

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is made and entered into by and between **Webb County Purchasing Dept.** (hereinafter "OWNER") and **J-STARR CONSTRUCTION INC.** (hereinafter "CONTRACTOR").

In consideration of the mutual covenants herein set forth, and other good and valuable consideration, the parties do hereby agree as follows:

1. **Description of Project:** **RFP 2014-04 Golf Course Kitchen Repairs; Replacement of Appliances. And refurbishing of the Restaurant and Casa Blanca Clubhouse**

2. **Premises Defined:** As used herein, "PREMISES" is defined as the site where the work specified in Exhibit "A" will be performed. The address of the PREMISES is 4420-4942 Bob Bullock Loop, Laredo, Texas referring to the entire block that this address is part of.

3. **Scope of Work:** CONTRACTOR agrees to perform the following work for OWNER:

As set forth in the document attached as described on the public notice issued by the county of Webb.

Contractor agrees that all work shall be performed in a good and workmanlike manner.

4. **Contract Sum:** In exchange for CONTRACTOR'S performance of services under this Agreement, OWNER shall pay to CONTRACTOR the following amount(s): **\$139,066.24**. OWNER will disburse to CONTRACTOR an initial draw in the amount of \$ -0- upon execution of this contract. Disbursements thereafter will be made to CONTRACTOR based on percentage draw applications made by CONTRACTOR to OWNER, as approved by OWNER after inspecting the progress of completed work and materials on site at the PREMISES.

5. **Retainage:** OWNER shall withhold from its payment(s) to CONTRACTOR a retainage of five percent (10%). The retainage shall be paid to CONTRACTOR upon final completion of the work. Completion of the work shall be considered final upon written approval by OWNER's designated representative.

6. **Date of Commencement:** Within 10 days of being issued a Notice to Proceed from the County.

7. **Substantial Completion:** Substantial Completion is the stage in the progress of the completion of the work covered by this contract, when the work at the PREMISES is sufficiently complete in accordance with the work specified in RFP 2014-04 Golf Course Kitchen Repairs; Replacement of Appliances. And refurbishing of the Restaurant and Casa Blanca Clubhouse, including completion of all post-construction clean-up in and about the PREMISES, so that the OWNER (or OWNER's tenant) can occupy and utilize the PREMISES for the intended after the receipt of a Certificate of Occupancy.

8. **Date of Substantial Completion: 60 Days after Date of Commencement.**

The time set forth in the proposal for the completion of the Work is an essential element of the Contract. For each working day under the conditions described in the preceding Paragraph that any work shall remain uncompleted after the expiration of the working days specified in the Contract, together with any additional working days allowed, the amount per day given in the following schedule will be deducted from the money due or to become due the Contractor, not as a penalty but as liquidated damages.

Said Contractor further agrees to begin the work on or before the tenth day following the date set by Webb County written notice to proceed and to complete the work within sixty (60) days.

The Contractor further agrees to pay, as liquidated damages, the sum of \$125.00 for each consecutive working day there-in-after as herein provided

9. **Owner's Right to Terminate:** OWNER may terminate this Agreement upon thirty (30) days written notice. If OWNER terminates this Agreement, CONTRACTOR shall only be paid for the work performed or expenses incurred prior to the receipt of the notice of termination.

10. **Contractor and Subcontractor Insurance:** The financial integrity of Contractor is of interest to Webb County, therefore, subject to the right of Contractor to maintain reasonable deductibles in such amounts as are approved by Webb County. Contractor shall obtain and maintain in full force and effect for the entire duration of this agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies

authorized and admitted to do business in the State of Texas and rated B+ or better by A.M. Best Company (Best's Key Rating Guide, 2005 Edition, and as amended) and/or otherwise acceptable to Webb County, the following types and amounts:

The Contractor shall not commence work under this Contract until he/she has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his/her Sub-Contract until the insurance required of the Subcontractor has been so obtained and approved.

a. Compensation Insurance: The Contractor shall procure and shall maintain during the life of this Contract Workmen's Compensation Insurance as required by applicable State or Territorial law for all of his/her employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the Subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In the case where any class of employees engaged in hazardous work on the project under this Contract and is not protected under the Workmen's Compensation Statute, The Contractor shall provide and shall cause each Subcontractor to provide adequate employee's liability insurance for the protection of such of his/her employee as are not otherwise protected.

b. Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall procure and shall maintain during the life of his Contract, insurance in the amounts listed in A and B.

c. Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amount of not less than \$200,000 for bodily injury, including accidental death, to any one person and an amount not less than \$300,000 on account of any one occurrence; Property Damage in the amount not less than \$100,000 per occurrence and \$200,000 aggregate; and Vehicle Liability of \$100,000 for any one person or \$200,000 for each occurrence.

c. Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall either (1) require each of his/her Subcontractor to procure and shall maintain during the life of his /her Subcontractor, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amount specified in Subparagraph b. above or, (2) insure the activities of his/her Subcontractors in his/her policy specified in Subparagraph b. above.

d. Scope of Insurance and Special Hazards: The insurance required under Subparagraph b. and c. above shall provide adequate protection for the Contractor and his/her Subcontractor's, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by any one directly or indirectly employed by him/her and also against any of the special hazard which may be encountered in the performance of this Contract.

e. Builder's Risk Insurance (Fire and Extended Coverage): The Contractor shall procure and shall maintain during the life of this Contract Builder's Risk Insurance (Fire and Extended Coverage on a 100 percent (100%) completed value basis on the insurable portion of the project. The Owner, the Contractor, and Subcontractor (as their interests may appear), shall be named as the Insured.

f. Proof of Carriage of Insurance: The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies.

Such certificates shall also contain substantially the following statement: "The Insurance covered by this certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the Owner".

The Owner, the Contractor, and Subcontractor (as their interests may appear), shall be named as the Insured.

g. Webb County, Texas, a political subdivision of the State of Texas shall be named as an additional insured with respect to General Liability and Automobile Liability. A blanket waiver of subrogation in favor of Webb County, Texas, a political subdivision of the State of Texas shall be contained in the Workers Compensation, and all liability policies

11. **Relationship of Parties:** CONTRACTOR is engaged under this Agreement as an independent contractor and not as an agent or employee of OWNER. CONTRACTOR is not entitled to benefits of any kind to which OWNER's employees are entitled, including but not limited to unemployment compensation, workers compensation, health insurance or retirement benefits. CONTRACTOR assumes full responsibility for payment of all federal, state and local taxes or contributions, including but not limited to, unemployment insurance, social security, Medicare and income taxes with respect to CONTRACTOR and CONTRACTOR's employees. This Agreement does not create a partnership or a joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party has any right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, against or in the name of or on behalf of the other party.

12. **Indemnity:** CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY AND ALL LOSS, EXPENSE, COST OR LIABILITY (INCLUDING REASONABLE LEGAL FEES AND EXPENSES), ARISING FROM ANY CLAIM OR CAUSE OF ACTION FOR ANY LOSS OR DAMAGE CAUSED BY OR ARISING FROM THE PERFORMANCE OF CONTRACTOR'S OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE CONDUCT OF CONTRACTOR'S EMPLOYEES. IN CASE OF ANY SUCH CLAIM, CONTRACTOR, UPON NOTICE FROM OWNER, COVENANTS TO DEFEND ANY SUCH ACTION OR PROCEEDING.

13. **Notices:** All notices provided to be given under this Agreement shall be given by hand-delivery, certified mail or registered mail, addressed to the proper party, at the following address indicated at the bottom of this Agreement.

14. **Compliance With Laws:** Contractor agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities, including but not limited to those pertaining to safety, and shall obtain all licenses, registrations or other approvals required in order to fully perform its obligations hereunder. Contractor represents and warrants that all improvements made to the property shall

comply with the Americans with Disabilities Act and all other applicable codes, regulations and laws.

15. **Governing Law**

This agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas, without regard to choice of law rules of any jurisdiction. The parties agree venue lies exclusively in Webb County.

16. **Attorney's Fees:** In the event either party breaches any of the terms of this Agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney's fees incurred by such other party.

17. **Entire Agreement:** This Agreement and its Exhibits shall constitute the complete and exclusive written expression of the intentions of the parties hereto and shall supersede all previous communications, representations, agreements, promises or statements, either oral or written, by and between either parties. Any modifications to this Agreement must be in writing signed by the party sought to be bound.

18. **Exhibits:** The following documents are attached hereto and fully incorporated herein by reference:

- a. Exhibit "A" – Progress Draws
- b. Exhibit "B" - Allowances
- c. Proposal Price form – Draw amounts

19. **Omissions.** If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any portion of this Contract of Sale shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted element shall be

20. **Materialmen/Suppliers: Contractor within 10 days from the date of the execution of this agreement shall provide an updated and current listing of all SUBCONTRACTORS AND/OR MATERIALMEN or SUPPLIERS, and all laborers, used by the Contactor to Webb County and contractor shall notify Webb County in writing whenever changes occur, and contractor shall provide Webb County with an updated listing within 5 working days of upon request for an updated listing. Contractor will immediately notify Webb County in writing of any SUBCONTRACTORS AND/OR MATERIALMEN or SUPPLIERS, and all laborers independent contractors, and/or other such materialmen and/or suppliers services that are discontinued, and/or that have been added to their workforce.**

21. **Place for Payment.** All request for payments are to be made payable to Contractor, or to any designee by dated and signed invoice(s). Said invoice and/or request for payments can be mailed to Webb County Purchasing Dept. 1110 Washington St., Laredo, Webb County, Texas 78040, or to the address of the designee as designated by Seller herein.

22. **COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES:** Contractor agrees to comply at all times with all federal, state, county and city rules, regulations, ordinances and laws, and Contractor shall not permit the Premises or any part thereof to be used for (a) any offensive, noisy, or dangerous activity that would pose a health or safety risk; (b) the creation or maintenance of a public nuisance, (c) anything which is against public regulations or rules of any public authority at any time applicable to the Leased Premises; or (d) any purpose or any manner which will obstruct, interfere with, or infringe on the rights of other tenants or adjoining properties

23. **LEGAL CONSTRUCTION:**

In case any one or more of the provisions contained in the 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 provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

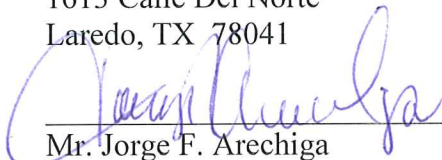
24. **AMENDMENT:**

No amendment, modification or alteration of the terms of this agreement hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by both of the parties hereto.

25. **TIME OF ESSENCE:** Time is of the essence of this Agreement and each and every covenant, condition and provision herein contained.

IN WITNESS WHEREOF the undersigned parties hereto execute this Agreement as of this day and year indicated below.

CONTRACTOR: JSTARR Construction, Inc.
1613 Calle Del Norte
Laredo, TX 78041

By: 
Mr. Jorge F. Arechiga

Title: President

Date: 8-16-14

Initials 
Initials _____

ATTEST:

Danny Valdez
Webb County Judge

Margie Ramirez Ibarra
Webb County Clerk

APPROVED AS TO FORM:

Marco A. Montemayor
Webb County Attorney

*By law, the county attorney's office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).