEGIC PLANNING****Mayor and City Council****City of Round Rock****March 2015****Program Outcomes for Each Year**

➤ **LINK THE CITY OF ROUND ROCK'S VISION, MISSION, GOALS AND PLAN (5-YEAR) TO THE CITY COUNCIL'S ANNUAL WORK PROGRAM**

- Vision 2030: A Vision Statement with defined, value-based principles that describe the preferred future in 15 years for the City of Round Rock
- Mission: A Mission Statement that defines what should be the primary purposes of the City of Round Rock and operating guidelines
- Twelve Goals for 2020: with measurable objectives an analysis of major challenges and opportunities and specific actions

➤ **COUNCIL ANNUAL WORK PROGRAM ACTION AGENDA FOR 2015 – 2016**

- Policy Agenda for 2015 – 2016: A Top "10" list of Top and High Priority policy related actions for the Mayor and City Council to address during the next year
- Management Agenda for 2015 – 2016: A Top "10" List of Top and High Priority management administrative actions for the next year
- Major Projects for 2015 – 2016: A list of key projects to be completed or requiring significant work for the next year
- Action Outlines 2015 – 2016: For prioritized actions including steps, timeframe, responsible party/team
- Guidelines for Budget: review and service direction

➤ **MAKING THE STRATEGIC PLANNING PROCESS WORK FOR THE CITY OF ROUND ROCK**

Linking the Council's Annual Work Program to the process in the governance processes and For the City organization and Strategic Plan

- Progress Matrix or Status Reports
- Marketing the Plan to the Community

**EXHIBIT "A"**

- Incorporation into Policy Reports, Budget Plan Development, Program Development, Project Planning

➤ **FRAMEWORK FOR SUCCESSFUL LEADERSHIP AND EFFECTIVE GOVERNANCE (if needed)**

- Building the Mayor - City Council Team
- Governance Guide: Operating Protocol for Mayor and City Council
- Refinements in the Governance Process – Formal Meetings, Work/Study Session, Boards/Councils

## Program Outline for Each Year

### ***ACTIVITY 1: Strategic Planning Outline for the City of Round Rock***

The Consultant will meet with the City Manager and City Manager's Office to finalize purpose, work product, activities, and time frames.

### ***ACTIVITY 2: Mayor, City Council and City Manager Background Interviews***

The Consultant will interview the Mayor, each member of the City Council, and the City Manager. The purpose of each interview is to:

- Gain background on the City of Round Rock
- Review the City's performance for the past year: achievements, setbacks and actions to carry forward to the Council Annual Action Plan for 2015 – 2016
- Discuss for each of the twelve Strategic Goals: challenges and opportunities to achieve each goal and action ideas for 2015 – 2016
- Focus the top priorities for 2015 – 2016 by the Mayor and each Councilmember
- Identify topics that need strategic discussion during the Workshop
- Identify other topics for discussion during the Workshop
- Focus on key topics for the Workshop

During the interview, the questions are likely to explore the following information:

1. During the past year, what are the major successes for the City of Round Rock?
2. What did not get accomplished this past year or is in progress and needs to continue for the next year?
3. As you look to the future, what are the major challenges facing the City of Round Rock?
4. What are short-term actions that need to be taken to achieve the Vision 2030?
5. What do you believe are the most important 5-year goals for the City of Round Rock?
6. For each of the twelve strategic goals, during the next year, what are the specific major challenges/opportunities and actions?
7. What are your personal "Top Priorities" for the next year?

## EXHIBIT "A"

8. What suggestions do you have for the Mayor and City Council or staff to enhance their effectiveness?
9. What other topics do you feel need to be addressed during the workshop?

*Additional questions are likely to be added to this list based upon further discussion with the City Manager. These interviews will be either in person or by phone, and at the personal convenience of the interviewee.*

The Consultant will analyze the interview data and present a written summary to the City Manager, including integration to the City's Strategic Plan.

### ***ACTIVITY 3: Consultation and Planning with the City Manager and the City Manager's Office***

The interview summary will be reviewed by the City Manager and City Manager's Office. Ongoing planning with the City Manager and City Manager's Office will continue during the remainder of the activity.

### ***ACTIVITY 4: Preparation of Initial Leader's Guide 2015 – Working Document***

Each department will complete preparatory worksheets, which identify department's achievement, complete an environmental scan, focus major challenges, review actions in progress and identify action ideas as short term. These documents will be reviewed, included in the Leader's Guide 2015 – Working Document and incorporated into the Council Annual Action Plan for 2015 – 2016.

The Consultant will prepare an initial draft of the Leader's Guide 2015 – Working Document. The document will be modified during Activity 5.

### ***ACTIVITY 5: Leadership and Strategic Planning Session 1 for Management Team***

A one-day Leadership and Strategic Planning Workshop will be held. The purpose of this session is to:

- Provide background on Strategic Planning
- Review accomplishments from the past year and the status of the Council Annual Work Program 2014 – 2015
- Discussion on the Vision, Mission and Goals impact and the status of the Council Annual Work Program 2015 – 2016
- Identify specific topics for discussion during the Mayor and City Council Workshop

The specific agenda will be developed and submitted to the City Manager. The Workshop should be flexible, adjusting to your needs, and should be fun in order to maximize the benefits for the City of Round Rock

## **EXHIBIT "A"**

### ***ACTIVITY 6: Interview Analysis and Preparation of Leader's Guide 2015 Working Document***

The Consultant will revise the Leader's Guide 2015 – Working Document with:

- Performance Report 2014 – 2015
- Looking to the Future 2015 – 2016
- Council Annual Work Plan 2015 – 2016

The Leader's Guide 2015 – Working Document will be used and modified during the Mayor and City Council Workshops.

### ***ACTIVITY 7: Leadership and Strategic Planning Workshop for Mayor and City Council***

A one to two day Leadership and Strategic Planning Workshop will be conducted for the Mayor, City Council and City Manager. The specific agenda will be developed based upon interviews. A typical outline for a Leadership and Strategic Planning Workshop follows:

1. Round Rock – a Sustainable City
2. Strategic Planning for City of Round Rock
3. Performance Report 2014 – 2015
4. Looking to City of Round Rock's Future:
  - *Council Perspective*
  - *Management Perspective*
5. City of Round Rock's Vision 2030
6. Plan 2015 – 2021 with Goals, Measurable Objectives, Value to Citizens and Actions (short/long term)
7. Council Annual Action Plan
8. Making the Strategic Planning Process Work for City of Round Rock
9. Building Our Mayor – Council Team

### ***ACTIVITY 8: Follow-up Strategic Planning Session II for Management Team***

A one-day Workshop is suggested for the Management Team. This workshop will focus on:

- Developing an Action Outlines for Each Target on the Council Action 2015 – 2016
- Developing a process for monitoring short-term Actions
- Monthly reports to the Mayor and City Council
- Quarterly updates to the Mayor and City Council
- Exploring ways to work effectively with the Mayor and City Council – to help them to be successful

## **EXHIBIT "A"**



***ACTIVITY 9: Draft Reports for the Mayor, City Council and City Manager***

As a follow-up to the workshop, the following reports will be prepared for the Mayor, City Council and City Manager:

- Performance Report for 2014
- Strategic Plan 2015 – 2020 - 2030
- Executive Summary 2015 – 2020 – 2030
- Leader's Guide 2015 – Summary Report
- Action Agenda 2015 – 2016
- Policy Calendar 2015 – 2016

These reports become working documents for the next year.

**EXHIBIT "A"**

# *STRATEGIC FRAMEWORK BASIC ELEMENTS*

## **VISION**

**“What We Want to Become –  
Our Preferred Future as Defined in Value-Based Principles.”**

## **PLAN**

**“Our Road Map for 5 Years – How to Realize Our Vision with  
Achievable Goals Defined Through: Objectives, Meaning to  
Our Citizens, Challenges and Opportunities, Actions 2015 – 2016,  
Major Projects 2015 – 2016 and Actions on the Horizon.”**

## **EXECUTION**

**“Actions to Implement the Plan – A Work Program for Next Year  
with a “To Do” List for Mayor, City Council and Management –  
To be Completed with Accountability for the Results.”**

## **MISSION**

**“Purposes of City Government – Determined in Service Businesses  
Defined in: Operating Elements, Business Successes, Challenges  
and Opportunities and Service Improvements 2015 – 2016.”**

## **BELIEFS**

**“Our Core Beliefs Which are the Foundation for Our City  
Government – Creating a Corporate Culture of Action and  
Accountability, the Primary Value, As Defined in Performance  
Standards to Guide Behaviors and Actions.”**

**HOW WE CONDUCT OUR BUSINESS**

## **EXHIBIT "A"**

# Fee Estimate for Each Year

## Leadership and Strategic Planning

*City of Round Rock*

*March 2016*

### ESTIMATED BILLING TIME:

Number of days scheduled is flexible and is based on the needs of the City.

<b>ACTIVITY 1</b>	Strategic Planning Outline for the City of Round Rock _____	2.0 – 4.0 hours
<b>ACTIVITY 2</b>	Mayor, City Council and City Manager Background Interviews ____ (1 hour per person, in person or by phone, billed at actual time) (if phone interviews are missed, you are charged for the time)	10.0 – 14.0 hours
<b>ACTIVITY 3</b>	Consultation and Planning with the City Manager and the City Manager's Office _____	8.0 – 16.0 hours
<b>ACTIVITY 4</b>	Preparation of Initial Leader's Guide 2015 – Working Document _____	4.0 – 8.0 hours
<b>ACTIVITY 5</b>	Leadership & Strategic Planning Session 1 for Management Team _____ Preparation                      2 hours Session                              8 – 10 hours Summary Report                  2 hours	10.0 – 12.0 hours
<b>ACTIVITY 6</b>	Interview Analysis and Preparation of Leader's Guide 2015 – A Working Document _____	4.0 – 8.0 hours
<b>ACTIVITY 7</b>	Leadership & Strategic Planning Workshop for Mayor & City Council _____ Preparation                      2 – 4 hours Workshop                         12 – 16 hours	14.0 – 22.0 hours
<b>ACTIVITY 8</b>	Follow-up Strategic Planning Session II for Management Team _____ Preparation Workshop	8.0 – 12.0 hours
<b>ACTIVITY 9</b>	Draft Reports for the Mayor, City Council and City Manager_	8.0 hours
<b>Total Estimated Time</b> _____		68.0 – 104.0 hours

*Each year the dates will be changed to current set of dates.*

## EXHIBIT "A"

**CONSULTATION FEES:**

Individual consultation \_\_\_\_\_ \$ 225.00 per hour  
\_\_\_\_\_ \$1,800.00 per day on-site  
(8 hours)

The typical cost is \$15,300 - \$25,000 to completion + expenses + products.

**EXPENSES:** \_\_\_\_\_ Additional Costs

Including, but not limited to:

- *Airline Tickets*
- *Travel/Auto Expenses*
- *Telephone/Fax (billed at \$12.00/hr.)*
- *Assessment Instruments*
- *Accommodations and Meals*
- *Typing, Duplication, Binding, Shipping*
- *Products:*
  - *Strategic Plan (coil bound)*
  - *Executive Summary (booklet)*
  - *Leader's Guide Summary Report*
  - *Performance Report*

Additional discussions if beyond the scope of the proposal will be also charged at \$225/hour.

**EXHIBIT "A"**