

EXHIBIT

"A"

**CITY OF ROUND ROCK AGREEMENT FOR
FOR REPLACEMENT SEATING AT DELL DIAMOND
WITH
IRWIN SEATING COMPANY**

THE STATE OF TEXAS

CITY OF ROUND ROCK

COUNTY OF WILLIAMSON

COUNTY OF TRAVIS

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§

KNOW ALL BY THESE PRESENTS:

THAT THIS AGREEMENT for the purchase of replacement seating and installation services at Dell Diamond Baseball Stadium, and for related goods and services (referred to herein as the "Agreement"), is made and entered into on this the ____ day of the month of August, 2018 by and between the CITY OF ROUND ROCK, a Texas home-rule municipality, whose offices are located at 221 East Main Street, Round Rock, Texas 78664-5299 (referred to herein as the "City"), and IRWIN SEATING COMPANY, whose offices are located at 3251 Fruit Ridge Avenue, Grand Rapids, Michigan 49544 (referred to herein as "Vendor").

RECITALS:

WHEREAS, City desires to purchase certain goods and services, replacement seats and installation services at Dell Diamond Baseball Stadium, and City desires to procure same from Vendor; and

WHEREAS, City is a member of Buy Board Cooperative Purchasing Program ("Buy Board") and Vendor is an approved Buy Board vendor through Buy Board Contract #503-16; and

WHEREAS, City desires to purchase said goods and services from Vendor through Buy Board as set forth herein; and

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

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 follow:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Vendor whereby City is obligated to buy specified services and Vendor is obligated to provide said services. The Agreement includes Vendor's Proposal dated July 19, 2018 (attached as Exhibit "A").

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods** mean the specified supplies, materials, commodities, or equipment.

F. **Services** mean work performed to meet a demand or effort by Vendor to comply with promised delivery dates, specifications, and technical assistance specified.

2.01 EFFECTIVE DATE, TERM, PRICES FIRM

A. 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.

B. This Agreement shall terminate upon successful completion of services as described in Exhibit "A."

C. Prices shall be firm for the duration of this Agreement. No separate line item charges shall be permitted for invoicing purposes, including but not limited to equipment rental, demurrage, costs associated with obtaining permits, or any other extraneous charges.

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

3.01 CONTRACT DOCUMENTS AND EXHIBITS

The goods and services which are the subject matter of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the Contract Documents. Any inconsistencies or conflicts in the contract documents shall be resolved by giving preference to

the terms and conditions set forth in pages one (1) through nine (9) of this Agreement.

4.01 SCOPE OF WORK

Vendor shall satisfactorily complete all services described in Vendor's Proposal, Exhibit "A," attached hereto and incorporated herein.

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

Vendor shall satisfactorily provide all deliverables and services described in Exhibit "A" within the contract term specified. A change in the Scope of Services or any term of this Agreement, including bonding requirements, must be negotiated and agreed to in all relevant details, and must be embodied in a valid Supplemental Agreement as described herein.

5.01 CONTRACT AMOUNT

In consideration for the deliverables and services related to the deliverables, the City agrees to pay Vendor **One Million Three Hundred Two Thousand Seven Hundred Eighty-Eighty and 91/100 Dollars (\$1,302,788.91)** for the goods and services set forth in Exhibit "A."

6.01 INVOICES

All invoices shall include, at a minimum, the following information:

- A. Name and address of Vendor;
- B. Purchase Order Number;
- C. Description and quantity of items received or services provided; and
- D. Delivery or performance dates.

7.01 NON-APPROPRIATION AND FISCAL FUNDING

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

8.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Vendor will be made within thirty (30) days of the day on which City receives the performance, supplies, materials, equipment, and/or deliverables, or within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which City receives a correct invoice for the performance and/or deliverables or services, whichever is later. Vendor 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); however, this Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Vendor, a contractor, subcontractor or supplier about the goods delivered or the service performed that cause the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Vendor 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
- D. Invoices are not mailed to City in strict accordance with instructions, if any, on the purchase order or the Agreement or other such contractual agreement.

9.01 GRATUITIES AND BRIBES

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

10.01 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Vendor's charges.

11.01 ORDERS PLACED WITH ALTERNATE SERVICES PROVIDERS

If Vendor cannot provide the goods as specified, City reserves the right and option to obtain the products from another supplier or suppliers

12.01 CITY'S REPRESENTATIVE

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

Brian Stillman
Sports Facilities & Operations Manager
Sports Management and Tourism
221 East Main Street
Round Rock, Texas 78664
(512) 218-6607

13.01 INSURANCE

Vendor shall meet all City of Round Rock Insurance Requirements as set forth at: http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.201112.pdf.

14.01 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 as an anticipatory repudiation of this Agreement.

15.01 DEFAULT

If Vendor abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Vendor agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Vendor shall be declared in default of this Agreement if it does any of the following:

- A. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- B. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- C. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

16.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Vendor.

B. In the event of any default by Vendor, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Vendor.

C. Vendor has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City, or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Vendor, Vendor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Vendor shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Vendor that portion of the charges, if undisputed. The parties agree that Vendor is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

17.01 INDEMNIFICATION

Vendor shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Vendor, or Vendor's agents, employees or subcontractors, in the performance of Vendor's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Vendor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

18.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Vendor, its 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.

B. Vendor acknowledges and understands that City has adopted a Storm Water Management Program (SWMP) and an Illicit Discharge Ordinance, Sections 14-139 through 14-152 of the City's Code of Ordinances, to manage the quality of the discharges from its Municipal

Separate Storm Sewer System (MS4) and to be in compliance with the requirements of the Texas Commission on Environmental Quality (TCEQ) and the Texas Pollutant Discharge Elimination System (TPDES). The Vendor agrees to perform all operations on City-owned facilities in compliance with the City's Illicit Discharge Ordinance to minimize the release of pollutants into the MS4. The Vendor agrees to comply with of the City's stormwater control measures, good housekeeping practices and any facility specific stormwater management operating procedures specific to a certain City facility. In addition, the Vendor agrees to comply with any applicable TCEQ Total Maximum Daily Load (TMDL) Requirements and/or I-Plan requirements.

C. 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 and will not boycott Israel during the term of this contract. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not boycott Israel and will not boycott Israel during the term of this Agreement.

19.01 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 shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

20.01 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 the recipient's address as stated in this Agreement;
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 Vendor:

Irwin Seating Company
3251 Fruit Ridge Avenue
Grand Rapids, MI 49544

Notice to City:

**City Manager
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 herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

21.01 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 the State of Texas.

22.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Vendor and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

23.01 DISPUTE RESOLUTION

City and Vendor 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.

24.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or 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 or 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 section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

25.01 MISCELLANEOUS PROVISIONS

Standard of Care. Vendor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Vendor understands and agrees that time is of the essence and that any failure of Vendor to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Vendor shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Vendor's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Vendor 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 as defined herein. However, notice of such impediment or delay in performance must be timely given and all reasonable efforts undertaken to mitigate its effects.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, City and Vendor have executed this Agreement on the dates indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

Irwin Seating Company


By:  _____
Printed Name: Spence Benedict
Title: Director of Sales
Date Signed: 8/2/2018





Exhibit "A"

BuyBoard Contract 503-16

DATE: Thursday, July 19, 2018

TO: Mr. Brian Stillman
City of Round Rock

REFERENCE: Gene Kropff w/Dell Diamond Ballpark
Round Rock, TX



We are pleased to offer the following proposal for Irwin Seating Company products per the terms and conditions of BuyBoard Contract 503-16:

Type 1 Typical Non-Upholstered Chairs for HRP Sections as well as outfield sections 110, 111, 112, 113, 125, 126, 127, and 128. Rows 11 back in 114, 115, 116, 117, 118, 120, 121, 122, 123, 124

6,057 Irwin Seating Company Outdoor Ballpark Seating - Model 507.507.202.202 with the following components, options, accessories, and finishes:

No. 507 - non-upholstered blow molded polyethylene back with four slats

No. 507 - non-upholstered blow molded polyethylene seat with simulated slats.

No. 202 cast iron stadium standards. Floor or riser mounted as required on project.

No. 202 Two-legged stadium end standards at aisles.

5 1/4" round screen printed aluminum disc logo plates

Includes up to 4 different artwork designs (for project)

Integral cast iron armrests.

Integral cast iron aisle armrests

1 3/4" round row designation number plates.

2 3/4" round seat designation number plates

36 ADA transfer arm on cast iron.

Rear mounted cup holders, or armrest/wall mount in front rows

E-coat cast iron standards for outdoor use

Irwin standard color outdoor powder coat for metal components.

Irwin standard color outdoor plastic for seats, backs, and cup holders.

1% All stock components (seats, backs, standards, cup holders, and misc. hardware)

Hilti Stainless anchor

List Price: \$220.98 per chair, FOB Grand Rapids

Type 2 Typical Upholstered Seat Chairs for Rows 1-14 in Section 119 and Rows 1-10 in Sections 114 to 124

1,858 Irwin Seating Company Outdoor Ballpark Seating - Model 507.517.202.202 with the following components, options, accessories, upholstery and finishes:

No. 507 - non-upholstered blow molded polyethylene back with four slats

No. 517 - blow molded polyethylene seat with upholstered pad.

No. 202 cast iron stadium standards. Floor or riser mounted as required on project

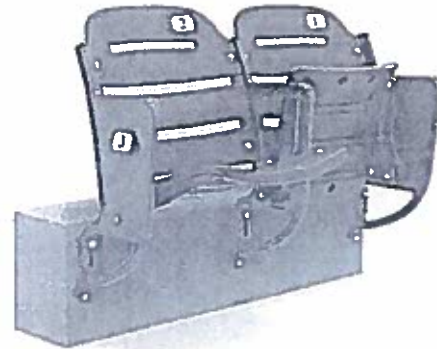
No. 202 Two-legged stadium end standards at aisles.

5 1/4" round screen printed aluminum disc logo plates.

Includes up to 4 different artwork designs (for project)

Integral cast iron armrests.

Integral cast iron aisle armrests.

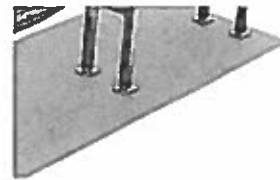


Model 507.507.202.202



Exhibit "A"

- 1 3/4" round row designation number plates
- 2 3/4" round seat designation number plates
- ADA transfer arm on cast iron.
- Rear mounted cup holders, or armrest/wall mount in front rows.
- E-coat cast iron standards for outdoor use.
- Irwin standard color outdoor powder coat for metal components.
- Irwin standard color outdoor plastic for seats, backs, and cup holders.
- CMI "O" vinyl, outdoor marine grade vinyl upholstery
- 1% Attic stock components (seats, backs, standards, cup holders)
- 5% Attic stock upholstered seat replacement covers.
- Tailored row covers for all upholstered chair rows.
- Hilti Stainless anchor



Model 507.517.202.202

List Price: \$365.98 per chair, FOB Grand Rapids

Type 3 Suite Seating and Intel Club Seating

536 Irwin Seating Company Outdoor Ballpark Seating - Model 507.12.35.45 with the following components, options, accessories, upholstery and finishes:

- No. 507 - non-upholstered blow molded polyethylene back with four slats
- No. 12 Outdoor - upholstered seat with ergonomic substrate and glass filled polypropylene seat structure, treated for outdoor use.
- No. 45 Stadium cast iron standards. Floor or riser mounted as required on project
- No. 35 Stadium end standards at aisles.
- 5 1/4" round screen printed aluminum disc logo plates.
- Includes up to 4 different artwork designs (for project)
- Integral cast iron armrests
- Aluminum oval row designation number plates.
- Aluminum seat designation number plates.
- 62 Chairs mounted on movable bases
- 40 Intermediate tables between chairs
- Rear mounted cup holders, or armrest/wall mount if required.
- E-coat cast iron standards for outdoor use.
- Irwin standard color outdoor powder coat for metal components.
- Irwin standard color outdoor plastic for seats, backs, and cup holders.
- CMI "O" vinyl, outdoor marine grade vinyl upholstery
- 1% Attic stock components (seats, backs, standards, cup holders, misc. hardware)
- 5% Attic stock upholstered seat replacement covers
- Tailored row covers for all upholstered chair rows.
- Hilti Stainless anchor



Model 507.12.35.45 (shown with optional aisle logo disc)

List Price: \$388.05 Net per chair, FOB Grand Rapids
PRICING BASED ON SHIPMENT IN 2018

Pricing Summary:			
QTY	DESCRIPTION	NET	EXTENDED
6057	Type 1 chairs, list price	\$ 220.98	\$ 1,338,475.86
1868	Type 2 chairs, list price	\$ 365.98	\$ 683,650.64
536	Type 3 chairs, list price	\$ 388.05	\$ 207,994.80
	Total List Price		\$ 2,230,121.30
1	Buy Board Contract 503-16 Discount (45% discount)		\$ (1,003,554.59)
1	Additional discount based on above scope of work		\$ (136,148.91)
	Net FOB Destination (freight included) contract price:		\$ 1,090,417.81
On Site Labor:			
QTY	DESCRIPTION	NET	EXTENDED
8461	Removal/Disposal of Existing - Break off existing anchors	\$ 7.95	\$ 67,284.95
8461	Installation of New Seating per above	\$ 17.15	\$ 145,106.15

Exhibit "A"

Total - Delivered and Installed Project Cost:

\$ 1,302,788.91

TERMS AND CONDITIONS

- Payment Terms are to be approved by Irwin Seating Company

Unless otherwise noted:

- This proposal is subject to Irwin Seating Company Standard Terms and Conditions.
- This proposal is based upon the use of standard Irwin Seating Company products, manufactured using standard Irwin Seating Company methods.
- This proposal is based upon the use of the referenced fabric, and standard paint, plastic, stain and laminate selections. Options or special details are only provided to the extent specifically listed in this proposal. If any of the above specifications change, alternative pricing must be quoted.
- Base pricing is F.O.B. factory and does not include freight, installation, sales tax, and performance and payment bonds.
- If applicable, sales tax will be charged based on the tax rate in effect at the time of billing. For tax exempt orders, please provide Irwin Seating Company a copy of your tax exempt certificate along with your purchase order for review and approval.
- Pricing is based on shipment in the 2019 calendar year.
- Adherence to project milestones as outlined in the critical date schedule is required to meet requested shipment dates.
- Our quotation is based upon the following concrete specifications: (if applicable)
 - 1) Floor mounted chairs must be 3" thick free from obstructions for top 1-1/2".
 - 2) Riser mounted chairs must be 4" thick free from obstructions for 2-1/2" from riser face.
 - 3) Riser to be plumb + or - 1/8".
 - 4) Normal weight concrete to be compressive strength 3000 PSI (structural concrete).
 - 5) Structural light weight concrete is acceptable if it is 2500 PSI minimum and weights 80-115 pounds per cubic foot.
- Pricing is valid for 90 days from date of issue. If purchase order is not received within 90 days of this quote date Irwin Seating Company reserves the right to reissue the quotation with adjusted pricing.

If you have any questions, please contact your Irwin Seating Company Project Administrator for clarification.

IRWIN SEATING COMPANY

Clark Dudley
Regional Sales Manager