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December 4, 2017

Honorable Judge Kenneth Liggett
Clay County Commissioner's Court
214 N. Main Street (North of Courthouse)
Henrietta, Texas 76365

Re: Structural Engineering Proposal for the
Clay County Courthouse Dome Renovation - Henrietta, Texas.

Dear Judge Liggett:

RTP Structural, PLLC ("RTP") is pleased to submit this proposal to Clay County Commissioner's Court ("Client") for the provision of structural engineering services for the project identified as the Clay County Courthouse Dome Renovation in Henrietta, Texas ("Project"). By signing below, Client and RTP agree to the terms and conditions and provision of structural engineering services provided herein (this proposal is referred to as the "Agreement"). This proposal is valid only if returned within thirty (30) days of the date of this proposal and signed by all parties. RTP's services will commence upon receipt of this fully executed Agreement. The effective date of this agreement is the above listed date.

A. Scope of Services

The consultation includes a visual observation of the existing historical building structure and subsequent recommendations about bringing the existing dome structure in line with the current building code. The services for this project will include the following:

SCHEMATIC DESIGN / DESIGN DEVELOPMENT PHASE:

1. Review structural requirements of local building code.
2. Review of the project scope to determine existing construction considerations.
3. Attend a project kick-off meeting at Clients office.
4. Perform up to two site visits to observe the existing structure.
5. Review existing Structural and Architectural drawings (if available).
6. Preparation of Preliminary (35%) Contract Drawings in sufficient detail to determine the basic structure depths, spacings and approximate quantities.

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CONSTRUCTION DOCUMENT PHASE:

- 1. Preparation of 80% and Final Contract Drawings.
- 2. Attend a project coordination meeting at Clients office.
- 3. Preparation of Final Contract Specifications.

BIDDING PHASE:

- 1. Assist the Architect in evaluation of Contractor bids.
- 2. Coordinate bid documents with Architect and Contractor.

CONSTRUCTION ADMINISTRATION PHASE:

- 1. Perform up to two site visits during construction as requested by Client.
- 2. Review of Structural Shop Drawings and Product Submittals.
- 3. Review of Structural Material Test Reports.

B. Compensation

Engineering Fee: **\$3,500.00**

Compensation due for services performed in each phase of this project will be:
 Construction Documents Phase Ninety Percent (90%)
 Bidding and Construction Phase Ten Percent (10%)

Terms of payment are "Net 30 Days".

C. Exclusions

The extent of the services to be provided by this proposal is limited to the items noted above. In addition, RTP assumes no responsibility to perform any of the services specifically listed below.

- 1. Material testing, Special Inspections, and acting as an Owner or Client Agent.
- 2. Geotechnical investigations.
- 3. Assessing the general condition of any existing structure not affected by RTP's anticipated provision of services above.
- 4. Surveying or field measuring of any existing structure(s). Client is responsible for obtaining all existing structure dimensions.
- 5. Any services not specifically outlined in RTP's scope of services above.
- 6. Design of bracing or shoring for construction or demolition.
- 7. Design of waterproofing or roofing systems.

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D. Terms and Conditions

1. **Definitions:** As used herein, "Owner" shall mean the owner of the Project; "Contractor" shall mean the general contractor for the Project and its subcontractors; "Instruments of Service" shall mean drawings, specifications, and any other documents, including those in electronic form, prepared by RTP for use solely on this Project; "Contract Documents" shall mean RTP's sealed structural design documents.
2. **RTP's Responsibilities:** Professional services performed by RTP under this Agreement will be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing structural engineers performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. RTP makes no other warranties, express or implied, with respect to the services rendered.
3. **Client's Responsibilities:** If determined necessary by RTP, this Agreement is predicated on the receipt by RTP of functional electronic Architectural CAD Backgrounds. Receipt of the backgrounds will initiate the development of the structural Contract Documents. Should functional backgrounds be requested but not provided, RTP reserves the right to suspend/terminate this Agreement.

Client shall provide available information in a timely manner regarding any requirements or limitations for the Project and any other information reasonably requested by RTP concerning the Project, including but not limited to bids, construction schedules and/or any other information provided by other consultants, contractors, or vendors on the Project.

Client shall review RTP's work for compliance with the Project Owner's program and for overall coordination with the Project Owner's program and general architectural and engineering requirements. Client shall provide prompt written notice to RTP if Client becomes aware of any fault or defect with respect to the Project, including any errors, omissions, or inconsistencies with RTP's Instruments of Service.

Client agrees to inform RTP of any known deviations on the Project from RTP's Contract Documents, Instruments of Service, and from the construction schedule that may affect RTP's work.

Client agrees to comply with all applicable laws, regulations, and ordinances relating to its performance hereunder. Client shall be liable to RTP for all loss, cost, and expense attributable to any acts of commission or omission by Client, its employees or agents resulting from the failure to comply with all laws, regulations, and ordinances relating to their performance hereunder, including, but not limited to, any fines, penalties, or corrective measures.

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4. **Reliance:** RTP is entitled to rely on the accuracy and completeness of services, designs, CAD Backgrounds, and any other information furnished by Client, the Client's Consultants, the Owner, and/or the Contractor.
5. **Site Observation Visits:** Site observation visits are performed for the sole purpose of determining general conformance with the intent of the structural Contract Documents and do not relieve the Contractor of the obligation to perform work in accordance with the Contract Documents. RTP will only conduct site observation visits following the express written request by Client and acknowledgement by RTP, and as provided for above. Client agrees to notify RTP a minimum of forty-eight hours prior to the requested time of the site observation visit. Under no circumstances is RTP required to make exhaustive or continuous site observation visits to check the quality or quantity of work performed on the Project.
6. **Shop Drawing Review:** If requested by Client, RTP will review submittals, such as shop drawings, product data, samples, and other data, for the limited purpose of checking for conformance with the design concept and the information shown in the structural Contract Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor and or Client. Review of a specific item shall not indicate that RTP has reviewed the entire assembly of which the item is a component. RTP shall not be responsible for any deviation from the structural Contract Documents not brought to the attention of RTP in writing by the Contractor or Client. RTP shall not be required to review partial submissions or those for which submissions of correlated items have not been received. RTP's review shall be conducted with reasonable promptness while allowing sufficient time in RTP's judgment to permit adequate review.

Client shall confer with RTP before issuing interpretations or clarifications of documents prepared by RTP and shall request the recommendation of RTP before providing interpretations or clarifications of shop drawings, product data, samples or other submissions of the contractor, or upon change orders and construction change directives affecting RTP's services for the Project.

7. **Means and Methods:** RTP 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 construction work performed on the Project, since these are solely the Contractor's rights and responsibilities.

RTP shall not be responsible for the Contractor's failure to perform any construction work in accordance with the requirements of the Contract Documents. RTP 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

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any other persons or entities performing portions of construction work on the Project.

8. **Guarantees and Warranties:** RTP shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence RTP cannot ascertain.
9. **Limitations:** Causes of action between the parties to this Agreement pertaining to acts or failures to act, with the exception of any causes of action concerning the Client's failure to pay RTP, shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of substantial completion for acts or failures to act occurring prior to substantial completion or the date of issuance of the final certificate for payment for acts or failures to act occurring after substantial completion. In no event shall such statutes of limitations commence to run any later than the date when the Client's services are substantially completed.
10. **Hazardous Material Indemnity:** The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless RTP from and against any and all claims arising out of the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances that exist on or adjacent to the Project site.

RTP shall have no liability whatsoever for the discovery, presence, handling, removal, disposal, or exposure of persons to hazardous materials, toxic substances, or mold in form at the Project site.

11. **Limitation of Liability:** In recognition of the relative risks, rewards, and benefits of the Project to both the Client and RTP, the risks have been allocated such that the Client agrees that, in no event and to the fullest extent permitted by law, RTP's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this Agreement from any cause or causes, whether arising out of contract, tort, negligence, warranty, strict liability or any other legal or equitable theory, shall not exceed \$50,000.

RTP shall have no liability whatsoever for any injuries, negligent acts or omissions, damages, losses, claims, causes of action, or defects resulting from any change to the Instruments of Service or to any part of RTP's work without the advance, written consent of RTP.

RTP shall not be responsible for the acts or omissions of the Client or Client's other consultants, independent contractors, agents, or employees.

No claims shall be made against RTP for delays or damages based in whole or in part on (a) the length of time required for review of information provided by Client or any other entity, (b) the acts or omissions of others with whom RTP has no written

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contract or over whom it has no authority to control, or (c) circumstances beyond RTP's control.

12. Indemnification: Client understands and agrees that it shall be solely responsible and solely liable for any and all changes or modifications to the Instruments of Service made without RTP's written permission. Accordingly, Client warrants and agrees to defend, indemnify and hold harmless RTP and its officers, directors, shareholders, members, employees, agents and consultants, and its/their affiliated entities (the "indemnitees") from and against any and all damages, costs and expenses of whatsoever kind or character, including, but not limited to, reasonable attorneys' fees and expenses, actually incurred by such indemnitees with respect to any claim (including bodily injury or death), arising out of or relating to the following: (A) any modification of the instruments of service without RTP's advance, written permission; (B) the intentional, willful, or negligent act, error, or omission of Owner, contractor, Client or anyone acting on its/their behalf, including, but not limited to, suppliers, consultants, subcontractors and vendors, and their subconsultants, subcontractors and subvendors, and the employees and agents of any of the foregoing; (C) any breach or default in the performance by client of any warranty, representation, covenant or agreement; and (D) any liability arising out of any and all actions, demands, judgments, costs and expenses incident to the foregoing. This includes, but is not limited to, unpaid expenses, liens, or other potential subrogation claims.

For purposes of this Agreement, any assertion of fact and/or law by a third party shall, on the date that assertion is made, immediately invoke Client's obligation to protect, defend, hold harmless and indemnify an indemnitee under this Agreement (an "Indemnitee"). When an Indemnitee proposes to assert the right to be indemnified under this Section, that Indemnitee shall, to the extent that it desires, have the right to jointly direct the defense with Client with counsel of its own choosing. Client shall pay the fees and expenses of an Indemnitee's separate counsel if: (a) the Indemnitee has reasonably concluded that there may be a conflict of interest between Client and one or more of the Indemnitees in the conduct of the defense of such action; or (b) Client has not employed counsel satisfactory to the Indemnitee to assume the defense of the action. In each of these cases, the fees and expenses of the Indemnitee's counsel shall be paid by Client. An Indemnitee shall not be liable for any settlement of any action or claim that is effected without its consent.

13. Claims for Consequential Damages: The Client and RTP waive consequential damages, lost profits, lost savings, loss of goodwill, indirect, special, and/or incidental damages of any kind whatsoever for claims, disputes, causes of action or other matters in question arising out of or relating to this Agreement, regardless if RTP or Client have been informed of the possibility of such damages. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the Suspension/Termination of Services

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noted below. For purposes of this Agreement, any damages owed by Client to any other entity are considered consequential damages.

14. Billings/Payments: Invoices for RTP's services shall be submitted, at RTP's option, either upon completion of such services or on a monthly basis. Invoices shall be payable within terms noted above. If the invoice is not paid within the terms noted above, RTP may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, suspend/terminate the performance of the services without notice. Retainers shall be credited on the final invoice.

15. Instruments of Services: All Instruments of Service and documents produced by RTP under this Agreement shall remain the property of RTP and may not be used by the Client for any other endeavor without the written consent of RTP. RTP shall be deemed the author and owner of all Instruments of Service and shall retain all common law, statutory, and other reserved rights, including copyrights. Client agrees to not make changes to RTP's Instruments of Service without RTP's prior written consent.

Upon execution of this Agreement, the RTP grants to the Client a nonexclusive license to reproduce the RTP's Instruments of Service for purposes of designing, administering, using and maintaining the Project, provided that the Client shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license.

17. Independent Contractor: RTP is an independent contractor and no employment, agency, or fiduciary relationship exists between RTP and Client.

18. Suspension/Termination of Services: This Agreement may be suspended or terminated by Client or RTP upon written notification to the other in the event the other fails to perform its obligations hereunder. In the event of termination, the Client shall pay RTP for all services rendered to the date of suspension/termination, all reimbursable expenses, and reimbursable suspension/termination expenses. Any termination of this Agreement, for any reason whatsoever, shall not alter, affect or terminate the rights and obligations of the parties to one another that are created by this Agreement, nor shall termination of this Agreement prejudice any right or remedy that either party has in law or in equity or under this Agreement. In the event RTP suspends services due to non-payment by Client, RTP shall have no liability for delay of services due to the suspension of services. Before resuming services, RTP shall bill Client for sums due prior to suspension and any expenses incurred in the interruption and resumption of its services.

19. No Waiver: No delay or omission by either party hereto to exercise any right or power hereunder upon any noncompliance or default by the other party with respect to any provisions of this Agreement shall impair any such right or power or be construed as a waiver thereof. A waiver by either of the parties hereto of any of

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the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained. Unless stated otherwise, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity, or otherwise. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce. No notice to or demand on a party in any case entitles such party to any other or further notice or demand in similar or other circumstances.

20. Dispute Resolution: Any claims or disputes between the Client and RTP arising out of the services to be provided by RTP for this Agreement shall be submitted to nonbinding mediation unless both parties mutually agree otherwise. The Client agrees to include a similar mediation agreement with all contractors, subcontractors, suppliers and fabricators, providing for mediation as the primary method for dispute resolution among all parties.

21. No Assignment: Neither party may, without the prior written consent of the other party, assign, transfer this Agreement or any obligation incurred hereunder, voluntarily or involuntarily. For purposes of this Agreement, a transfer of this Agreement pursuant to a transaction such as a merger, consolidation, reorganization, change of control, stock sale or exchange, sale of any substantial portion of a party's assets or similar transaction will be deemed to be an assignment. Any attempt to do so in contravention of this Section shall be void and of no force and effect. Notwithstanding the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

22. No Third Party Beneficiary: Except as otherwise expressly provided herein, this Agreement is solely for the benefit of the parties to this Agreement and their respective successors and permitted assigns, and no other person has any right, benefit or interest under or because of the existence of this Agreement as a third party beneficiary or otherwise.

23. Governing Law and Jurisdiction: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to principles of conflict of laws thereof. Further, the parties expressly consent to the sole and exclusive jurisdiction and venue in the United States District Court for the Northern District of Texas, Dallas Division, or the District Courts of Dallas County, Texas, and all applicable appellate courts. Accordingly, any action or proceeding brought by either party which is based on, or derives from, this Agreement will be brought in such courts. The parties irrevocably waive any objection, including any objection to the venue of venue or based on the grounds of forum non conveniens, which any of them may hereafter have to the bringing of any such action or proceeding in such jurisdictions. Each party irrevocably consents to the service of process in any action or proceeding by the mailing of copies

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thereby by post or by prepaid registered or certified mail, return receipt required to each of the other parties at its address proved herein.

24. **Severability:** If any provision in this Agreement is invalid or unenforceable or contrary to applicable law, such provision shall be construed, limited, or altered, as necessary, to eliminate the invalidity or unenforceability or the conflict with applicable law. All other provisions of this Agreement shall remain in effect.

25. **Entire Agreement:** This Agreement (including all schedules, exhibits, attachments, or amendments) set forth in and/or attached to this Agreement) sets forth the final, complete, and exclusive agreement between the parties and supersedes any prior agreements, understandings, promises, representations, inducements, conditions, letters of intent, understandings, negotiations and discussions of the parties, whether oral or written, with respect to the subject matter hereof. Any prior agreements, understandings, letters of intent, understandings, negotiations and discussions, promises, representations, inducements, or conditions not expressly set forth in this Agreement are of no force or effect. No change, alteration, amendment, modification, waiver, or discharge hereof shall be valid unless it is in writing and is executed by a person authorized to execute agreements on behalf of the party to whom such change, alteration, amendment, modification, waiver, or discharge is intended to be enforced.

Please return the attached copy of this agreement at your earliest convenience. If you require any further information or additional information, please do not hesitate to contact me.

Thank you for the opportunity to be of service.

Regards,

R. Trent
President

Accepted By: _____

Date: _____

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