

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

CITY OF WILMER

PROFESSIONAL SERVICES AGREEMENT

This agreement (“Agreement”) is made by and between the City of Wilmer, Texas (“City”) and Square Peg Partners (the “Consultant”) acting by and through their authorized representatives.

Recitals:

WHEREAS, the City desires to engage the services of Consultant as an independent contractor and not as an employee in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the Consultant desires to render Consultant services for the City in accordance with the terms and conditions set forth in this Agreement in connection with the City’s need for inspection of buildings and structures that are erected, constructed, altered or repaired within the City limits (the “Project”);

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

**Article I
Term**

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1.1 The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and continue until the services are completed unless sooner terminated as provided herein.

1.2 Either party may terminate this Agreement by giving thirty (30) days prior written notice to the other party. In the event the City terminates this agreement with or without cause, the Consultant shall be entitled to compensation for: 1) any services completed in accordance with this Agreement prior to such termination, and, 2) a lump sum payment of the average of the last ninety (90) days of services provided to the City.

**Article II
Scope of Services**

2.1 The Consultant agrees to provide the Professional Consultant services for the Project as set forth in Exhibit “A.” Deviations from the scope may be authorized in writing from time to time by the City.

2.2 The parties acknowledge and agree that any and all opinions and cost estimates provided by the Consultant represents professional opinions consistent with the standards of the industry.

2.3 All materials and reports prepared by the Consultant in connection with this Agreement are “works for hire” and shall be the property of the City. The City shall have the

right to publish, disclose, distribute and otherwise use such materials and reports. Consultant shall upon completion of the services, or earlier termination, and at the request of the City, provide the City with any and all reports, correspondence, or other documents at reimbursable expense to the consultant as defined in this agreement.

Article III Compensation and Method of Payment

3.1 The City shall compensate the Consultant for the services by payment of a fee as set forth in Exhibit "B." Unless otherwise provided herein, payment to the Consultant shall be monthly based on the Consultant's monthly progress report and monthly itemized statement for services that shows the names of the Consultant's employees, agents, contractors performing the services, the actual services performed, reimbursable expenses, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary reimbursable expenses with supporting itemized invoices and documentation. The monthly invoices shall be submitted on or before the fifteenth (15th) day of each calendar month. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein.

3.2 Unless otherwise provided in Exhibit "B," the Consultant shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, and telephone, internet and email charges.

Article IV Devotion of Time, Personnel, and Equipment

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4.1 The Consultant shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should the City require additional services not included under this Agreement, the Consultant shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by the City; and without decreasing the effectiveness of the performance of services required under this Agreement.

4.2 To the extent reasonably necessary for the Consultant to perform the services under this Agreement, the Consultant shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Consultant may deem proper to aid or assist in the performance of the services under this Agreement with the prior written approval of the City. The cost of such personnel and assistance shall be borne exclusively by the Consultant, unless the City has provided written approval otherwise.

4.3 The Consultant shall furnish the facilities, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

4.4 The Consultant shall submit monthly progress reports and attend bi-monthly City Council meetings as requested by the City or more frequently as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article V Miscellaneous

5.1 **Entire Agreement.** This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.

5.2 **Assignment.** The Consultant may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by the Consultant to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

5.3 **Successors and Assigns.** Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

5.4 **Governing Law.** The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

5.5 **Amendments.** This Agreement may be amended by the mutual written agreement of the parties.

5.6 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

5.7 **Independent Contractor.** It is understood and agreed by and between the parties that the Consultant in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Consultant pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Consultant shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

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5.8 **Notice.** Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

City of Wilmer
City Hall
128 N. Dallas
Wilmer, Texas 75172
Telephone: 972-441-6373
Facsimile: 972-441-3061

With copy to:

Michael B. Halla
The Halla Law Firm, PLLC,
P.O. Box 796066
Dallas, Texas 75379
Fax: 972.805.0929

If intended for Consultant:

Bills Burns
Square Peg Partners
1302 Ashbrook DR
GRAND PRAIRIE, Texas 75052
Telephone: 214 791 2002
Facsimile: 972 642 2387

(COPY)

5.9 **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

5.10 **Exhibits.** The Exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

5.11 **Indemnification.** Consultant shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the services provided by Consultant to the extent caused by the negligent act or omission or intentional wrongful act or omission of Consultant, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Consultant is legally responsible (hereinafter "Claims"). Consultant is expressly required to defend City against all such Claims.

5.12 **Audits and Records.** The Consultant agrees that during the term hereof the City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Consultant's records relating to the

services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by the City or date of termination if sooner.

5.13 **Insurance.**

- (a) Consultant shall during the term hereof maintain in full force and effect the following insurance: (1) a policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Consultant's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$2,000,000 Dollars per occurrence for injury to persons (including death), and for property damage; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Consultant, its officers, agents, and employees, and used in the performance of this Agreement; and (3) statutory Worker's Compensation Insurance covering all of Consultant's employees involved in the provision of services under this Agreement.
- (b) All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.
- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and be rated at least "A" by AM Best or other equivalent rating service.
- (d) A certificate of insurance evidencing the required insurance shall be submitted to the City prior to commencement of services.

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5.14 **Recitals.** Recitals are incorporated herein and made a part hereof for all purposes.

(signature page to follow)

EXECUTED this 20th day of May, 2010.

City of Wilmer, Texas

By: [Signature]
Name:
Title:

APPROVED:

Michael B. Halla, City Attorney

EXECUTED this 20th day of May, 2010.

CO

Square Peg Partners

By: [Signature]
Bill Burns
Title: COORDINATOR