

December 5, 2019

Mr. Dwayne Gossett  
Project Manager  
Williamson County (WILCO)  
3101 S E Inner Loop  
Georgetown, TX 78

via Email : [dgossett@wilco.com](mailto:dgossett@wilco.com)

**Subject: Proposal for Roof Consulting Services**

Georgetown Health Department  
102 W. 3rd St.  
Georgetown TX, 78626

Georgetown Health Department Education Building  
300 N. Main St.  
Georgetown TX, 78626

Taylor Health Department  
115 W. 6th St.  
Taylor TX, 76574

In accordance with your request and based on information and background provided, Jim Whitten Roof Consultants, LLC (JWRC) is pleased to present our proposal for providing roof consulting services at the subject WILCO Facilities. The following sections present project information, our proposed scope of services, schedule and fee information, and instructions for authorization.

**BACKGROUND INFORMATION**

We understand the purpose of this request for proposal is for JWRC to provide roof consulting services for a roof improvements project for the three (3) Subject Facilities.

**SCOPE OF SERVICES**

We propose the following scope of services:

**Bidding and Construction Documents**

- Based on our roof reconnaissance with you, to all three (3) facilities:
- We will determine local code and permit requirements regarding wind uplift resistance, energy conservation, membrane reflectivity, and roof drainage requirements.
- We will verify with the local electric power provider the availability of rebates for roof insulation or reflectivity improvements.

- We will evaluate existing stormwater drainage components to determine current plumbing code compliance for primary roof drainage and secondary emergency overflow.
- We will verify, with WILCO assistance, existing rooftop vents and equipment that are to remain as is, those that will require replacement, if any, and abandoned roof top penetrations or equipment scheduled for disposal and requiring deck repair. We will also request that WILCO provide preferred locations for roof top walk tread for roof maintenance traffic.
- We will prepare a Design Development Scope of Work report with our recommendations for roof improvements scope of work for WILCO review and approval.
- Following WILCO approval of a roof improvements scope of work, we will prepare Construction Documents consisting of a Project Manual and Drawings for the approved scope of work.
- The Project Manual will contain technical specifications, contracting forms, general conditions of the construction contract, and supplemental conditions, such as owner specific insurance requirements. Technical Specifications will be in Construction Specifications Institute (CSI) Three-Part Format. We plan on using the RCI Manual of Practice contracting forms and general conditions, unless directed otherwise by WILCO.
- The Drawings will consist of scaled roof plans and detailed installation drawings.
- Construction Documents will be prepared under the direction of State of Texas Registered Architect, Don Hurst, of Tejas Design, LLC.
- We will provide a 75% complete bidding and construction documents review set for WILCO review and comment.
- Following WILCO review, we will incorporate review comments and issue the sealed bidding and construction documents to invited bidders.

### **Bidding Phase Services**

- We will coordinate and attend a pre-bid meeting for bidders to discuss the project, Owner's requirements, provide interpretations, and answer questions.
- JWRC will assist WILCO with answering requests for information and bidder substitution requests during the bid process, and if warranted, will issue addenda to clarify the Bidding and Construction Documents.
- JWRC will assist WILCO with bid tabulation and evaluation, and based upon review of bidder qualifications and bid amount, provide a recommendation for WILCO award. If necessary, JWRC will assist WILCO with negotiating a final contract amount.
- With WILCO approval, we will prepare and issue a Notice of Award to the successful bidder and issue the Agreement Between Owner and Contractor.
- Based on WILCO approved scheduling, we will prepare and issue the Notice To Proceed.

### **Construction Phase Services**

- Once a contract for construction has been let, we will review pre-job submittals and shop drawings for conformance with the Contract Documents. We will issue a submittal review letter report documenting noted non-compliance with the Contract Documents.
- Pre-Roofing Meeting: we will attend a pre-roofing meeting with WILCO and WILCO representatives, the contractor and its subcontractors, and the roofing materials manufacturer. Following the pre-roofing meeting, we will prepare the pre-roofing meeting minutes and distribute to all attendees.
- Progress Meetings: we will attend periodic progress meetings during the work (contractor will be responsible for setting meeting dates and issuing meeting minutes).

- Construction Phase Site Visits: We will perform periodic unannounced site visits during the roof construction to observe and document compliance with the Contract Documents and reviewed submittals. After each site visit, we will prepare a site visit report with representative photos of our observations. We will coordinate with WILCO and the roofer for scheduling our site visits.
- Perform one site visit to determine substantial completion and develop substantial completion "punch-list".
- Perform one site visit to document completion of the substantial completion punch-list and document final completion.
- We will recommend that WILCO back-charge the Contractor for time and expenses incurred by JWRC in the event more than one substantial completion or more than one final completion site visit are required due to Contractor delay or negligence in completing the Work within the Contract Time.
- Review close-out submittals and record documents, issue transmittal letter with close-out documents.

## **SCHEDULE AND FEES**

JWRC is prepared to commence with the above-proposed scope of services within five business days of receiving written authorization to proceed.

We estimate two weeks to issue a 75% Complete Review Set of the Bidding and Construction Documents for WILCO review. The final 100% Bidding and Construction Documents will be completed within two weeks of receiving WILCO 75% review comments.

Construction phase site visit reports will typically be issued within 24 hours of leaving the job site.

Based on our understanding of the project information provided as described above, and our experience with similar projects, we propose the following lump sum fees for the above scope of services:

- Bidding & Construction Documents: \$ 12,000
- Bidding: \$ 2,000
- Construction Administration: \$ 12,000
- Total Fee: \$ 26,000

### **Consultants Preliminary Opinion of Cost of Roof Construction:**

Georgetown Health Department .....\$ 120,000  
102 W. 3rd St.  
Georgetown TX, 78626

Georgetown Health Department.....\$ 20,000  
Education Building  
300 N. Main St.  
Georgetown TX, 78626

Taylor Health Department.....\$ 120,000  
115 W. 6th St.  
Taylor TX, 765

## ADDITIONAL SERVICES

If additional services not included in the above proposed scope of services are requested by WILCO, we will prepare a written fee proposal and submit to you for review and approval prior to commencing with the additional services, to be performed in accordance with the following Schedule of Fees:

### Fee Schedule

|                                                |           |
|------------------------------------------------|-----------|
| Senior Consultant, per hour -----              | \$ 175.00 |
| Waterproofing Consultant, per hour -----       | \$ 175.00 |
| Outside Consulting Architect/Engineering ----- | \$ 230.00 |
| Field Consultant -----                         | \$ 100.00 |
| Technician, per hour -----                     | \$ 85.00  |
| CADD drafting, per hour -----                  | \$ 50.00  |
| Secretarial Services, per hour -----           | \$ 50.00  |
| Travel Mileage, per mile -----                 | \$ .70    |
| Reimbursable Expenses, actual cost times ----- | 1.25      |

If further consulting services are required, fees for those services will be agreed upon and charged in accordance with the Fee Schedule above.

## AUTHORIZATION

To authorize us to proceed with the above-proposed scope of services, please execute your signature in the space provided below, initial the Attachment A JWRC Terms and Conditions, and return to us at your earliest convenience.

We appreciate the opportunity to submit this proposal to provide experienced, professional, independent roofing consulting services for WILCO, and we look forward to being of continued service.

Please feel free to call us with any questions or concerns you may have regarding this proposal.

Sincerely,

**JIM WHITTEN ROOF CONSULTANTS, LLC**

*Jim Whitten*

Jim Whitten  
Senior Consultant

Attachment A: Jim Whitten Roof Consultants, LLC (JWRC) Terms and Conditions

## ACCEPTED AND APPROVED

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name/Title

## ATTACHMENT A TERMS AND CONDITIONS

### I. DEFINITION OF TERMS

- A. The Project – The completed installation defined by the Contract Documents including the design, all as described in the Consultant's Proposal.
- B. This Part of The Project – That portion of The Project for which the Consultant is to provide its professional roofing and/or waterproofing consulting services.
- C. Client – The entity named in the Consultant's Proposal.
- D. Consultant – Jim Whitten Roof Consultants, LLC
- E. Work – All work performed in connection with The Project other than services performed by the Consultant. Work is the portion of The Project that is the responsibility of the Contractor and its subcontractors.
- F. Services – Those professional roofing/waterproofing consulting services provided by the Consultant to the Client in connection with The Project. Such Services consist of both Basic Services and Additional Services as described in the Consultant's proposal. It is clearly understood the Consultant is providing professional services only and is not providing nor participating in the provision of any product(s).
- G. Agreement – The Consultant's Proposal, these Terms and Conditions, the Hourly Rate Schedule, and any other attachments will be referred collectively as the "Agreement" between the Client and the Consultant.
- H. Contract Documents – The drawings, specifications, addenda, and change orders that define The Project.
- I. Special Consultants – Consultants or firms in specialized fields outside of Consultant's area of expertise who are retained through the Consultant to provide various services. The use of Special Consultants is subject to the acceptance by the Consultant to provide the services of such Special Consultants, and to the Client's written approval.
- J. Hazardous Materials – Any substances, including but not limited to asbestos; toxic materials; toxic or hazardous waste; PCBs; pollutants including any solid, liquid, gaseous, thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals, and waste; mold, mildew, or other microbial growth; combustible gases and materials; petroleum or radioactive materials (as each of these is defined in applicable federal statutes); or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

### II. CONSULTANT'S RESPONSIBILITIES

- A. Standard of Care – Consultant will render Services under this Agreement in accordance with generally accepted professional practices using reasonable care and skill consistent with that ordinarily exercised by members of their profession under similar conditions of time and locale. Except as expressly provided for in this Paragraph II.A., Consultant makes no expressed or implied warranties as to its Services rendered under this Agreement, and any other expressed or implied warranties are expressly disclaimed and waived.
- B. Accounting Records – Consultant will maintain adequate accounting records pertaining to The Project and shall make them available to Client upon Client's request and at mutually convenient times.
- C. Excluded Services – Consultant will not obligate itself to provide any Services which, in the Consultant's professional opinion, are outside its area of expertise or are in violation of applicable codes or regulations.
- D. Insurance – For the period of design and construction of the Project until substantial completion, during which time the Consultant is providing Services to the Client, Consultant will secure and maintain in force policies of insurance in connection with Consultant's Services of The Project with limits of not less than those listed below:
1. Professional Liability (Negligent Errors and Omissions) – Limits of \$1,000,000 per claim and \$2,000,000 aggregate. The Consultant agrees to maintain this professional liability coverage for the period of design and construction of the Project, and for a period of one (1) year following substantial completion, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement "reasonably available" and "commercially affordable" shall mean that more than half the Consultants practicing the same professional discipline in the state where the project is located are able to obtain such coverage.
  2. Commercial Umbrella Liability - \$2,000,000 combined, single limit.
  3. Non-Owned Automobile Liability - \$1,000,000 combined, single limit.
  4. Worker's Compensation – as required by statutory amount.
- The indicated coverages shall be subject to all of the terms, exclusions and conditions of the policies. If requested, Consultant will furnish Client a certificate evidencing that the required insurance is in effect. Insurance carried by Special Consultants will be subject to the approval of both Consultant and Client.
- E. Job Site Visits – Consultant will visit the project site as described in the Consultant's proposal as Consultant determines is appropriate to the stage of construction for This Part of The Project to become generally familiar with the progress and quality of Work completed for This Part of The Project and to determine, in general, if the Work is consistent with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site visits to check the quality or quantity of the Work for This Part of The Project. Consultant will provide written reports of observed defects and deficiencies, if any, to the Client following each Job Site Visit.

The Consultant shall not be responsible for any acts or omission of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. Consultant does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

The Consultant shall have the authority to recommend to the Client rejection of any Work that is not, in the judgment of the Consultant, in conformance with the Contract Documents. Neither this authority nor the Consultant's good-faith judgment to recommend rejection or not recommend rejection any Work shall subject the Consultant to any liability or cause of action to the Contractor, subcontractors or other suppliers or persons performing work on The Project.

F. Coordination with Special Consultants – Consultant will coordinate the Services provided by Special Consultants with the Consultant and with other Special Consultants.

### III. CLIENT'S RESPONSIBILITIES

A. Access to Site – Client will furnish or obtain full and free access to all property as necessary for the performance of Consultant's Services under this Agreement.

B. Permits and Approvals – Client will furnish permits and approvals from all governmental authorities having jurisdiction over This Part of The Project and from others as may be necessary for completion of The Project.

C. Design Criteria – Client will timely furnish detailed information, design criteria, drawings, specifications, construction standards, and full information as to Client's requirements for The Project. Failure to provide the information or documentation when requested may result in the delay of the Project.

D. Reviews and Authorizations – Client shall receive and examine documents submitted by Consultant, interpret and define Client's policies and promptly render decisions and authorizations in writing to prevent unreasonable delay in the progress of Consultant's Services.

E. Client's Consultants – It is understood and agreed that the Client shall contract directly with other consultants to provide other services for The Project. The Client agrees that Consultant shall have no responsibility for any portion of The Project designed by other consultants engaged by the Client. The Consultant shall not be required to check or verify or consultants' contract documents or reports and shall be entitled to rely on the accuracy and completeness thereof, as well as the compliance of such documents or reports with applicable laws, codes, statutes, ordinances and regulations.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant from any damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising out of or connected in any way with the services performed by other consultants engaged by the Client.

F. Insurance – Client represents and warrants that all other design professionals will be required to have or obtain professional liability and general liability insurance in amounts that at least equal the minimum amounts required of the Consultant (see section II.D.).

### IV. PAYMENTS TO CONSULTANT

A. Time of Payment – Payments to the Consultant shall be made within 30 days following receipt of Consultant's invoice. The invoice will be based upon the proportion of the Consultant's Services completed during the invoice period, or upon time and expenses incurred when fees are on a time and expenses basis. Client shall promptly forward Consultant's invoices to Third Party Responsible for Payment in the event Client will be making payment to Consultant after receiving payment from Third Party Responsible for Payment. Client shall then exert all reasonable and diligent effort to collect prompt payment from Third Party Responsible for Payment.

B. Late Payment – Client agrees to pay Consultant interest on all amounts past due at a rate of 1.5% per month, subject to maximum legal limits. Any amount paid in excess of maximum legal limits shall be automatically applied to reduce the principal owed by Client. In addition to amount due and interest, Client agrees to pay Consultant all reasonable collection and attorney's fees, court costs and other expenses including reasonable value of the Consultant's time and expenses spent in connection with such collection action, computed according to the Consultant's prevailing fee schedule and expense policies.

C. Reimbursable Expenses – Consultant will be reimbursed for expenses incurred by Consultant in addition to compensation for Services and will provide documentation of expenses at Client's request. Reimbursable Expenses are defined in the Consultant's proposal.

### V. DOCUMENTS

A. Ownership – All documents, including Drawings, Specifications, computer files, electronic media, field data, calculations, notes, and other documents and instruments prepared or furnished by Consultant to Client pursuant to this Agreement are the property of Consultant. Consultant shall retain all common law, statutory and other reserved rights, including copyright thereto.

Whether or not the Project is completed, but subject to the provisions of this Article all such documents are instruments of professional service only and Consultant is not providing any product. Upon completion of the Services and payment in full of all monies due to Consultant, Client may retain, copies of all such documents as its property. Such documents are not intended or represented to be suitable for reuse on extensions of the Project or on any other project. Any reuse of such documents without written verification or adaptation by Consultant for the specific purpose intended (for which Client shall pay Consultant compensation at rates mutually agreed upon) will be at Client's sole risk and without liability or legal exposure to Consultant, or to Consultant's independent professional associates or consultants, and Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant, its officers, directors, employees, and Special Consultants against all claims, damages, losses, and expenses (including reasonable attorneys' fees, defense costs, and court costs) arising from or allegedly arising from or in any way connect with the unauthorized reuse or modification of the documents by the Client or any person or entity that acquires or obtains the documents from or through the Client without the written authorization of the Consultant.

B. Unauthorized Changes – The Consultant shall have no liability to the Client or others for changes made to the Consultant's documents or to the Project by the Client without the Consultant's prior written approval.

### VI. LIABILITY LIMITATION

Consultant shall have no liability to Client or to others for acts or omissions of the Contractor or any other persons performing Work on The Project; or for construction means, methods, techniques, sequences or procedures, time of performance, programs or for any safety precautions, in connection with the Work; or for Contractor's failure to carry out the Work in accordance with Drawings and Specifications prepared by Consultant; or for acceptance by the Client, its agents, subcontractors, or employees, of materials,

equipment and/or workmanship over the objection of Consultant, its agents or employees if such materials, equipment or workmanship in question have been rejected in writing by Consultant, prior to the inclusion of same in The Project and Client shall fully notify Consultant in writing before Client, its agents, subcontractors, or employees accept anything without prior written approval of Consultant so that Consultant may timely object to such acceptance; or for any other reason beyond warranty of the use of reasonable professional skills in execution of the assignments covered by this Agreement. Furthermore, Consultant shall not be responsible for the defects or omissions in the Project or Work resulting from any deviation from Consultant's Services; or of the Contractors or subcontractors, or any of the contractors' or subcontractors' employee's, or that of any other persons or entities responsible for performing any of the Work result as contained in the construction contract for This Part of The Project.

To the maximum extent permitted by law, the Client agrees to limit the Consultant's entire liability for Client's damages, failure to perform Consultant's Services according to the terms and conditions of this Agreement, or otherwise in connection with the Project to the fee paid to the Consultant, or \$50,000, whichever is less. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

Consultant will not be responsible for accuracy, completeness, errors, or omissions contained in the services provided by Special Consultants. Such Special Consultants are provided for the Client's benefit only, and are only retained through the Consultant for the Client's convenience. Consultant may rely on the services provided by Special Consultants to be accurate, complete, and free of errors and omissions.

This Agreement is made for the benefit of Client and Consultant only. Accordingly, no third party shall have any claim against either Client or Consultant by virtue of this Agreement of the Services rendered hereunder.

## **VII. HAZARDOUS MATERIALS**

It is understood and agreed that in seeking the professional services of the Consultant under this Agreement, the Client is requesting the Consultant to perform Roofing and/or Waterproofing Consulting Services for the Client's benefit. Both parties agree that the Consultant has not been retained or compensated to provide any services (including but not limited to design or construction review services in the abatement, replacement, detection, identification, or removal of hazardous materials) related to the presence of any hazardous materials.

The Client agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold the Consultant, its officers, partners, employees, and Special Consultants harmless from and against all claims, suit actions, demands, liabilities, losses, damages and expenses, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement or disposal of any hazardous materials in the Project, in materials used in the construction or modification of the Project, and arising from the presence of pollutants that exist on, about, or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the Consultant.

## **VIII. TERMINATION**

This Agreement may be terminated by either party for any reason by sending written notice to the other party. Such termination shall be effective seven (7) days after notice is received. Within seven (7) days of termination of the Agreement, Consultant will send a statement of account and final invoice to Client for Consultant's Services rendered. Client shall pay Consultant the amount set forth in the final invoice which will be equal to the sum of (i) Basic Compensation for Basic Services performed for any Phase or Phases and not yet paid; plus (ii) Additional Compensation not yet paid for Additional Services rendered; plus (iii) reimbursement for Reimbursable Expenses incurred by Consultant and not yet paid; plus (iv) Special Consultant Fees and Reimbursable Expenses not yet paid.

## **IX. MISCELLANEOUS PROVISIONS**

A. Assignment of Rights – Neither Client nor Consultant shall assign, sublet, or transfer all or any portion of its interest in this Agreement without the prior written consent of the other. Subject to the preceding sentence, this Agreement shall inure to the benefit of and shall be binding upon the successors, assigns and legal representative of each party. Subcontracting to Special Consultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this Agreement.

B. Entire Agreement – This Agreement represents the entire and integrated Agreement between Client and Consultant and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may be amended only by written instrument signed by both Client and Consultant.

C. Betterment – If, due to the Consultant's negligence, a required item or component of the Project is omitted from the Consultant's contract documents, the Consultant shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original contract documents. In no event will the Consultant be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

D. Dispute Resolution – In the event of a dispute arising out of or relating to this Agreement or the Services rendered hereunder, the Client and Consultant agree to attempt to resolve such disputes in the following manner: First, the parties agree to attempt to resolve such disputes through direct negotiations between the appropriate representatives of each part. Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute by formal non-binding mediation conducted in accordance with rules and procedure to be agreed upon by the parties.

If the steps indicated above cannot resolve any disputes, and arbitration or litigation is necessary, such action will be held in Austin, Travis County, Texas, without regard to its conflict of law provisions. The prevailing party to any dispute, including payment disputes, arising from this Agreement will be entitled to recover from the non-prevailing party all reasonable costs incurred including staff time, litigation or arbitration expenses, collection expenses, witness fees, court costs, attorneys' fees, and all other related expenses in such litigation.

In the event of a non-adjudicative settlement of litigation between the parties or a resolution of a dispute by arbitration, the term "prevailing party" shall be determined by that process.

It is intended by the parties to this Agreement that the Consultant's services in connection with the Project shall not subject the Consultant's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Consultant, a Texas corporation, and not against any on the Consultant's individual employees, officers, or directors.

All legal causes of action between the parties to this Agreement shall accrue and any applicable statutes of repose or limitation shall begin to run not later than the date of Substantial Completion. If the act or failure to act complained of occurs after the date of Substantial Completion, then the date of final completion shall be used, but in no event shall any statute of repose or limitation begin to run any later than the date the Consultant's services are completed or terminated.

E. Interpretation – Limitations on liability, waivers and indemnities this Agreement are business understandings between the parties and shall apply to all legal theories or recovery, including breach of contract or warranty, breach of fiduciary duty, tort (including negligence), strict or statutory liability, or any other cause of action, provided that these limitations on liability, waivers and indemnities will not apply to any losses or damages that may be found by a trier of fact to have been caused by the Consultant's sole or gross negligence or the Consultant's willful misconduct. The parties also agree that the Client will not seek damages in excess of the contractually agreed-upon limitations directly or indirectly through suits against other parties who may join the Consultant as a third-party defendant. "Parties" means the Client and the Consultant, and their officers, directors, partners, employees, subcontractors, and Special Consultants.

F. Force Majeure – Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, fires, riots, war, natural disasters, strikes, lockouts, accidents or any other events beyond the reasonable control of the other party, its employees or agents.

G. Severability – In the event any provision of this Agreement shall be held to be invalid or unenforceable, that provision shall be struck and the remaining provisions shall be valid and binding upon the parties.

H. Survival – Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties, including all limitations of liability, indemnifications, warranties, and representations, shall survive such completion or termination and remain in full force and effect until fulfilled.

I. Safety – Consultant has not been retained or compensated to provide design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences, or procedures required for the Contractor to perform his work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Omitted services include but are not limited to shoring, scaffolding, underpinning, temporary retention of excavations and any erection methods or temporary bracing. The Consultant and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the Client's contract with the General Contractor. The Client also agrees that the Client, the Consultant, and any Special Consultants shall be indemnified by the General Contractor and shall be made additional insured under the General Contractor's policies of general liability insurance.

J. Cost Estimates – Any opinion of the construction cost prepared by Consultant represents its best judgment as a design professional familiar with roofing, exterior wall and/or waterproofing work and is supplied for the general guidance of Client. Since Consultant has no control over cost of labor and materials, over competitive bidding, or other market conditions, Consultant makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from the Consultant's opinion of probable construction cost.

K. Value Engineering – If the Client retains the services of a Value Engineer (VE) to review the Contract Documents prepared by the Consultant, it shall be at the Client's sole expense and shall be performed in a timely manner so as not to delay the orderly progress of the Consultant's Services. The Client shall promptly notify the Consultant of the identity of the VE and shall define the VE's scope of services and responsibilities for the Consultant. All recommendations of the VE shall be given to the Consultant for review, and adequate time shall be provided for the Consultant to respond to the recommendations.

If the Consultant objects to any recommendations made by the VE, it shall so state in writing to the Client, along with the reasons for objecting. If the Client requires the incorporation of changes in the Contract Documents to which the Consultant has objected, the Client agrees, to the fullest extent permitted by law, to waive all claims against the Consultant and to indemnify and hold harmless the Consultant from any and all damages, liabilities or costs, including reasonable attorney's fees and costs of defense, which arise in connection with or as a result of the incorporation of such design changes required by the Client.

In addition, the Consultant shall be compensated for services necessary to incorporate recommended value engineering changes into reports, drawings, specifications, bidding, contract or other documents. The Consultant shall be compensated as Additional Service for all time spent to prepare for, review and respond to the recommendations of the VE. The Consultant's time for performance of its services shall be equitably adjusted.

L. Instructions to Contractor – Consultant's instructions to the Contractors shall be issued in writing through the Client unless otherwise mutually agreed.

M. Titles – The paragraph titles used in this Agreement are for general reference only and are not part of the Agreement.

N. Third-Party Beneficiaries – Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client and Consultant agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

O. Renegotiation – Lump sum and not-to-exceed Agreements will be subject to renegotiation at the Consultant's discretion if the duration of The Project is more than twenty-four (24) months.

P. Contingency -The Client and the Consultant agree that certain increased costs and changes may be required because of possible omissions, ambiguities or inconsistencies in the Contract Documents prepared by the Consultant and therefore, that the final construction cost of the Project may exceed the estimated construction cost. The Client agrees to set aside a reserve to be mutually agreed upon by Client and Consultant as a contingency to be used, as required, to pay for any such increased costs and



changes. The Client further agrees to make no claim by way of direct or third-party action against the Consultant or its Special Consultants with respect to any increased costs within the contingency because of such changes or because of any claims made by the Contractor relating to such changes.

Q. Verification of Existing Conditions – Inasmuch as the remodeling and/or rehabilitation of the site requires that certain assumptions be made by the Consultant regarding existing conditions, and because some of these assumptions may not be verifiable without the Client's expending substantial sums of money or destroying otherwise adequate or serviceable portions of the facilities, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees, and Special Consultants against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with this Project, excepting only those damages, liabilities or costs attributable to the sole negligence and willful misconduct by the Consultant. In addition, the Client agrees to bear all costs, losses and expenses, including the cost of the Consultant's Additional Services, arising from the discovery of concealed or unknown conditions in the existing site, or from any deficiencies or inaccuracies in any information or documentation furnished to the Consultant by the Client.

R. Defects in Service – The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services of which the Client becomes aware, so that the Consultant may take measures to minimize the consequences of such a defect. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the Client and the Client's contractors or subcontractors to notify the Consultant shall relieve the Consultant of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

## **END OF ATTACHMENT A**