

EXHIBIT

"A"

**CITY OF ROUND ROCK AGREEMENT
FOR PURCHASE OF GENERAL BUILDING CONSTRUCTION
TRADES SERVICES (PAINTING TRADE) FROM
JNA PAINTING AND CONTRACTING COMPANY, INC.**

THE STATE OF TEXAS

CITY OF ROUND ROCK

**COUNTY OF WILLIAMSON
COUNTY OF TRAVIS**

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KNOW ALL BY THESE PRESENTS:

This Agreement for on-site services in the nature of general building construction trades services (painting) to be performed on and in various commercial and residential City-owned or City-occupied buildings on a directed as-needed basis, 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 _____, 2018, by and between the CITY OF ROUND ROCK, TEXAS, a home-rule municipality whose offices are located at 221 East Main Street, Round Rock, Texas 78664, referred to herein as the "City," and JNA PAINTING AND CONTRACTING COMPANY, INC., whose address is 17819 Davenport Road #240, Dallas, Texas 75252, referred to herein as "JNA Painting." This Agreement supersedes and replaces any previous agreements between the named parties, whether oral or written, and whether or not established by custom and practice.

RECITALS:

WHEREAS, City desires to purchase certain on-site services in the nature of general building construction trades services (painting) to be performed on and in various commercial and residential City-owned or City-occupied buildings on a directed as-needed basis, and associated goods and services, and City desires to purchase same from JNA Painting; and

WHEREAS, City has issued its "Invitation for Bid" for the provision of said goods, and City has selected the bid submitted by JNA Painting; 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 receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and JNA Painting whereby City is obligated to buy specified services and JNA Painting is obligated to sell same. The Agreement includes the following: (a) City's Invitation for Bid designated Solicitation

Number 18-012 (b) JNA Painting's Response to IFB; (c) contract award; and (d) any exhibits, addenda, and/or amendments thereto. Any inconsistencies or conflicts in the contract documents shall be resolved by giving preference in the following order:

- (1) This Agreement;
- (2) JNA Painting's Response to IFB;
- (3) City's Invitation for Bids, exhibits, and attachments.

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 and services** mean the specified services, supplies, materials, commodities, or equipment.

F. **JNA Painting** means JNA Painting and Contracting Company, Inc., or any of its successors or assigns.

2.01 EFFECTIVE DATE, INITIAL TERM, AND ALLOWABLE RENEWALS

A. This Agreement shall be effective on the date it has been signed by both parties hereto, and shall remain in full force and effect unless and until it expires by operation of the term stated herein, or until terminated or extended as provided herein.

B. The term of this Agreement shall be for sixty (60) months from the effective date hereof.

C. Prices shall be firm for the duration of this Agreement and for any renewal periods. 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. City may permit "unit price" adjustments upwards only in accordance with Part III, Item 6 of City's Invitation for Bid included as a part of Exhibit "A," attached hereto and incorporated herein by reference for all purposes. Any price increase shall be requested by JNA Painting in writing and accompanied by the appropriate documentation to justify the requested increase. JNA Painting may offer price decreases at any time and in excess of any allowable percentage changes.

D. City reserves the right to review the relationship 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

City selected JNA Painting to supply the services as outlined in IFB Solicitation Number 18-012; and Response to IFB submitted by JNA Painting, all as specified in Exhibit "A." The intent of these documents is to formulate an Agreement listing the responsibilities of both parties as outlined in the IFB and as offered by JNA Painting in its Response to the IFB.

The services which are the subject matter of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the total Agreement and they are fully a part of this Agreement as if repeated herein in full.

4.01 DUAL PROVIDERS OF SERVICES

The parties specifically acknowledge and agree that JNA Painting shall be considered as one of two (2) providers ("dual providers") of the specified goods and services (painting services). JNA Painting specifically further acknowledges and agrees that this Agreement is not an exclusive agreement. City may, in its sole and unfettered discretion, elect to use either of the two providers in whatever order it deems most advantageous to City's purposes. City may, in its sole and unfettered discretion, elect to use any other providers. City is not obligated to use or purchase any estimated annual quantity of goods, and no guarantee is made of any minimum or maximum purchase.

5.01 ITEMS AWARDED

Only if, as, and when needed by City, painting services are awarded to JNA Painting in accordance with bid items shown on Attachment A – Bid Sheet of Exhibit "A," as follows:

Painter

Regular Hourly Labor Rate	\$38.64 (no minimum hours)
Overtime Hourly Labor Rate	\$38.64 (no minimum hours)
Painter Helper Hourly Labor Rate	\$20.16 (no minimum hours)
Overtime Painter Helper Hourly Labor Rate	\$20.16 (no minimum hours)

Materials (if on Cost-Plus basis)

Percentage Markup	1%
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6.01 COSTS

A. Only if, as, and when needed by City, the bid costs listed on Attachment A – Bid Sheet of Exhibit "A," which are specifically relevant to the referenced bid items, shall be the basis of any charges collected by JNA Painting.

B. JNA Painting specifically acknowledges and agrees that City is not obligated to use any estimated annual quantity of services, and City may not expend in excess of **Seventy-Five Thousand and No/100 Dollars (\$75,000.00) per year** for JNA Painting's services combined with the dual provider's services for a total not-to-exceed amount of **Three Hundred Seventy-Five Thousand and No/100 Dollars (\$375,000.00)** for the term of this Agreement.

7.01 INVOICES

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

- A. Name and address of JNA Painting;
- B. Purchase Order Number;
- C. Description and quantity of items received; and
- D. Delivery dates.

8.01 INTERLOCAL COOPERATIVE CONTRACTING / PURCHASING

Authority for local governments to contract with one another to perform certain governmental functions and services, including but not limited to purchasing functions, is granted under Government Code, Title 7, Chapter 791, Interlocal Cooperation Contracts, Subchapter B and Subchapter C, and Local Government Code, Title 8, Chapter 271, Subchapter F, Section 271.101 and Section 271.102.

Other governmental entities within the State of Texas may be extended the opportunity to purchase off of the City of Round Rock's bid, with the consent and agreement of the successful vendor(s) and Round Rock. Such agreement shall be conclusively inferred for the vendor from lack of exception to this clause in the vendor's response. However, all parties hereby expressly agree that the City of Round Rock is not an agent of, partner to, or representative of those outside agencies or entities and that the City of Round Rock is not obligated or liable for any action or debts that may arise out of such independently-negotiated "piggyback" procurements.

9.01 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 JNA Painting a written notice of termination at the end of its then-current fiscal year.

14.01 INSURANCE

JNA Painting shall meet all requirements as stated in Part II, Section 2 of the attached IFB Solicitation Number 18-012.

15.01 CITY'S REPRESENTATIVE

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

Pete Dominguez, Facilities Manager
City of Round Rock
212 Commerce Cove
Round Rock, TX 78664
512-341-3144
pdominguez@roundrocktexas.gov

16.01 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.

17.01 DEFAULT

If JNA Painting abandons or defaults hereunder and is a cause of City purchasing the specified services elsewhere, JNA Painting 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.

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

- A. Fails to make any payment in full when due;
- B. Fails to fully, timely and faithfully perform any of its material obligations hereunder;
- C. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- D. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

10.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by City to JNA Painting will be made within thirty (30) days of the date City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date City receives a correct invoice for the goods or services, whichever is later. JNA Painting 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 City in the event:

A. There is a bona fide dispute between City and JNA Painting, a contractor, subcontractor, or supplier about the goods delivered or the service performed that causes the payment to be late; or

B. There is a bona fide dispute between JNA Painting 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 City from making a timely payment with federal funds; or

D. The invoice is not mailed to City in strict accordance with any instruction on the purchase order relating to the payment.

11.01 GRATUITIES AND BRIBES

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

12.01 TAXES

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

13.01 ORDERS PLACED WITH ALTERNATE VENDORS

If JNA Painting cannot provide the services as specified, City reserves the right and option to obtain same from another source or supplier(s).

Systems (TPDES). JNA 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. JNA Painting agrees to comply with 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, JNA Painting 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 and 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 JNA Painting verifies JNA Painting does not boycott Israel and will not boycott Israel during the term of this Agreement.

21.01 ASSIGNMENT AND DELEGATION

The parties 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.

22.01 NOTICES

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

A. When delivered personally to recipient's address as stated in this Agreement; or

B. 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 JNA Painting:

JNA Painting Design and Contracting Company, Inc.
17819 Davenport Road #240
Dallas, TX 75252

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

AND TO: Stephen 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 JNA Painting.

18.01 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 JNA Painting.

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

C. JNA Painting has the right to terminate this Agreement only for cause, in the event of material and substantial breach by City, or by written mutual agreement to terminate.

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 JNA Painting, JNA Painting shall discontinue all services in connection with 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 termination notice, JNA Painting shall submit a statement showing in detail the goods and services satisfactorily performed hereunder to the date of termination. City shall then pay JNA Painting that portion of the charges, if undisputed. The parties agree that JNA Painting is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

19.01 INDEMNIFICATION

JNA Painting 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 JNA Painting, or JNA Painting's agents, employees or subcontractors, in the performance of JNA Painting'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 JNA Painting (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

20.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. JNA Painting, its agents, employees and subcontractors shall use best efforts to comply with all federal and state laws, City's Charter and Ordinances, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. JNA Painting 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

23.01 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.

24.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between JNA Painting 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.

25.01 DISPUTE RESOLUTION

City and JNA Painting 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.

26.01 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 such 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 to be void.

27.01 MISCELLANEOUS PROVISIONS

Standard of Care. JNA Painting 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. JNA Painting understands and agrees that time is of the essence and that any failure of JNA Painting to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. JNA Painting 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 JNA Painting'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 JNA Painting 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.

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

City of Round Rock, Texas

JNA Painting and Contracting Company, Inc.

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

By:  _____
Printed Name: NICK ANASTASIS
Title: PRESIDENT
Date Signed: 8-1-18

For City, Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney