



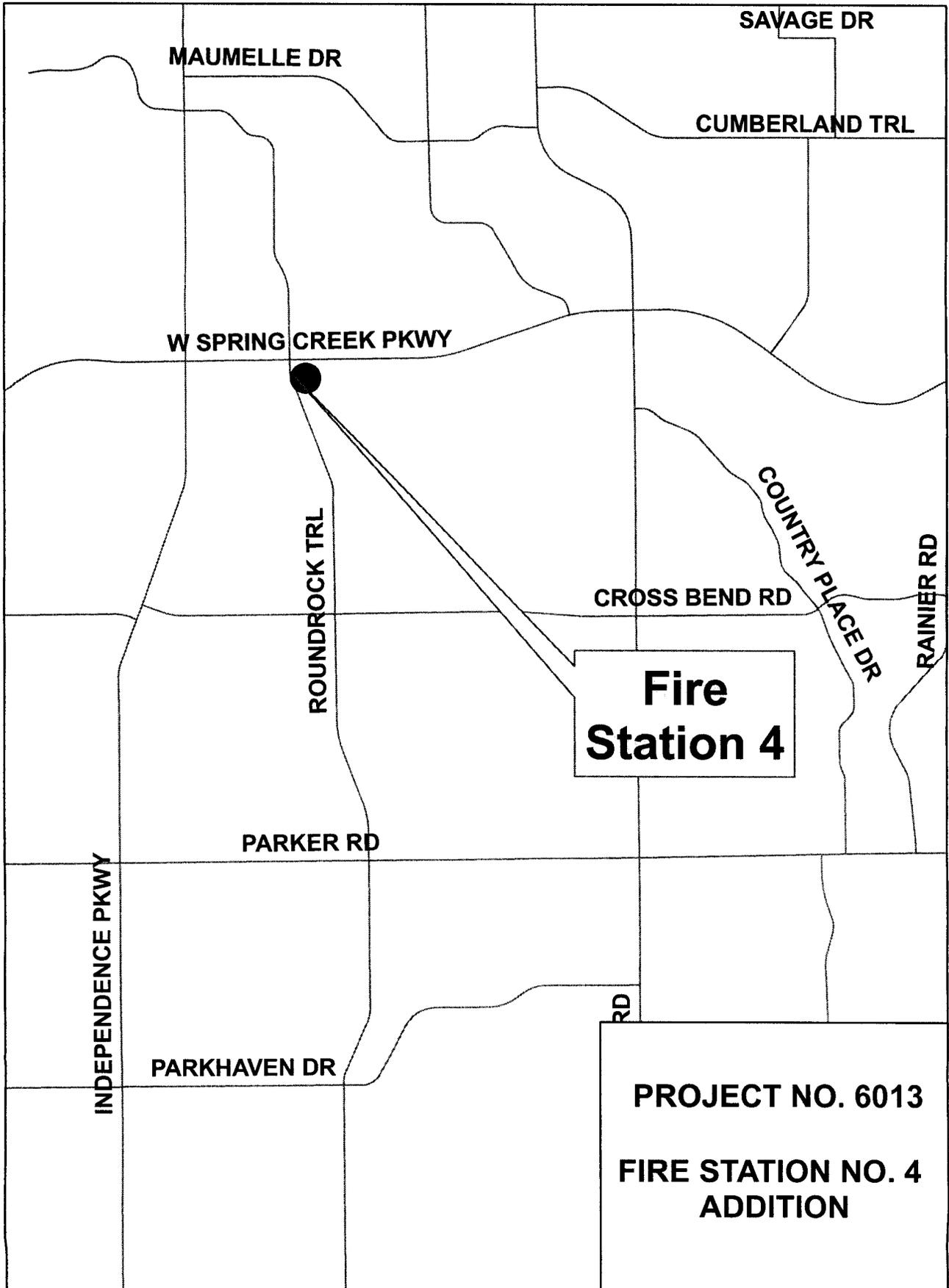
**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		2/22/10		
Department:		Public Works & Engineering		
Department Head		Alan L. Upchurch		
Agenda Coordinator (include phone #):			Irene Pegues (7198)	
			<b>Project No. 6013</b>	
<b>CAPTION</b>				
Approval of an architectural contract by and between the City of Plano and Kirkpatrick Architecture Studio in the amount of \$166,000 for design and construction oversight of Fire Station 4 Addition; and authorizing the City Manager or his authorized designee to execute all necessary documents.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: <b>2009-10</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	2,128,000	0	<b>2,128,000</b>
Encumbered/Expended Amount	0	-32,240	0	<b>-32,240</b>
This Item	0	-166,000	0	<b>-166,000</b>
BALANCE	0	1,929,760	0	<b>1,929,760</b>
<b>FUND(S):    FIRE FACILITIES CIP</b>				
<b>COMMENTS:</b> Funds are included in the 2009-10 Fire Facilities CIP. This item, in the amount of \$166,000, will leave a current year balance of \$1,929,760 for the Fire Station #4 project. <b>STRATEGIC PLAN GOAL:</b> Architectural design services for fire facilities relate to the City's Goals of Safe Large City and Financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
This agreement with Kirkpatrick Architecture Studio is for architectural design for Fire Station 4 Addition to include oversight. The contract fee is for \$166,000 and is detailed as follows:				
Design Development		\$ 47,500		
Construction Document Development		\$ 73,000		
Construction Bid and Contract		\$ 9,000		
Construction Observation		\$ 36,500		
TOTAL		<u>\$166,000</u>		
The addition to the Fire Station will consist of three new apparatus bays that will include designed training elements for operational training such as confined space entry, rescue basket access from roof positions, etc. The addition will also include additional sleeping quarters that may be used by a future ambulance crew. The project will also repair the paved surface of the site and design a Spring Creek Parkway entry to the site to minimize traffic disruptions by returning trucks.				
Funding is available from the Fire Facilities Community Investment Program. Staff feels the fee is reasonable for this project estimated to cost \$2M.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Architectural Services Agreement; Location Map			N/A	



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

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**FIRE STATION 4 ADDITION**

**PROJECT NO. 6013**

**ARCHITECTURAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **KIRKPATRICK ARCHITECTURE STUDIO**, a **TEXAS** Corporation, hereinafter referred to as "Architect", to be effective from and after the date as provided herein.

**WITNESSETH:**

**WHEREAS**, the City desires to engage the services of the Architect to prepare construction plans, specifications, details and special provisions and to perform other related architectural services in connection with the **FIRE STATION 4 ADDITION** located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

**WHEREAS**, the Architect desires to render such architectural services for the City upon the terms and conditions provided herein.

**NOW, THEREFORE**, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

**I. Employment of the Architect**

The City hereby agrees to retain the Architect to perform professional architectural services in connection with the Project. Architect agrees to perform such services in accordance with the terms and conditions of this Agreement.

**II. Scope of Services**

The parties agree that Architect shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City.

### **III. Schedule of Work**

The Architect agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the reasonable control of Architect, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

### **IV. Compensation and Method of Payment**

The parties agree that Architect shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

### **V. Information to be Provided by the City**

The City agrees to furnish, prior to commencement of work, all that information requested by Architect and available in City's files.

### **VI. Insurance**

Architect agrees to meet all insurance requirements, and to require all consultants who perform work for Architect to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

Architect agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Architect shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Architect's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

### **VII. INDEMNITY**

**THE ARCHITECT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ARCHITECT'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS**

CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE ARCHITECT, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE ARCHITECT IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE ARCHITECTS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ARCHITECT AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ARCHITECT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ARCHITECT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ARCHITECT SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ARCHITECT FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND ARCHITECT SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

#### **VIII. Independent Contractor**

Architect covenants and agrees that Architect is an independent contractor and not an officer, agent, servant or employee of City; that Architect shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Architect, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Architect.

## **IX. Assignment and Subletting**

The Architect agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Architect further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Architect from its full obligations to the City as provided by this Agreement.

## **X. Audits and Records/Prohibited Interest**

The Architect agrees that at any time during normal business hours and as often as City may deem necessary, Architect shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Architect agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Architect shall execute the affidavit shown in Exhibit "E". Architect understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

## **XI. Contract Termination**

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Architect. In the event of such termination, Architect shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Architect in connection with this Agreement. Architect shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

## **XII. Architect's Opinion of Probable Construction Costs**

The parties recognize and agree that any and all opinions of probable construction costs prepared by Architect in connection with the Project represent the best judgment of Architect as a design professional familiar with the construction industry, but that the Architect does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Architect.

### **XIII. Ownership of Documents**

Original drawings and specifications are the property of the Architect; however, the Project is the property of the City and Architect may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Architect shall also furnish the City electronic Auto Cad DWG files of the complete design. Upon completion of the work or any earlier termination of this Agreement under Article XI, Architect will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Architect's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

### **XIV. Complete Contract**

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

### **XV. Mailing of Notices**

Unless instructed otherwise in writing, Architect agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano  
Public Works & Engineering Department  
P.O. Box 860358  
Plano, TX 75086-0358

City agrees that all notices or communications to Architect permitted or required under this Agreement shall be addressed to Architect at the following address:

Kirkpatrick Architecture Studio  
100 West Mulberry  
Denton, Texas 76201  
Attn: James R. Kirkpatrick, President/Owner

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

## **XVI. Miscellaneous**

### **A. Paragraph Headings:**

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

### **B. Contract Interpretation:**

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

### **C. Venue/Governing Law:**

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

### **D. Successors and Assigns:**

City and Architect, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

### **E. Severability:**

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

### **F. Effective Date:**

This Agreement shall be effective from and after execution by both parties hereto.

**SIGNED** on the date indicated below.

**KIRKPATRICK ARCHITECTURE  
STUDIO**  
A Texas Corporation

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
James R. Kirkpatrick  
PRESIDENT/OWNER

**CITY OF PLANO, TEXAS**

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Thomas H. Muehlenbeck  
CITY MANAGER

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Diane C. Wetherbee  
CITY ATTORNEY

**ACKNOWLEDGMENTS**

**STATE OF TEXAS           §**  
**§**  
**COUNTY OF DENTON       §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by **JAMES R. KIRKPATRICK, President/Owner** of **Kirkpatrick Architecture Studio**, a **Texas** corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**STATE OF TEXAS           §**  
**§**  
**COUNTY OF COLLIN       §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by **THOMAS H. MUEHLENBECK, City Manager** of the **City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

## EXHIBIT "A"

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### **SCOPE OF SERVICES**

### **EXHIBIT A PLANO FIRE STATION NO. 4**

#### **1. 2.4 DESIGN SERVICES**

**2.4.1** The Architect's design services shall include normal structural, mechanical and electrical engineering services.

**2.3.2** The Architect shall provide a preliminary evaluation of the schematic design information furnished by the Owner.

#### **2.4.3 DESIGN DEVELOPMENT DOCUMENTS**

**2.4.3.1** Based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Architects shall prepare for approval by the Owner, Design Development Documents consisting of drawings and other instruments to fix and describe the relationships, forms, size and appearance of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

#### **2.4.4 CONSTRUCTION DOCUMENTS**

**2.4.4.1** Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

#### **2. 2.5 CONSTRUCTION PROCUREMENT SERVICES**

**2.5.1** The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding form, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

**2.5.2** The Architect shall assist the Owner in establishing a list of prospective bidders or contractors.

**2.5.3** The Architect shall assist the Owner in bid validation or proposal evaluation and determination of the successful bid or proposal, if any.

#### **3. 2.6 CONTRACT ADMINISTRATION SERVICES**

#### **2.6.1 GENERAL ADMINISTRATION**

**2.6.1.1** The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

**2.6.1.2** The Architect's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the Architect shall be entitled to a Change in Services when Contract Administration Services extend 90 days after the date of Substantial Completion of the Work.

**2.6.1.3** The Architect shall be a representative of and shall advise and consult with the Owner during the provision of the Contract Administration Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement.

**2.6.1.4** The Architect shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

**2.6.1.5** The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.

**2.6.1.6** Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor and shall not be liable for the results of interpretations or decisions so rendered in good faith.

**2.6.2 EVALUATIONS OF THE WORK**

**2.6.2.1** The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**2.6.2.2** The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

**2.6.2.3** The Architect shall at all times have access to the Work wherever it is in preparation or progress.

**2.6.2.4** The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

**2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR**

**2.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents.

**2.6.3.2** The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**2.6.4 SUBMITTALS**

**2.6.4.1** The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents

**2.6.5 CHANGES IN THE WORK**

**2.6.5.1** The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

**2.6.6 PROJECT COMPLETION**

**2.6.6.1** The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

**2.6.6.2** The Architect's inspection shall be conducted with the Owner's Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

**2.6.6.4** The Architect shall receive from the Contractor and forward to the Owner: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

**4. 2.7 FACILITY OPERATION SERVICES**

**2.7.1** Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall conduct a meeting with the Owner and the Owner's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the Owner.

**5. 2.8 RESPONSIBILITIES OF THE PARTIES****2.8.1 OWNER**

**2.8.1.1** The Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project.

**2.8.1.2** The Owner's Designated Representative shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services

**2.9.2 ARCHITECT**

**2.9.2.1** The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project.

**2.9.2.2** The Architect's Designated Representative shall be authorized to act on the Architect's behalf with respect to the Project.

**2.9.2.3** The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

**6. 2.10 TERMS AND CONDITIONS****2.10.1 COST OF THE WORK**

**2.10.1.1** The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

**2.10.1.2** The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

**2.10.1.3** The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

**2.10.2 CHANGE IN SERVICES**

**2.10.2.1** Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Architect's control. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation and to any Reimbursable Expenses.

**2.10.2.2** If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- .1** change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
- .2** enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- .3** decisions of the Owner not rendered in a timely manner;
- .4** significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;

**2.10.3 MEDIATION**

**2.10.3.1** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**2.10.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**2.10.4 MISCELLANEOUS PROVISIONS**

**2.10.4.1** The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary.

**2.10.5 TERMINATION OR SUSPENSION**

**2.10.5.1** This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**2.10.5.2** This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

**2.10.5.3** In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable

**7. 2.11 PAYMENTS TO THE ARCHITECT**

**2.11.1** Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

**2.11.1.1** Reimbursable Expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1** fees paid for securing approval of authorities having jurisdiction over the Project;
- .2** reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .3** expense of models and mock-ups requested by the Owner;

**2.11.1.2** Direct Personnel Expense is defined as the direct salaries of the Architect's Personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

**EXHIBIT "B"**

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**PROJECT SCHEDULE** **EXHIBIT B**  
**PLANO FIRE STATION 4**

<b>Notice to Proceed</b>	<b>1 February 2010</b>
<b>Program Verification and Design Development Completion</b>	<b>15 February 2010</b>
<b>Public Meeting</b>	<b>23-25 February 2010</b>
<b>Review and Approval by City</b>	<b>1 March 2010</b>
<b>Construction Documents (100%)</b>	<b>5 April 2010</b>
<b>Construction Documents Review by City (Including Permit Review)</b>	<b>19 April 2010</b>
<b>Release Documents for Bidding</b>	<b>26 April 2010</b>
<b>Receive Bids</b>	<b>18 May 2010</b>

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**EXHIBIT "C"**

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**COMPENSATION** **EXHIBIT C**  
**PLANO FIRE STATION 4**

**1. BASIS FOR COMPENSATION FOR SERVICES**

**1.1 For Services described in Exhibit "A", Scope of Services**

<b>Basic Services</b>	<b>\$166,000.00</b>
Architectural	
Structural	
Mechanical-Electrical-Plumbing	
Civil	
Landscape	
Cost Estimate	

**1.2 Services provided by the City of Plano**

Topographical & Boundary Survey  
Geotechnical Subsurface Soils Investigation  
ADA Review  
Bid Documents Printing

**1.3 Progress Payments for Basic Services**

Design Development Phase	\$47,500.00
Construction Documents Phase	\$73,000.00
Bidding/Contract Phase	\$9,000.00
Construction Phase	<u>\$36,500.00</u>

Total Fee for Basic Services \$166,000.00

Statements for services rendered shall be submitted and paid monthly.  
Invoices shall be due 15 days from date of invoice.

**EXHIBIT "D"**  
**ARCHITECTURE**  
**INSURANCE**

**INSURANCE:** (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

**1. General Insurance Requirements:**

- 1.1 The Architect (hereinafter called "Architect") shall not start work under this contract until the Architect has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Architect will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

**NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.**

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Architect from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Architect's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
  - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Architect shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

- 1.6 Architect agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Architect fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Architect, and the Architect shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Architect. Architect may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

**2. Architect's Insurance - "Occurrence" Basis:**

- 2.1 The Architect shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
  - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
    - i. General aggregate limit is to apply per project;
    - ii. Premises/Operations;
    - iii. Actions of Independent Contractors;
    - iv. Contractual Liability including protection for the Architect from claims arising out of liability assumed under this contract;
    - v. Personal Injury Liability including coverage for offenses related to employment;
    - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
  - 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

### **3.0 Consultant's Insurance – Claims Made**

#### Professional Errors and Omissions

The Consultant shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000  
per claim and aggregate of \$3,000,000

# ARCHITECTURE

## City of Plano - Insurance Checklist

("X" means the coverage is required.)

### Coverages Required

### Limits (Figures Denote Minimums)

<input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability	Statutory limits of State of Texas \$100,000 accident \$100,000 disease \$500,000 policy limit disease
<input type="checkbox"/> 2. For Future Use	
<input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program	\$150,000 medical, safety program
<input checked="" type="checkbox"/> 4. General Liability	Complete entry No. 26 Minimum \$500,000 each occurrence \$1,000,000 general aggregate
<input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL)	
<input checked="" type="checkbox"/> 6. Premises/Operations	(Items No. 3-10 & 12 require)
<input checked="" type="checkbox"/> 7. Independent Contractors	<u>\$500,000</u> combined single limit for bodily injury and property damage
<input type="checkbox"/> 8. Products	damage each occurrence with
<input type="checkbox"/> 9. Completed Operations	\$1,000,000 general aggregate that applies to project under contract
<input checked="" type="checkbox"/> 10. Contractual Liability	
<input checked="" type="checkbox"/> 11. Personal Injury Liability	\$500,000 each offense & aggregate
<input type="checkbox"/> 12. XCU Coverages	
<input checked="" type="checkbox"/> 13. Automobile Liability	\$500,000 Bodily Injury & Property
<input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned	Damage each accident
<input type="checkbox"/> 15. Motor Carrier Act Endorsement	
<input checked="" type="checkbox"/> 16. Professional Liability	\$1,000,000 each claim \$3,000,000 aggregate
<input type="checkbox"/> 17. Garage Liability	\$_____ BI & PD each occurrence



**EXHIBIT "E"**

**AFFIDAVIT OF NO PROHIBITED INTEREST**

I, the undersigned declare and affirm that no person or officer of **Kirkpatrick Architecture Studio** (herein "Contractor") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

Kirkpatrick Architecture Studio  
Name of Contractor

By: \_\_\_\_\_  
Signature

James R. Kirkpatrick  
Print Name

President/Owner  
Title

\_\_\_\_\_  
Date

STATE OF TEXAS       §  
                                  §  
COUNTY OF DENTON   §

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public, State of Texas