

**SMALL A/E
AGREEMENT
for
Architect/Engineer Consultant Services**

This AGREEMENT is between the Town of Addison, Texas ("CITY"), acting through its duly authorized City Manager or designee ("Deputy Assistant Manager"), and **R. H. Shackelford, Inc.**, a Texas corporation ("CONSULTANT"), acting through its duly authorized representative who is **Kent Power, P.E., Vice President**, which agree as follows:

1. **DECLARATIONS.** CITY desires to engage "CONSULTANT" to provide services in connection with CITY's project, described as follows: "**Project Management**". CONSULTANT desires to provide such Project Management services to the CITY.

2. **SCOPE OF WORK.** "CONSULTANT" shall, upon the CITY's request, provide services for the PROJECT in accordance with the accompanying Letter, Scope of Services, and Fee attached as "Exhibit A" ("**Services**"). The Services include and encompass, among other things, supervision of the engineering construction of the various CITY projects for which CONSULTANT is providing project management services.

CONSULTANT warrants and represents that CONSULTANT has the skills, qualifications, expertise, and experience necessary to perform the Services described herein with a high degree of quality and responsiveness. CONSULTANT warrants and represents that CONSULTANT is licensed, permitted, or otherwise authorized by Texas law, as may be necessary, to practice and perform the Services described herein and will at all times while this Agreement is in effect be so licensed or otherwise authorized. Neither CITY's review, approval or acceptance of, nor payment for, any of the Services provided under this Agreement shall be construed to operate as a waiver of any rights or remedies of the CITY under this Agreement or of any claim or cause of action that the CITY has or may have arising out of CONSULTANT's performance of this Agreement, and CONSULTANT shall be and remain liable to the CITY for all claims, damages and injuries caused by or resulting from the Services under or in connection with this Agreement.

Notwithstanding anything herein to the contrary, CONSULTANT and the CITY acknowledge that the CITY is entering into this Agreement in reliance on CONSULTANT's professional abilities with respect to performing its Services set forth herein. CONSULTANT agrees to use its professional skill, judgment and abilities in the performance of its Services hereunder, and CONSULTANT shall be responsible, to the level of competency presently maintained by other project managers in the same type of work in Dallas County, Texas, for the professional and technical soundness, accuracy, and adequacy of all of its Services under this Agreement.

CONSULTANT shall use its best efforts to ensure that the work of each project as described in the construction contract and related documents applicable to the project to be performed under the construction contract and related documents is completed in a timely manner and in accordance with the applicable construction contract documents, plans, standards, specifications, and other materials and information related thereto. CONSULTANT shall coordinate the construction as a construction and project manager, including confirming that the Design Professional has observed and reviewed the work of the contractor, to guard the CITY against defects and deficiencies in the

work without assuming responsibility for the means and methods used by the Contractor. CONSULTANT shall promptly notify the CITY of any defects or deficiencies in the work if the same are observed or detected by CONSULTANT or otherwise brought to CONSULTANT's attention.

3. **FEE.** The "CITY" agrees to pay the "CONSULTANT" for services provided in accordance with Exhibit "A", Scope of Services, and Fee under this AGREEMENT, a total fee not to exceed **\$48,566.88, Forty Eight Thousand Five Hundred Sixty Six Dollars and Eighty Eight Cents.**

Payment of the said amount shall be in accordance with the following: No later than the 10th day of each calendar month, CONSULTANT shall submit to the CITY an invoice for the services performed by CONSULTANT during the immediately preceding calendar month. Each invoice shall (i) identify each of CONSULTANT's employees that provided services during the period of the invoice, (ii) the hourly rate for each such person (which rate shall be the rate for that person identified in the document submitted by CONSULTANT to the CITY and entitled "RFQ 11-04 Program/Project Management Professional Services, Price/Cost Schedule" (the "**Price/Cost Schedule**")), (iii) a description of the services performed, and (iv) the total amount of the invoice. It is anticipated that each invoice will reflect approximately the number of hours for each month and for each employee as set forth in the Price/Cost Schedule (and in any event, the total amount to be paid CONSULTANT for the services provided pursuant to this Agreement shall not exceed the amount set forth above). Upon the CITY's receipt of the invoice, the CITY will review the same and, if the invoice has been submitted in accordance with the provisions hereof and if the services have been properly performed and are not in dispute, the CITY shall pay the invoice within thirty (30) days following the CITY's receipt of the invoice.

Notwithstanding the foregoing or any other provision of this Agreement, the CITY shall not be obligated to make payment to the CONSULTANT hereunder if:

- (a) The CONSULTANT is in default of any of its obligations under this Agreement (and payment may be withheld to the extent of any such default);
- (b) Any part of such payment is attributable to any services of the CONSULTANT which are not performed in accordance with this Agreement;
- (c) The CONSULTANT has failed to make payment promptly to consultants or other third parties used by the CONSULTANT in connection with the CONSULTANT's Services hereunder for which the CITY has made payment to the CONSULTANT; or
- (d) If the CITY, in its good faith judgment and after consultation with the CONSULTANT, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services hereunder, no additional payments will be due the CONSULTANT hereunder unless and until the CONSULTANT performs a sufficient portion of the services so that such portion of the compensation remaining unpaid is determined by the CITY to be sufficient to complete the services.

4. **CERTAIN PROVISIONS REGARDING THE SERVICES.** The provision of the Services by CONSULTANT shall be in accordance with the following:

(a) CONSULTANT will inspect the work (“**work**”) of the construction contractor or contractors (“**contractor**”) for each project (“**project**”) for which CONSULTANT is providing project management services.

(b) CONSULTANT will perform and provide the Services in an efficient and professional manner, and at a level of competency consistent and in accordance with the commercially accepted best practices and industry standards in the Dallas, Texas metropolitan area for project management and engineering review services at the time such Services are performed. CONSULTANT’s Services shall be performed and provided in accordance and compliance with all applicable state, federal, and local laws, ordinances, codes, rules, and regulations relating to the same.

(c) The CONSULTANT shall expeditiously review design documents during their development or revision and advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of project delivery. The CONSULTANT shall keep the CITY informed of cost implications of their design concepts, provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.

(d) The CONSULTANT shall consult with the CITY and the design professional (“**Design Professional**,” e.g., architect or engineer who prepared the architectural or engineering plans for the project) regarding the project construction contract and related documents and make recommendations whenever design details adversely affect constructability, cost or schedules.

(e) Consultant shall review the contractor’s safety control program and implementation thereof to ensure that the same are in compliance with law and to ensure public safety with vehicular and pedestrian traffic and site cleanup. This will include review of suitable temporary structures as required by law and to ensure sufficient access and lighting for hydrants and other similar places at all times.

(f) The CONSULTANT shall assist the CITY in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for a project.

(g) The CONSULTANT shall obtain insurance certificates, bonds and any other relevant documents from the contractor and Design Professionals and required building permits and special permits for permanent improvements. The CONSULTANT shall verify that the CITY has paid applicable fees and assessments. The CONSULTANT shall assist the CITY in connection with the CITY’s responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the construction of any project improvements.

(h) The CONSULTANT shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the contractor and with those of the CONSULTANT, the CITY, and the Design Professional to endeavor to manage the project in accordance with the latest approved estimate of construction costs, any project schedule (approved

by the CITY), and the project construction contract and related documents.

(i) The CONSULTANT shall schedule and conduct meetings to discuss such matters as procedures, progress and scheduling. The CONSULTANT shall review the pre-construction conference minutes for the entire construction team to establish job site practices and guidelines, including, but not limited to and as applicable, establishing job site work rules; safety and security procedures; developing a detailed phasing and relocation strategy; establishing traffic flow patterns, including planning the means of egress, traffic control and work hours; planning storage and staging areas, including equipment placement, job office location, and utility availability.

(j) The CONSULTANT shall review the construction schedule(s) (if any) provided by the contractor, to ensure they incorporates the activities of the contractor on the project, including activity sequences and durations, allocation of labor and materials, processing of shop drawings, product data and samples, and delivery of products requiring long lead time and procurement. The project construction schedule shall include the CITY's occupancy requirements showing portions of the project having occupancy priority. The CONSULTANT shall coordinate updates to the project construction schedule with revisions to the contractor's project construction schedule as required to show current conditions. If an update indicates that the previously approved project construction schedule may not be met, the CONSULTANT shall recommend corrective action to the CITY.

(k) Consistent with the various bidding documents, and utilizing information from the contractor, the CONSULTANT shall coordinate the sequence of construction and assignment of space in areas where the contractor is performing work. The CONSULTANT shall ensure proper provisions for safety, temporary protection, pedestrian flow and ongoing building use. The CONSULTANT shall oversee scheduling and expediting, quality assurance, work schedule management, communications among trade contractors and consultants, document control and contract compliance, and shall perform periodic project, job and work inspection and observation (and more often as the CITY may request).

(l) The CONSULTANT shall use its best efforts to obtain prompt and satisfactory performance from the contractor and subcontractors. The CONSULTANT shall require each contractor to perform and complete its respective portion of the work in accordance with the contract documents pertaining to such contractor. The CONSULTANT shall recommend courses of action to the CITY when requirements of the construction contract are not being fulfilled. The CONSULTANT shall ensure the contractor has arranged for all work, labor, services, materials, supplies, and equipment necessary for the execution and completion of the work.

(m) The CONSULTANT shall provide regular monitoring of the costs set forth in the construction contract, showing actual costs for activities in progress and estimates for uncompleted tasks. The CONSULTANT shall identify variances between actual and budgeted costs (that is, costs that comprise the then existing costs set forth in the construction contract), and advise the CITY whenever projected costs are likely to exceed such budgeted costs. At least once each month, the CONSULTANT shall review the contractor's pay estimate and prepare and distribute a letter recommending payment and indicating potential overrun and critical project cost reports during the construction of each project. The letter shall specify actual project and construction costs compared to each project and construction budget.

(n) The CONSULTANT shall maintain accounting records on authorized work

performed under unit costs, additional work performed on the basis of actual costs of labor and materials, and other work requiring accounting records.

(o) The CONSULTANT shall develop and implement procedures for the review and processing of applications by contractor for progress and final payments in accordance with the CITY's payment application procedures.

(p) Based on the CONSULTANT's observations and evaluations of each contractor's application for payment, the CONSULTANT shall review and approve each such application and determine whether the amount requested reflects the progress of the contractor's work. The CONSULTANT shall make appropriate adjustment to each payment application and shall prepare and forward to the CITY a progress payment report. The report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owned for the current period. Included in this report shall be a certificate of payment that shall be signed by the CONSULTANT and delivered to the CITY for the CITY's approval and payment.

(q) The CONSULTANT shall prepare a project application for payment based on the contractor's certificates for payment.

(r) CONSULTANT's certification shall be by affidavit sworn to by the appropriate official of CONSULTANT authorized to submit the same, and shall certify that the estimate of work completed for the relevant period is true and correct to the best of CONSULTANT's information and belief, has been measured and verified in accordance with the applicable construction contract documents, and that all construction contract preconditions to payment have been met. If not previously provided to the CITY, copies of all material testing results (if applicable and available) shall be furnished with the certification.

The CONSULTANT's approval of payment shall constitute a representation to the CITY, based on the CONSULTANT's determinations, inspections and observations at the project site and on the data comprising the contractor's applications for payment, that, to the best of the CONSULTANT's knowledge, information and belief, the work has progressed to the point indicated and the quality of the work is in accordance with the construction contract and related documents. The forgoing representations are subject to an evaluation of the work for conformance with the Construction Contract and related documents upon substantial completion, to results of subsequent tests and inspections, to minor deviations from the construction contract and related documents correctable prior to completion and to specific qualifications expressed by the CONSULTANT. The issuance of a certificate for payment shall further constitute a representation that the contractor is entitled to payment in the amount certified.

(s) The CONSULTANT shall review the safety programs developed by each contractor (and any subcontractors) for purposes of coordinating the safety programs with those of any other contractors. The CONSULTANT's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the contractor, subcontractors, agents or employees of the contractor or subcontractors, or any other persons performing portions of the work and not directly employed by or on behalf of, or under contract by or on behalf of, the CONSULTANT.

The CONSULTANT shall, or shall cause contractors to, take all precautionary measures as

required by the CITY and all other governmental authorities to prevent and correct hazardous conditions, and shall conduct all operations with due regard for the avoidance of hazardous conditions.

The CONSULTANT shall plan all work to minimize personal injury, property damage and loss of productive time, and shall maintain a system of prompt detection and correction of unsafe practices and conditions. The CONSULTANT shall furnish and maintain all necessary first aid equipment in a special location on each project site. The CONSULTANT shall investigate all accidents promptly to determine cause and to take necessary corrective action, and shall file required reports in connection therewith.

The CONSULTANT shall monitor contractor's activities to ensure contractor is adequately protecting existing facilities and adjacent property. Any portion of the work and any existing improvements or appurtenances liable to damage shall be properly protected.

(t) The CONSULTANT shall determine that the work of the Contractor is being performed in accordance with the requirements of the applicable project construction contract, endeavoring to guard the CITY against defects and deficiencies in the work. As appropriate, the CONSULTANT shall have authority, upon written authorization from the CITY, to require additional inspection or testing of the work in accordance with the provisions of the Construction Contract, whether or not such work is fabricated, installed or completed. The CONSULTANT, in consultation with the Design Professional and the CITY, may reject work which does not conform to the requirements of the contract. The CONSULTANT agrees to cause to be performed any work and furnish and install any materials and equipment which CONSULTANT deems reasonably necessary during an emergency endangering life or property; the CONSULTANT shall notify the CITY of the emergency as soon as practicable but shall not wait for instruction before proceeding unless the cost to be incurred by reason thereof shall exceed \$5,000.00.

(u) The CONSTRUCTION MANAGER shall schedule and coordinate the sequence of construction in accordance with the Construction Contract and the latest approved project construction schedule.

(v) With respect to each contractor's own work, the CONSTRUCTION MANAGER shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of each contractor, since these are solely the contractor's responsibility. The CONSTRUCTION MANAGER shall determine that the contractor carries out its work in accordance with the terms and conditions of the construction contract.

(w) The CONSULTANT shall transmit to the Design Professional requests for interpretations of the meaning and intent of the construction contract drawings and specifications, and assist in the resolution of questions that may arise.

(x) The CONSULTANT shall review requests for changes, assist in negotiating contractor' proposals, submit recommendations to the Design Professional and the CITY, and, if they are accepted, prepare change orders and construction change directives which incorporate the Design Professional's or other modifications to the construction contract and related documents, and submit the same to the CITY for review and approval. At least once each month during the

construction of each project, the CONSULTANT shall prepare and distribute to the CITY and Design Professional change order reports.

All change orders with respect to a construction contract and the construction of the applicable improvements shall be processed and approved by the City in accordance with the City's procedure for the review and approval thereof. In the event of a change order which increases the cost of construction work for the construction of the improvements, there shall be withheld from each payment of an invoice, pay request or draw in connection with that change order the retainage required to be withheld under the construction contract,.

The CITY, from time to time, has and reserves the right to, among other things, order (in writing) changes in the work, including additions, deletions, and modifications in the work; work which must be performed in respect of unforeseen conditions; changes in the intensity and pace of the work (including suspensions of the work or any portion thereof); and uncovering and covering of a portion of the work, if such portion, upon uncovering, is found to be acceptable.

(y) The CONSULTANT shall assist the Design Professional in the review, evaluation and documentation of any claims.

(z) The CONSULTANT shall receive certificates of insurance from the contractor and forward them to the CITY, and shall assist the CITY in evaluating the same.

(aa) In collaboration with the Design Professional, the CONSULTANT shall establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples, proposed substitutions, design modification, and other submittals. The CONSULTANT shall review all shop drawings, product data, samples, proposed substitutions, design modifications, and other submittals from the contractor for general conformance with the contract documents and make any recommendations regarding the same. If any such submittal is deemed to be in such general conformance, the CONSULTANT shall promptly forward it to the Design Professional and the CITY; if any such submission is deemed to not be in such general conformance, it shall be returned to the applicable contractor for correction and resubmittal to CONSULTANT. The CONSULTANT shall coordinate submittals with information contained in related documents and transmit to the Design Professional those which have been approved by the CONSULTANT. The CONSULTANT's actions shall be taken with such reasonable promptness as to cause no delay in the construction work or in the activities of the CITY or contractor.

(bb) The CONSULTANT shall record the progress of each project on a weekly basis. The CONSULTANT shall submit written progress reports to the CITY including information on each contractor and each contractor's work, as well as the entire project, showing percentages of completion. The submittal of this report shall coincide with the submittal of the CONSULTANT's invoice for professional services. The CONSULTANT shall review, and submit to the CITY, the contractor's daily log containing a record of weather, each contractor's work on the site, number of workers, identification of equipment, work accomplished, problems encountered, other similar relevant information pertaining to the construction of the applicable improvements, and other information as the CITY may require. The CONSULTANT shall maintain a log for those days physically present on the site.

(cc) The CONSULTANT shall ensure the contractor maintains at a project site for the

CITY one record copy of the construction contract and related documents, and all other contracts, drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction which are related to the project and/or the construction contract, and in addition, approved shop drawings, product data, samples and similar required submittals. .

(dd) The CONSULTANT shall verify that the contractor arranges for the delivery, storage, protection and security of materials, systems and equipment that are a part of the project until such items are incorporated into the project. In addition, the protection of and security for such materials, systems and equipment after such delivery to the project site and until such items are incorporated into the project is the contractor's responsibility.

(ee) With the CITY's personnel and the Design Professional, the CONSULTANT shall observe the contractors' checkout of utilities, operational systems and equipment for readiness and assist in their initial start-up and testing. The CONSULTANT shall arrange, with the CITY's approval and consent, for the appropriate contractors to assist in training the CITY's personnel, as needed, to operate and maintain all systems and equipment, and shall monitor, as necessary, this training.

With the Design Professional and the CITY's personnel, the CONSULTANT shall observe the contractor's final testing and start-up of utilities, operational systems and equipment.

(ff) When the CONSULTANT considers the contractor's work and services or a designated portion thereof substantially complete, the CONSULTANT shall, jointly with the contractor, prepare for the CITY and the Design Professional a list of incomplete or unsatisfactory items and a schedule for their completion. The CONSULTANT shall assist the CITY and the Design Professional in determining whether the work or designated portion thereof is substantially complete.

(gg) The CONSULTANT shall coordinate and monitor the correction and completion of the work by the contractor. Following issuance of a certificate of substantial completion of the work or a designated portion thereof, the CONSULTANT shall evaluate the completion of the work of the contractor and make recommendations to the CITY and the Design Professional when work is ready for final inspection. After substantial completion of the work has been achieved, the CONSULTANT shall coordinate the correction and completion of the work remaining to be completed. The CONSULTANT shall evaluate the completion of the work of the contractors, and assist the Design Professional and the CITY in conducting final review and observation.

(hh) The CONSULTANT shall secure from the contractor(s) and transmit to the Design Professional, or to such other appropriate person as CITY may direct, all required guarantees, lien waivers, releases, bonds, affidavits, warranties and similar submittals required by the construction contract for delivery to the CITY and deliver all keys, manuals, record drawings and maintenance stocks to the CITY. The CONSULTANT shall forward to the Design Professional a final project application for payment upon compliance with the requirements of the construction contract and related documents.

(ii) The CONSULTANT agrees to exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be

satisfactory to the CITY. The CONSULTANT agrees to keep full and detailed project books and records showing the charges billed to the CITY for performance of the work. Such project books and records shall be open for inspection by the CITY and its authorized representatives upon reasonable notice to the CONSULTANT and at reasonable hours at the CONSULTANT's office, and shall be retained by CONSULTANT for a period of three years after the work has been completed.

(jj) All reports, documents and materials prepared by CONSULTANT under this Agreement shall be the sole property of the CITY. CONSULTANT may retain a copy of such reports, documents, and materials.

5. **INSURANCE.** At all times in connection with this Agreement, CONSULTANT shall purchase and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

(i) Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate;

(ii) Commercial general liability insurance at minimum combined single limits of \$1,000,000.00 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate) and contractual liability (covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement); and

(iii) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

B. With reference to the foregoing insurance requirement, CONSULTANT shall specifically endorse applicable insurance policies as follows:

(i) The Town of Addison shall be named as an additional insured with respect to General Liability and Automobile Liability.

(ii) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.

(iii) A waiver of subrogation in favor of the Town of Addison, Texas, its officers, employees, and agents shall be contained in the Workers Compensation and all liability policies.

(iv) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.

(v) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.

(vi) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

(vii) Required limits may be satisfied by any combination of primary and umbrella liability insurances.

(viii) CONSULTANT may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.

(ix) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison and licensed to do business in the State of Texas.

C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance, satisfactory to CITY, shall be prepared and executed by the insurance company or its authorized agent, shall be delivered to the CITY immediately upon execution of this Agreement by CONSULTANT (and CONSULTANT shall not provide any services, and shall not be entitled to payment for any services, unless and until CONSULTANT has provided or caused to be provided such Certificates of Insurance to the Town of Addison), and shall:

(i) List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.

(ii) Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, CONSULTANT shall furnish the Town of Addison with complete copies of all insurance policies certified to be true and correct by the insurance carrier. CITY reserves the right to review the insurance requirements contained herein and to adjust coverages and limits when deemed necessary and prudent by CITY.

6. INDEMNIFICATION AND HOLD HARMLESS OF CONSULTANT. The CONSULTANT covenants, agrees to, and shall INDEMNIFY, HOLD HARMLESS and DEFEND (with counsel reasonably acceptable to CITY) the Town of Addison, Texas and the Town of Addison, Texas' elected officials, its officers, agents, servants, volunteers, and employees (the Town of Addison, Texas and the elected officials, the officers, agents, servants, volunteers, and employees of the Town of Addison, Texas being each a "City Person" and collectively "City Persons") from and against any and all claims, liabilities, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees, fines, penalties, expenses, or costs, of any kind and nature whatsoever made upon or incurred by City and/or any other City Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (i) the performance or provision of the Services as described in Section 2 of this Agreement by CONSULTANT, (ii) any representations and/or warranties by CONSULTANT under this Agreement, and (iii) any act or omission under, in performance of, or in connection with this Agreement by CONSULTANT or by any of CONSULTANT's

owners, directors, officers, shareholders, managers, partners, employees, agents, consultants, contractors, subcontractors, invitees, guests, customers, licensees, sublicensees, or any other person or entity for whom CONSULTANT is legally responsible, and their respective owners, directors, officers, shareholders, managers, partners, employees, agents, consultants, contractors, subcontractors, invitees, guests, customers, and licensees ("Consultant Persons"). SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY CITY PERSON, OR CONDUCT BY ANY CITY PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However, CONSULTANT's liability under this clause shall be reduced by that portion of the total amount of the Claims (excluding defense fees and costs) equal to the City Person or City Persons' proportionate share of the negligence, gross negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, CONSULTANT's liability for City Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to City Person or City Persons' proportionate share of the negligence, gross negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

CONSULTANT shall promptly advise Municipality in writing of any claim or demand against any City Person or CONSULTANT or any other Consultant Person related to or arising out of CONSULTANT's activities under this Agreement and shall see to the investigation and defense of such claim or demand at CONSULTANT's sole cost and expense. The City Persons shall have the right, at the City Persons' option and own expense, to participate in such defense without relieving CONSULTANT of any of its obligations hereunder. The indemnity, hold harmless, and defense obligations set forth herein shall survive the expiration or termination of this Agreement.

CONSULTANT and CITY agree that the Services being provided by the CONSULTANT under this Agreement are not (i) engineering or architectural services as described by Section 271.904, Tex. Loc. Gov. Code, in that the CONSULTANT is not providing work product under this Agreement, and accordingly the indemnity, hold harmless and defense provision above does not apply to any work product of CONSULTANT, or (ii) the engineering or architectural design services of CONSULTANT as described in Section 130.002(b), Tex. Civ. Prac. & Rem. Code, in that the CONSULTANT is not providing such engineering or architectural design services under this Agreement, and accordingly the indemnity, hold harmless and defense provision above does not apply to any engineering or architectural design services of CONSULTANT.

7. **ASSIGNMENT.** CONSULTANT has no authority to and may not assign, sell, transfer, pledge, subcontract, or otherwise convey this Agreement or any portion hereof without the prior written consent of CITY, and any of the same without such prior written consent shall be deemed null and void. CONSULTANT remains responsible for any subcontractor's performance. Subcontractors will be subject to the same performance criteria expected of CONSULTANT. Performance clauses will be included in contracts with all subcontractors to assure quality levels and agreed upon schedules are met.

8. **THIRD PARTY BENEFICIARIES:** This Agreement is intended solely for the benefit of CONSULTANT and CITY and no third party rights or benefits are intended or implied,

and this Agreement does not create or grant any rights, contractual or otherwise, to any third person or entity. The provisions of this paragraph shall survive the termination of this Agreement.

9. **INDEPENDENT CONTRACTOR.** CONSULTANT is an independent contractor and neither CONSULTANT nor its employees or contractors will be considered as employed by CITY. Further, nothing in this Agreement creates nor shall be construed to create an employer-employee relationship, a partnership, a joint venture relationship, or a joint enterprise between the parties hereto.

10. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement at any time and for any reason (or for no reason) by giving at least thirty (30) days notice of such termination to the other party. Upon its receipt of or its giving of (as the case may be) notice of such termination, CONSULTANT will immediately invoice (in accordance with the invoice process set forth herein) CITY, and CITY agrees to pay for all services properly rendered by CONSULTANT to CITY prior to termination of this Agreement (which payment obligation shall survive termination of this Agreement).

11. **GOVERNING LAW; VENUE.** This Agreement shall be governed by and construed in accordance with, and is subject to, the laws of the State of Texas, and all services to be provided will be provided in accordance with applicable federal, state and local law. Venue for any suit, action or proceeding under this Agreement shall lie exclusively in Dallas County, Texas.

12. **MISCELLANEOUS.**

CONSULTANT shall keep complete and accurate records, reports, materials and other documents (in whatever form or format, whether kept electronically, in writing, or otherwise) (collectively, "records") in connection with the services performed pursuant to this Agreement, and such records are the property of CITY and CONSULTANT shall make such records available to CITY upon request. CONSULTANT shall assure the confidentiality of any records that are required by law, rule or regulation to be so maintained. CONSULTANT shall prepare and forward such additional or supplementary records as CITY may request.

CITY shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired by or on behalf of CONSULTANT pursuant to this Agreement with the same force and effect as if CITY had prepared or acquired the same.

No reports, information, documents, or other materials given to or prepared by CONSULTANT under this Agreement which CITY requests in writing to be kept confidential, shall be made available to any individual or organization by CONSULTANT without the prior written approval of CITY.

For purposes of this Agreement, notices and all other communications required to be in writing shall be addressed as provided hereinafter to the party to whom the notice or other communication is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given: when received if delivered personally; seventy-two (72) hours after deposit if sent

by mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier. Addresses for notice are as follows:

To CONSULTANT:

1100 NW Loop 410 Suite 546
San Antonio, Texas 78213
Attn: Kent Power, P.E.

To CITY:

Attn: _____

No term or provision of this Agreement shall be deemed waived or any breached excused unless the waiver or excusing of the breach shall be in writing and signed by the party claimed to have waived or excused.

Section and paragraph headings are for convenience only and shall not be used in interpretation of this License. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

This Agreement shall be deemed drafted equally by the parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this Agreement. All exhibits, schedules and addenda attached to this Agreement are incorporated herein by reference and for all purposes.

Notwithstanding any other provision of this Agreement nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the CITY, its officials, officers, employees, representatives, and agents is or may be entitled.

CONSULTANT represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, that it is authorized to conduct and do business in the State of Texas, and that the same shall remain in good standing throughout the term of this Agreement.

The provisions of this Agreement are severable. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

This Agreement supersedes all previous Agreements and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations shall be effective

unless in writing and signed by both parties.

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

TOWN OF ADDISON, TEXAS

 4/1/11
Lee Dunn (Date)
Deputy City Manager

R. H. SHACKELFORD, INC.

 03/29/11
Kent Power, P. E. (Date)
Vice President

APPROVED AS TO FORM:

CONSULTANT Legal Department (Date)

Proj. No.	Project Title	Fund Source No.	Amount
	Redding Trail Project		
	Bush Elementary		
	Spring Valley Road		
Total			\$48,566.88