



# AIA® Document B133™ – 2014

## ***Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition***

**AGREEMENT** made as of the 15<sup>th</sup> day of October in the year 2019  
(In words, indicate day, month and year.)

**BETWEEN** the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

County of Webb  
Webb County Courthouse  
1000 Houston Street  
Laredo, TX 78040

and the Architect:  
(Name, legal status, address and other information)

Hanson Professional Services Inc.  
4501 Gollihar Road  
Corpus Christi, TX 78411

Note: The reference to Architect and Architecture shall be interchangeable with  
Engineer/Architect and Engineering/Architecture, respectively for the entire document

for the following Project:  
(Name, location and detailed description)

Webb County Fairgrounds and Supporting Facilities

The Construction Manager (if known):  
(Name, legal status, address and other information)

TBD

The Owner and Architect agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A201™–2007, General Conditions of the Contract for Construction; A133™–2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134™–2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™–2007 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution," or "to be determined later by mutual agreement.")*

§ 1.1.1 The Owner's program for the Project:

*(Identify documentation or state the manner in which the program will be developed.)*

Implement the Master Plan for certain new facilities (hereafter "Facilities") and demolition of existing facilities (hereafter "Demolition") at the existing fairgrounds site as described in the report "Webb County Fairgrounds Master Plan" (hereafter referred to as the "Master Plan") prepared by Hanson, BSP and Gilpin dated November 20, 2018.

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

Project is to be located at the existing fairgrounds site on US HWY 59 east of Laredo adjacent to Casa Blanca Lake, as depicted in the Webb County Fairgrounds Master Plan. The limits of the site are depicted on the Boundary Survey dated August 3, 2015 prepared by Gilpin Engineering, Co. and is restricted to the 140.1706 acre tract located on the northwest side of US HWY 59.

Access to the existing fairgrounds site is directly off of US HWY 59. It is anticipated that access will continue to be from US HWY 59 with the feasibility of alternate access locations off of State Representative Henry Cuellar Roadway to be investigated. Should it be determined that access off of State Representative Henry Cuellar Roadway is feasible, the new access roadways will be incorporated into the scope of this agreement. In addition, a traffic study will be conducted and coordinated with TxDOT based on the estimated future traffic demands of the new Fairgrounds improvements. On-site improvements suggested by the traffic study will be incorporated into the design of the Fairgrounds site. Off-site traffic improvements that are not included in the Capitol Costs Estimate in the Masterplan

report may be included in the scope of this agreement upon approval by the Owner. Approval of off-site traffic improvements by the Owner presumes that the project construction budget will be adjusted accordingly for the new scope of work.

The Masterplan report assumes adequate utility services are available along the US HWY 59 corridor. The design and construction of on-site utilities and infrastructure is included in the Capitol Costs Estimate included in the Masterplan report. However, planning and/or improvements to off-site utilities and drainage structures is outside the scope of the Masterplan report. Off-site utility and infrastructure improvements may be included in the scope of this agreement upon approval by the Owner. Approval of off-site utility and infrastructure improvements by the Owner presumes that the project construction budget will be adjusted accordingly for the new scope of work.

Specific improvements planned for the new fairgrounds are as follows:

- .1 Main Events Arena with approximately 4,000 fixed seats, air-conditioned building with a 150'x 300' floor area and associated barns, warm-up rings and animal penning areas.
- .2 Community Center/Banquet Hall will be a multi-purpose air-conditioned facility with approximately 20,000 square feet of Meeting/Banquet space, a full food-service kitchen and administrative office space.
- .3 Show Ring/Animal Exhibition Building with approximately 97,000 square feet of contiguous air conditioned, flat-floored, flexible event and exhibition space including approximately 1,500 fixed and moveable bleacher seating and a 60 foot x 80 foot animal show ring.
- .4 Festival Grounds with an outdoor performance stage, concert sound and light power supply, concessions/vendor hook-ups and facilities for ticketing and security control.
- .5 The 5,000 square foot existing LIFE Pavilion will be refurbished and repurposed for storage and equipment maintenance space.
- .6 Entry Gates, feature towers, building signage and site wayfinding signage typical of large modern fairgrounds facilities.
- .7 New on-site utility services including water, sanitary sewer, gas, underground electrical, data/internet/telephone/communications infrastructure.
- .8 On-site drainage, grading, automobile parking, RV parking, roads, fencing, landscaping and irrigation.

**§ 1.1.3** The Owner's budget for the Cost of the Work, as defined in Section 6.1:  
(Provide total and, if known, a line item breakdown.)

To be determined during the development of the Guaranteed Maximum Price (GMP) developed through the CMAR process.

**§ 1.1.4** The Owner's anticipated design and construction schedule:

- .1 Project Commencement date: November 1, 2019

- .2

(Paragraphs deleted)

Substantial construction Completion date: January 28, 2022

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:  
(Indicate agreement type)

[ ] AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

§ 1.1.6 The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address and other information.)

TBD

§ 1.1.7 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:  
(List name, address and other information.)

TBD

§ 1.1.8 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address and other information.)

Lewis B. Shrier, P.E.  
Hanson Professional Services Inc.  
4501 Gollihar Road  
Corpus Christi, TX 78411  
(361) 814-9900

§ 1.1.9 The Architect will retain the consultants identified in Sections 1.1.9.1 and 1.1.9.2. Architect will provide the Owner with a copy of all consultant agreements including company profile and qualifications.

(List name, legal status, address and other information.)

§ 1.1.9.1 Consultants retained under Basic Services:

.1 Structural Engineer:

**Hanson Professional Services, Inc.**  
**4501 Gollihar Road**  
**Corpus Christi, Texas 78411**  
**(361) 814-9900**  
**Lewis B. Shrier, P.E.**

.2 Mechanical Engineer:

**Hanson Professional Services, Inc.**  
**720 N. Maitland Ave., Suite 102**  
**Maitland, Florida 32751**  
**(407) 622-2050**  
**Bradley Perrott, P.E., LEED AP, EMP**

.3 Electrical Engineer:

**Hanson Professional Services, Inc.**  
**7625 N. University St., Suite 200**

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Peoria, Illinois 61614  
(309) 691-0902  
Austin Thompson, P.E.

§ 1.1.9.2 Consultants retained under Additional Services:

.1 Civil Engineer:

.1 For on-site elements:  
**Hanson Professional Services, Inc.**  
4501 Gollihar Road  
Corpus Christi, Texas 78411  
(361) 814-9900  
Willie Rivera Jr., P.E.

.2 For off-site elements & coordination with local jurisdictions:  
**Gilpin Engineering Company**  
101 W. Hillside Road, #8  
Laredo, Texas 78041  
(956/) 753-2210  
Robert J. Gilpin, P.E., R.P.L.S.

.2 Surveying:  
**Gilpin Engineering Company**  
101 W. Hillside Road, #8  
Laredo, Texas 78041  
(956/) 753-2210  
Robert J. Gilpin, P.E., R.P.L.S.

.3 Architect / Fairgrounds Consultant:

**Bullock Smith Partners, Inc.**  
404 BNA Drive, Suite 320  
Nashville, Tennessee 37217  
(615) 242-1888  
Steve White, AIA

.4 Landscape Design:

**Gignac Landscape Architecture**  
3833 S. Staples Street, Suite N119  
Corpus Christi, Texas 78411  
(361) 853-0795  
Robert Gignac, Landscape Architect

.5 Architectural Interior Design:

**Hanson Professional Services, Inc.**  
4501 Gollihar Road  
Corpus Christi, Texas 78411  
(361) 814-9900  
Alva Pulido

.6 Performing Arts Consultant:

**WJHW, Inc.**  
**12175 Network Blvd, Suite 150**  
**San Antonio, Texas 78249**  
**(972) 934-3700**  
**René Garza, ASTC**

**.7 Aerial Photography (UAV):**

**Hanson Professional Services, Inc.**  
**4501 Gollihar Road**  
**Corpus Christi, Texas 78411**  
**(361) 814-9900**  
**Harrison McNeil, Drone Pilot**

**§ 1.1.10**

*(Paragraphs deleted)*

Other Initial Information on which the Agreement is based:

*(Paragraphs deleted)*

**§ 1.2** The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

**§ 1.3** Owner's user or reuse of the electronic files.

For the purpose of this project, Hanson Professional Services Inc.'s (Hanson's) Instruments of Service (IOS) shall consist of electronic files delivered in Adobe Acrobat Portable Document Format (PDF) Release 17 consisting of drawings, specifications, reports, and other related project deliverable documents prepared by Hanson, or by Hanson's sub-consultants, bearing the seal of a Registered Architect, a licensed Professional Engineer, a licensed Professional Land Surveyor or other applicable professional credential currently authorized to practice in the State of Texas. Hanson shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights to Hanson's Instruments of Service.

Other electronic data files, such as e-mail communications, editable native file formats of text documents, editable native format Computer Aided Drafting (CAD) files, etc., even when used as the basis for developing Hanson's IOS are not themselves considered to be IOS. To the extent these other types of electronic document are furnished by Hanson for delivery to the Owner, these documents are furnished merely for the Owner's convenience. The other types of electronic documents may be utilized by the Owner provided:

1. The Owner agrees not to reuse these other electronic files, in whole or in part, for any purpose other than for the project. The Owner further agrees to waive all claims against Hanson resulting in any way from any unauthorized changes to or reuse of the electronic files for any project by anyone other than Hanson.
2. The Owner is aware that differences may exist between these other electronic files provided and Hanson's IOS. In the event of a conflict between Hanson's IOS and the other electronic files, Hanson's IOS documents shall govern. The Owner also recognizes that information stored on electronic media may or may not be compatible with their own computer system. Hanson shall not be liable or responsible for any claims arising from incompatibility, readability, or translation of these other electronic files.
3. Under no circumstances shall delivery of any electronic files (either IOS or other documents) for use by the Owner be deemed a sale by Hanson, and Hanson makes no warranties, either express or Implied, of



merchantability and fitness for any particular purpose. In no event shall Hanson be liable for any damages, including indirect or consequential damages, as a result of the Owner's use or reuse of these electronic files.

4. Upon receipt, the electronic files shall be deemed to be accepted, and Hanson shall not have any obligation to correct errors or maintain electronic files beyond the completion of the final contract deliverables.

All drawings, reports and data on any form of electronic media generated or furnished by the Owner for Hanson's use shall be at the Owner's expense. Hanson may use such drawings, reports and data in performing its services and is entitled to rely upon the accuracy and completeness thereof.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions within the state in which the project is located. No other representation expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise. Nothing in this Agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party. Architecture is not acting as a municipal advisor to Owner as defined by the Securities and Exchange Commission.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

*(Paragraph deleted)*

§ 2.6 The Architect shall maintain the following insurance until termination of this Agreement.

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverage required under Sections 2.6.1. and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits of not less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) disease each employee, and One Million Dollars (\$1,000,000) disease policy limit.

**§ 2.6.6** Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (2,000,000) in the aggregate.

**§ 2.6.7** The Owner shall be an additional insured on the Architect's primary and excess insurance policies for commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.

**§ 2.6.8** The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as additional insureds on the Commercial General Liability, Automobile Liability, and any excess policies.

### **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

**§ 3.1** The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

**§ 3.1.1** The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

**§ 3.1.2** The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Construction Manager's Preconstruction Phase services, (4) for the performance of the Owner's consultants, and (5) for approval of submissions by authorities having jurisdiction over the Project.

**§ 3.1.4** The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

**§ 3.1.5** Once the Owner, Construction Manager, and Architect agree to the time limits established by the Project schedule, the Owner and Architect shall not exceed them, except for reasonable cause.

**§ 3.1.6** The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made without the Architect's approval.

**§ 3.1.7** The Architect shall at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities, including accessibility standards required by the Texas Department of Licensing and Regulation, and by such entities providing utility services.

**§ 3.1.8** The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### **§ 3.2 Evaluation of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate**

**§ 3.2.1** Prior to the Owner's acceptance of the Guaranteed Maximum Price proposal or Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the



Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner on all communications related to substitution requests, clarifications, and interpretations.

**§ 3.2.2** During one of the design phases, the Owner will receive a Guaranteed Maximum Price proposal or Control Estimate, as appropriate, from the Construction Manager. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

**§ 3.2.3** Upon authorization by the Owner, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

### **§ 3.3 Schematic Design Phase Services**

**§ 3.3.1** The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

**§ 3.3.2** The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

**§ 3.3.3** The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating sustainable design approaches, and consideration of the implementation of the Owner's sustainable objective, if any. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

**§ 3.3.4** Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

**§ 3.3.5** Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the Construction Manager's review. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

**§ 3.3.5.1** The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, implications of sustainable code requirements enacted in the relevant jurisdiction, if any, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other sustainable design services under Article 4.

**§ 3.3.5.2** The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

**§ 3.3.6** The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

**§ 3.3.7** Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon

adjustments to the Project's size, quality, or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

**§ 3.3.8** In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

#### **§ 3.4 Design Development Phase Services**

**§ 3.4.1** Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval and Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

**§ 3.4.2** Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

**§ 3.4.3** Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

#### **§ 3.5 Construction Documents Phase Services**

**§ 3.5.1** Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

**§ 3.5.2** The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

**§ 3.5.3** During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications and may include sample forms.

**§ 3.5.4** Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

**§ 3.5.5** Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and obtain the Owner's approval of the Construction Documents.

## § 3.6 Construction Phase Services

### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or the Owner's issuance of a Notice to Proceed to the Construction Manager. The Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager'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 Construction Manager or of any other persons or entities performing portions of the Work.

### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed 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. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 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 decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

### **§ 3.6.3 Certificates for Payment to Construction Manager**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates 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 as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

**§ 3.6.3.2** 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, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

**§ 3.6.3.3** The Architect shall maintain a record of the Applications and Certificates for Payment.

### **§ 3.6.4 Submittals**

**§ 3.6.4.1** The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

**§ 3.6.4.2** In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Construction Manager'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 for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Construction Manager that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

**§ 3.6.4.4** The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

**§ 3.6.4.5** The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.



### § 3.6.5 Changes in the Work

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

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Construction Manager 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 Construction Manager; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner 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 Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

## ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are included in Basic Services and are required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
<i>(Row deleted)</i>		
§ 4.1.1.1 Programming	Architect/Owner	4.2.1
§ 4.1.1.2 Multiple preliminary designs	Architect/Owner	4.2.2
§ 4.1.1.3 Measured drawings	Not Provided (NP)	
§ 4.1.1.4 Existing facilities surveys	Architect	4.2.3
§ 4.1.1.5 Site evaluation and planning	Architect/Owner	4.2.4
§ 4.1.1.6 Building information model Management Responsibilities	Architect	4.2.5
§ 4.1.1.7 Development of Building Information Models for post construction use	NP	

Init.

§ 4.1.1.8	Civil engineering (on-site only)	Architect	4.2.6
§ 4.1.1.9	Landscape design	Architect	4.2.7
§ 4.1.1.10	Architectural interior design	Architect	4.2.8
§ 4.1.1.11	Value analysis (B204™–2007)	Architect	4.2.9
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	NP	

(Row deleted)

§ 4.1.1.13	On-site project representation (B207™–2008)	Architect	4.2.10
§ 4.1.1.14	Conformed construction documents	NP	
§ 4.1.1.15	As-designed record drawings	NP	
§ 4.1.1.16	As-constructed record drawings	Architect	4.2.11
§ 4.1.1.17	Post occupancy evaluation	NP	
§ 4.1.1.18	Facility support services (B210™–2007)	NP	
§ 4.1.1.19	Tenant-related services	NP	
§ 4.1.1.20	Architect's Coordination of Owner's consultants	Architect	4.2.12
§ 4.1.1.21	Telecommunications/data design (conduit only)	Architect	4.2.13
§ 4.1.1.22	Security evaluation and planning (B206™–2007)	NP	
§ 4.1.1.23	Commissioning (B211™–2007)	NP	
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	NP	

(Row deleted)

§ 4.1.1.25	Fast-track design services (B214™–2012)	Architect	4.2.14
§ 4.1.1.26	Multiple bid packages	Architect	4.2.15
§ 4.1.1.27	Historic Preservation (B253™–2007)	NP	

(Row deleted)

§ 4.1.1.28	Furniture, furnishings, and equipment design	Architect	4.2.16
§ 4.1.1.29	Performing Arts Consultant	Architect	4.2.17
§ 4.1.1.30	Updated boundary/ROW Surveys	Architect	4.2.18
§ 4.1.1.31	Topographic survey-Facilities location survey	Architect	4.2.19
§ 4.1.1.32	Aerial photography through UAV (Un-manned Aerial Vehicle)	Architect	4.2.20
§ 4.1.1.33	Subsurface investigation for geotechnical soil Parameters/presence of rock for excavation Purposes	NP	
§ 4.1.1.34	Utility line locate surveys/pipeline location Surveys	Architect	4.2.21
§ 4.1.1.35	TxDOT Permit	Architect	4.2.22
§ 4.1.1.36	TCEQ Construction Site Stormwater Permit	NP	
§ 4.1.1.37	Utility availability coordination with City of Laredo	Architect	4.2.23
§ 4.1.1.38	Specialty testing/inspections	NP	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.2.1 Programing: Owner and Architect to review the Master Plan document and refine the programing for all buildings and improvements.



- § 4.2.2 Multiple Preliminary Designs: For each planned building or improvement, the Architect, in conjunction with input from the Owner, shall prepare multiple preliminary designs, as needed, with sufficient detail and notations to develop a preliminary budget estimate for the building or improvement. The number of preliminary plans per building or improvement shall be no more than five (5) each without a subsequent agreement defining the number of additional preliminary plans greater than five and additional compensation for same, if any.
- § 4.2.3 Existing Facilities Survey: The Architect will document the location and condition of any existing buildings or facilities that are to remain.
- § 4.2.4 Site Evaluation and Planning: The Architect, with input from the Owner, will evaluate the existing fairgrounds site for suitability with each planned building or improvement. The Architect and Owner will determine the placement of buildings or improvements based on the site evaluations.
- § 4.2.5 Building Information Model Management Responsibilities: The Architect will manage the development of 3-D models of the buildings and/or site for presentation purposes only. The 3-D model will not be sufficiently accurate or detailed for use by the CMAR for estimating or construction purposes nor for use by the Owner for facilities management.
- § 4.2.6 Civil Engineering: The Architect will include on-site civil engineering design and construction administration as part of the Basic Services provided by the Architect. In addition to design of all on-site utilities, grading, drainage and paving, Civil Engineering scope will include:
- § 4.2.6.1 Traffic study to be conducted and coordinated with TxDOT based on the estimated future traffic demands of the new Fairgrounds improvements. . On-site improvements suggested by the traffic study will be included as part of Basic Services provided by the Civil Engineer. Off-site traffic improvements are beyond the scope of this agreement and will be addressed by a separate agreement after the traffic study is completed.
- § 4.2.6.2 Design of on-site access roadways connecting to US HWY 59.
- § 4.2.6.3 Feasibility studies of alternate vehicular access connecting to State Representative Henry Cuellar Roadway. If feasible, design and construction documents of alternate access roadways will be included as part of the Basic Services of the Civil Engineer.
- § 4.2.6.4 Off-site traffic improvements that are not included in the Capitol Costs Estimate in the Masterplan report but are included in the scope of this agreement upon approval by the Owner. Approval of off-site traffic improvements by the Owner presumes that the project construction budget will be adjusted accordingly for the new scope of work.
- § 4.2.6.5 Off-site utility and infrastructure improvements that are not included in the Capitol Costs Estimate in the Masterplan report but are included in the scope of this agreement upon approval by the Owner. Approval of off-site utility and infrastructure improvements by the Owner presumes that the project construction budget will be adjusted accordingly for the new scope of work.
- § 4.2.7 Landscape Design: Landscape design including irrigation systems is included in the Basic Services of the Architect.
- § 4.2.8 Architectural Interior Design: Interior design, including selection of colors, fabrics, flooring, tile, etc. is included in the Basic Services of the Architect.
- § 4.2.9 Value Analysis: The Architect will provide value analysis of the cost estimates and schedules developed by the CMAR in accordance with Article 3 for the Schematic Design Phase, Design Development Phase, Construction Documents Phase and for the Final Guaranteed Maximum Price. In addition, the Architect will provide value analysis of any cost proposals or schedule modifications requested by the CMAR or Owner during the Construction Phase of the project.

- § 4.2.10 On-Site Project Representative: As part of Basic Services, the Architect will provide an on-site Project Representative for the duration of the Construction Phase.
- § 4.2.11 As-Constructed Record Drawings: The Architect will review for completeness and forward a record copy of the As-Constructed Record Drawings prepared by the CMAR to the Owner.
- § 4.2.12 Architect's Coordination of Owner's Consultants: As part of Basic Services, the Architect will coordinate the designs prepared or recommended by the Owner's Consultants with the Architect's work. The Architect will also assist with the coordination of the Owner's Construction Phase Consultants such as Materials Testing Laboratories.
- § 4.2.13 Telecommunications/Data Design: As part of Basic Services, the Architect will coordinate and provide secured, climate-controlled space with adequate number of separate power circuits for telecommunications and/or data systems designed by the Owner or the Owner's Consultants. The Architect's design documents will include conduit and data/network outlet locations distributed throughout the facility as directed by the Owner or Owner's Consultant. Purchase and installation of the telecommunications and/or data systems, including wiring, cabling, cable terminations, network outlets, data processors and controllers, will be by the Owner.
- § 4.2.14 Fast-Track Design Services: As part of Basic Services, the Architect will prepare phased design packages in cooperation with the CMAR in order to Fast-Track the construction process. Fast-Track schedules and phased design packages will be proposed jointly by the Architect and CMAR with final approved and acceptance by the Owner.
- § 4.2.15 Multiple Bid Packages: As part of Basic Services, the Architect will generate construction documents separated into multiple phased bid packages as requested by the Owner in order to facilitate fast-track construction schedules and/or budgetary and funding decisions by the Owner.
- § 4.2.16 Furniture, Furnishings and Equipment Design: As part of Basic Services, the Architect will include the design of selected FF&E elements included in the budget for the Cost of the Work. Design of selected FF&E elements included under Basic Services is limited to:
- § 4.2.16.1 Fixed audience seating for the Main Events Center (Approximately 4,000 seats.)
  - § 4.2.16.2 Kitchen equipment for Main Events Center, Banquet Hall, Show Ring and other facilities with planned inside cooking or concessions serving areas.
- The design of other FF&E elements may be added to the scope of this agreement upon approval by the Owner in accordance with Section 4.3.
- § 4.2.17 Performing Arts Consultant: As part of Basic Services, the Architect will hire a Performing Arts Consultant for recommendations on theatrical lighting, stage and acoustics recommendations for the Main Events Arena.
- § 4.2.18 Updated Boundary/ROW Survey: As part of Basic Services, the Architect will provide updates to the Fairground site boundary, ROW easements and utility easements that are modified or added during the execution of the project.
- § 4.2.19 Topographic Survey – Facilities Location Survey: As part of Basic Services, the Architect will provide an updated survey of the site indicating the as-constructed location of buildings and improvements.
- § 4.2.20 Aerial Photography through UAV (Un-Manned Aerial Vehicle): As part of Basic Services, the Architect will utilize UAVs to obtain periodic record photographs of the Fairgrounds site and construction progress. The frequency of obtaining aerial photographs will be determined by the Architect and the Owner at a later time. Photographs will not be suitable for controlled scale mapping or measurements.

§ 4.2.21 Utility Line Locate Survey/Pipeline Location Survey: As part of Basic Services, the Architect will attempt to locate and indicate on the site construction documents any known existing undergrounds utilities and/or pipelines that traverse the Fairground site. Historical property records, easement records and historical photographs, if available, will be utilized for the survey. In addition, the Texas811 statewide utility notification center will be contacted so that underground utility owners can be notified of excavations planned at the Fairground site.

§ 4.2.22 TxDOT Permit: As part of Basic Services, the Architect will prepare, modify and update all required TxDOT permit documents related to the Fairground site for review by TxDOT. Final approval and acceptance of the permit documents will be solely at the discretion of TxDOT.

§ 4.2.23 Utility Availability Coordination with City of Laredo: As part of Basic Services, the Architect will coordinate water, gas and sanitary sewer utility requirements as well as storm drainage conveyance requirements with the City of Laredo. The Architect will assist with the coordination and scheduling of the Fairground construction with off-site utility and drainage improvement projects implemented for the purpose of serving the Fairground site.

§ 4.3 Additional Services may be provided after execution of the Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, and Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.2 and 11.3 and an appropriate adjustment in the Architect's schedule. Prior to performing Additional Services the Architect shall receive Authorization To Proceed from the Owner.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

.1 Services necessitated by

*(Paragraphs deleted)*

the Owner's request for extensive sustainable design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

.2 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

*(Paragraphs deleted)*

.3 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

*(Paragraphs deleted)*

#### § 4.3.2

*(Paragraphs deleted)*

If the services covered by this Agreement have not been completed within Thirty-One (31) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

*(Paragraphs deleted)*

### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.4 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.4.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.8 The Owner shall furnish tests, inspections and reports required by law such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.9 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.10 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.11 The Owner shall contemporaneously provide the Architect with any communications provided to the Construction Manager about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.12 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.13 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

(Paragraph deleted)

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Managers' general conditions costs, overhead, and profit. The Cost of the Work does not include the compensation of the Architect, the compensation of the Construction Manager for Preconstruction Phase services, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and may be adjusted throughout the Project as required under Sections 5.4 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect shall work cooperatively with the Construction Manager to conform the cost estimates to one another.

§ 6.3.2 If the Owner engages a Cost Consultant and a discrepancy exists between the Construction Manager's estimate and the Cost Consultant's estimate, the Architect shall assist the Cost Consultant and Construction Manager as necessary to conform the estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.



**§ 7.2** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

**§ 7.3** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

**§ 8.1.1** The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

**§ 8.1.4** The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.



**§ 8.2.2** 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 administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution 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. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 8.2.3** 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.

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

*(Paragraph deleted)*

☒ Litigation in a court of competent jurisdiction in Webb County, Texas

*(Paragraphs Deleted)*

*(Paragraphs deleted)*

## **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.2** If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

**§ 9.4** Either party may terminate this Agreement 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.

**§ 9.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

**§ 9.6** 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 Expenses then due.

§ 9.7 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Section 1.3, Article 7 and Section 11.9.

*(Paragraph deleted)*

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 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. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information or (4) as otherwise provided by State or Federal Law.

## ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

11.1.1 10% Total Fee for Basic Services in connection with the first \$50,000,000 of Total Construction Cost comprised of:

8% of Total Construction Costs for Design Services and

2% of Total Construction Costs for Construction Administration Services.

11.1.2 9% Total Fee for Basic Services in connection with the next \$20,000,000 of Total Construction Cost, i.e.

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\$50,000,001 through \$70,000,000, comprised of:

7.2% of Total Construction Costs for Design Services and

1.8% of Total Construction Costs for Construction Administration Services.

11.1.3 8.5% Total Fee for Basic Services in connection with the next \$20,000,000 of Total Construction Cost, i.e. \$70,000,001 through \$90,000,000, comprised of:

6.8% of Total Construction Costs for Design Services and

1.7% of Total Construction Costs for Construction Administration Services.

**§ 11.2** For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

Compensation shall be in accordance with the attached schedule, "Basis of Payment, consulting services (Form 19 Rev 0)" plus direct expenses.

**§ 11.3** Compensation for Additional Services of the Architect's consultants shall be the amount invoiced to the Architect plus ten percent (10 %).

**§ 11.4** When compensation for Basic Services is based on a stipulated sum or percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty-Five	percent (	25	%)
Construction Documents Phase	Forty	percent (	40	%)
Construction Phase	Twenty	percent (	20	%)
<hr/>				
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services as appropriate.

**§ 11.5** When compensation is based on a percentage of the Cost of the

*(Paragraphs deleted)*

Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.4 based on (1) the Owner-accepted Guaranteed Maximum Price Amendment or Control Estimate, as applicable, or (2) if the Guaranteed Maximum Price proposal or Control Estimate has not been accepted by the Owner, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

**§ 11.6** The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

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*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

See attached schedule "Basis of Payment, Consulting Services" (Form 19, Rev 0)

*(Table Deleted)*

*(Paragraphs deleted)*

#### **§ 11.7 Compensation for Reimbursable Expenses**

**§ 11.7.1** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's consultants' expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;

**§ 11.7.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

#### **§ 11.8 Compensation for Use of Architect's Instruments of Service**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

TBD

#### **§ 11.9 Payments to the Architect**

##### **§ 11.9.1 Initial Payments**

**§ 11.9.1.1** An initial payment of zero (\$0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

##### **§ 11.9.2 Progress Payments**

**§ 11.9.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

1-1/2% One and a half percent monthly

**§ 11.9.3** The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

**§ 11.9.4** Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

*(Paragraphs deleted)*

(Table deleted)

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.1 In recognition of the relative risks and benefits of the Project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees that for the compensation herein provided the Architect cannot expose itself to damages disproportionate to the nature and scope of the Architect's services or the compensation payable to it hereunder. Therefore, the Owner agrees to limit its remedies against the Architect arising from the Architect's professional acts, errors or omissions, in any action based on strict liability, breach of contract, negligence or any other cause of action, such that the total aggregate amount of the Owner's damages shall not exceed the Architect's total net fee for services rendered on the Project. This limitation pertains to the Architect and to its subcontractors and sub consultants, and applies as a single aggregate amount to all work performed under the Agreement, including all work performed under an amendment or modification. If the Owner desires a limit greater than that provided above, the Owner and the Architect shall include in this Agreement the amount of such limit and the additional compensation to be paid to the Architect for assumption of such additional risk.

## ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B133™-2014, Standard Form Agreement Between Owner and Architect,
- .2

(Paragraphs deleted)

Other documents:

(List other documents, if any, including additional scopes of service forming part of the Agreement.)

Basis of payment, consulting services (Form 19, Rev 0)

This Agreement entered into as of the day and year first written above.

WEBB COUNTY

HANSON PROFESSIONAL SERVICES INC.

Tano E. Tijerina  
Webb County Judge

\_\_\_\_\_  
**ARCHITECT** (Signature)

John A. Michael, P. E.  
Senior Vice-President

(Row deleted)

ATTEST:

\_\_\_\_\_  
Margie Ramirez Ibarra  
Webb County Clerk

Approved as to Form:

\_\_\_\_\_  
Nathan R. Bratton  
General Counsel  
Civil Legal Division\*

Init.

\*The General Counsel, Civil Legal Division's office, may only advise or approve contracts or legal documents on behalf Webb County, its client. 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).





# **Additions and Deletions Report for**

## **AIA® Document B133™ – 2014**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 17:48:40 ET on 09/26/2019.

### **PAGE 1**

**AGREEMENT** made as of the 15<sup>th</sup> day of October in the year 2019

...

County of Webb  
Webb County Courthouse  
1000 Houston Street  
Laredo, TX 78040

...

Hanson Professional Services Inc.  
4501 Gollihar Road  
Corpus Christi, TX 78411

Note: The reference to Architect and Architecture shall be interchangeable with Engineer/Architect and Engineering/Architecture, respectively for the entire document

...

Webb County Fairgrounds and Supporting Facilities

...

TBD  
**PAGE 2**

Implement the Master Plan for certain new facilities (hereafter "Facilities") and demolition of existing facilities (hereafter "Demolition") at the existing fairgrounds site as described in the report "Webb County Fairgrounds Master Plan" (hereafter referred to as the "Master Plan") prepared by Hanson, BSP and Gilpin dated November 20, 2018.

...

Project is to be located at the existing fairgrounds site on US HWY 59 east of Laredo adjacent to Casa Blanca Lake, as depicted in the Webb County Fairgrounds Master Plan. The limits of the site are depicted on the Boundary Survey dated August 3, 2015 prepared by Gilpin Engineering, Co. and is restricted to the 140.1706 acre tract located on the northwest side of US HWY 59.

Access to the existing fairgrounds site is directly off of US HWY 59. It is anticipated that access will continue to be from US HWY 59 with the feasibility of alternate access locations off of State Representative Henry Cuellar Roadway to be investigated. Should it be determined that access off of State Representative Henry Cuellar Roadway is feasible,

the new access roadways will be incorporated into the scope of this agreement. In addition, a traffic study will be conducted and coordinated with TxDOT based on the estimated future traffic demands of the new Fairgrounds improvements. On-site improvements suggested by the traffic study will be incorporated into the design of the Fairgrounds site. Off-site traffic improvements that are not included in the Capitol Costs Estimate in the Masterplan report may be included in the scope of this agreement upon approval by the Owner. Approval of off-site traffic improvements by the Owner presumes that the project construction budget will be adjusted accordingly for the new scope of work.

The Masterplan report assumes adequate utility services are available along the US HWY 59 corridor. The design and construction of on-site utilities and infrastructure is included in the Capitol Costs Estimate included in the Masterplan report. However, planning and/or improvements to off-site utilities and drainage structures is outside the scope of the Masterplan report. Off-site utility and infrastructure improvements may be included in the scope of this agreement upon approval by the Owner. Approval of off-site utility and infrastructure improvements by the Owner presumes that the project construction budget will be adjusted accordingly for the new scope of work.

Specific improvements planned for the new fairgrounds are as follows:

- .1 Main Events Arena with approximately 4,000 fixed seats, air-conditioned building with a 150'x 300' floor area and associated barns, warm-up rings and animal penning areas.
- .2 Community Center/Banquet Hall will be a multi-purpose air-conditioned facility with approximately 20,000 square feet of Meeting/Banquet space, a full food-service kitchen and administrative office space.
- .3 Show Ring/Animal Exhibition Building with approximately 97,000 square feet of contiguous air conditioned, flat-floored, flexible event and exhibition space including approximately 1,500 fixed and moveable bleacher seating and a 60 foot x 80 foot animal show ring.
- .4 Festival Grounds with an outdoor performance stage, concert sound and light power supply, concessions/vendor hook-ups and facilities for ticketing and security control.
- .5 The 5,000 square foot existing LIFE Pavilion will be refurbished and repurposed for storage and equipment maintenance space.
- .6 Entry Gates, feature towers, building signage and site wayfinding signage typical of large modern fairgrounds facilities.
- .7 New on-site utility services including water, sanitary sewer, gas, underground electrical, data/internet/telephone/communications infrastructure.
- .8 On-site drainage, grading, automobile parking, RV parking, roads, fencing, landscaping and irrigation.

## **PAGE 3**

To be determined during the development of the Guaranteed Maximum Price (GMP) developed through the CMAR process.

...

.1 Design phase milestone dates, if any:

- .1 Project Commencement date: November 1, 2019

...

.2 Commencement of construction:

~~.3~~ Substantial Completion date or milestone dates:

~~.4~~ Other: Substantial construction Completion date: January 28, 2022

PAGE 4

*(Indicate agreement type.)type)*

[ ] AIA Document A133-2009, A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

~~[ ] AIA Document A134-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.~~

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling or phased construction are set forth below: Owner identifies the following representative in accordance with Section 5.3:

*(List number and type of bid/procurement packages.) name, address and other information.)*

TBD

...

§ 1.1.7 Other Project information:

*(Identify special characteristics or needs of the Project not provided elsewhere, such as the Owner's sustainable objective, if any, or historic preservation requirements.)* The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

*(List name, address and other information.)*

TBD

§ 1.1.8 The Owner-Architect identifies the following representative in accordance with Section 5.5:2.3:

...

Lewis B. Shrier, P.E.  
Hanson Professional Services Inc.  
4501 Gollihar Road  
Corpus Christi, TX 78411  
(361) 814-9900

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows: Architect will retain the consultants identified in Sections 1.1.9.1 and 1.1.9.2. Architect will provide the Owner with a copy of all consultant agreements including company profile and qualifications.

*(List name, legal status, address and other information.)*

§ 1.1.9.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Hanson Professional Services, Inc.  
4501 Gollihar Road  
Corpus Christi, Texas 78411  
(361) 814-9900  
Lewis B. Shrier, P.E.

.2 Mechanical Engineer:

Hanson Professional Services, Inc.  
720 N. Maitland Ave., Suite 102  
Maitland, Florida 32751  
(407) 622-2050  
Bradley Perrott, P.E., LEED AP, EMP

.3 Electrical Engineer:

Hanson Professional Services, Inc.  
7625 N. University St., Suite 200  
Peoria, Illinois 61614  
(309) 691-0902  
Austin Thompson, P.E.

§ 1.1.9.2 Consultants retained under Additional Services:

.1 Civil Engineer:

.1 For on-site elements:

Hanson Professional Services, Inc.  
4501 Gollihar Road  
Corpus Christi, Texas 78411  
(361) 814-9900  
Willie Rivera Jr., P.E.

.2 For off-site elements & coordination with local jurisdictions:

Gilpin Engineering Company  
101 W. Hillside Road, #8  
Laredo, Texas 78041  
(956/) 753-2210  
Robert J. Gilpin, P.E., R.P.L.S.

.2 Surveying:

Gilpin Engineering Company  
101 W. Hillside Road, #8  
Laredo, Texas 78041  
(956/) 753-2210  
Robert J. Gilpin, P.E., R.P.L.S.

.3 Architect / Fairgrounds Consultant:

Bullock Smith Partners, Inc.  
404 BNA Drive, Suite 320  
Nashville, Tennessee 37217  
(615) 242-1888  
Steve White, AIA

.4 Landscape Design:

Gignac Landscape Architecture  
3833 S. Staples Street, Suite N119  
Corpus Christi, Texas 78411

(361) 853-0795  
Robert Gignac, Landscape Architect

.5 Architectural Interior Design:

Hanson Professional Services, Inc.  
4501 Gollihar Road  
Corpus Christi, Texas 78411  
(361) 814-9900  
Alva Pulido

.6 Performing Arts Consultant:

WJHW, Inc.  
12175 Network Blvd, Suite 150  
San Antonio, Texas 78249  
(972) 934-3700  
René Garza, ASTC

.7 Aerial Photography (UAV):

Hanson Professional Services, Inc.  
4501 Gollihar Road  
Corpus Christi, Texas 78411  
(361) 814-9900  
Harrison McNeil, Drone Pilot

§ 1.1.10 The Owner will retain the following consultants:  
(List name, legal status, address and other information.)

.1 Construction Manager:

*(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.)*

.2 Cost Consultant (if in addition to the Construction Manager):

*(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.3.6, 3.3.7, 3.4.2, 3.4.3, 3.5.4, 3.5.5, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)*

.3 Land Surveyor:

.4 Geotechnical Engineer:

~~.5 — Civil Engineer:~~

~~.6 — Other consultants:~~

~~(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)~~Other Initial Information on which the Agreement is based:

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~~§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:  
(List name, address and other information.)~~

~~§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:  
(List name, legal status, address and other information.)~~

~~§ 1.1.12.1 Consultants retained under Basic Services:~~

~~.1 — Structural Engineer:~~

~~.2 — Mechanical Engineer:~~

~~.3 — Electrical Engineer:~~



**§ 1.1.12.2** ~~Consultants retained under Additional Services:~~

**§ 1.1.13** ~~Other Initial Information on which the Agreement is based:~~

**§ 1.2** The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that ~~such information the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.~~ Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

**§ 1.3** Owner's user or reuse of the electronic files.

For the purpose of this project, Hanson Professional Services Inc.'s (Hanson's) Instruments of Service (IOS) shall consist of electronic files delivered in Adobe Acrobat Portable Document Format (PDF) Release 17 consisting of drawings, specifications, reports, and other related project deliverable documents prepared by Hanson, or by Hanson's sub-consultants, bearing the seal of a Registered Architect, a licensed Professional Engineer, a licensed Professional Land Surveyor or other applicable professional credential currently authorized to practice in the State of Texas. Hanson shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights to Hanson's Instruments of Service.

Other electronic data files, such as e-mail communications, editable native file formats of text documents, editable native format Computer Aided Drafting (CAD) files, etc., even when used as the basis for developing Hanson's IOS are not themselves considered to be IOS. To the extent these other types of electronic document are furnished by Hanson for delivery to the Owner, these documents are furnished merely for the Owner's convenience. The other types of electronic documents may be utilized by the Owner provided:

1. The Owner agrees not to reuse these other electronic files, in whole or in part, for any purpose other than for the project. The Owner further agrees to waive all claims against Hanson resulting in any way from any unauthorized changes to or reuse of the electronic files for any project by anyone other than Hanson.
2. The Owner is aware that differences may exist between these other electronic files provided and Hanson's IOS. In the event of a conflict between Hanson's IOS and the other electronic files, Hanson's IOS documents shall govern. The Owner also recognizes that information stored on electronic media may or may not be compatible with their own computer system. Hanson shall not be liable or responsible for any claims arising from incompatibility, readability, or translation of these other electronic files.
3. Under no circumstances shall delivery of any electronic files (either IOS or other documents) for use by the Owner be deemed a sale by Hanson, and Hanson makes no warranties, either express or Implied, of merchantability and fitness for any particular purpose. In no event shall Hanson be liable for any damages, including indirect or consequential damages, as a result of the Owner's use or reuse of these electronic files.
4. Upon receipt, the electronic files shall be deemed to be accepted, and Hanson shall not have any obligation to correct errors or maintain electronic files beyond the completion of the final contract deliverables.

All drawings, reports and data on any form of electronic media generated or furnished by the Owner for Hanson's use shall be at the Owner's expense. Hanson may use such drawings, reports and data in performing its services and is entitled to rely upon the accuracy and completeness thereof.

**PAGE 7**

~~§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions within the state in which the project is located. No other representation expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise. Nothing in this Agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party. Architecture is not acting as a municipal advisor to Owner as defined by the Securities and Exchange Commission.~~

...

~~§ 2.6 Insurance. The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost as set forth in Section 11.8.3.~~

~~§ 2.6 The Architect shall maintain the following insurance until termination of this Agreement.~~

~~§ 2.6.1 Commercial General Liability with policy limits of not less than (\$ —) One Million Dollars (\$1,000,000) for each occurrence and (\$ —) Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage.~~

~~§ 2.6.2 Automobile Liability covering vehicles owned by the Architect owned, and non-owned vehicles used-used, by the Architect with policy limits of not less than (\$ —) per claim and (\$ —) in the aggregate for bodily injury and property damage One Million Dollars (\$1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

~~§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as those required under Sections 2.6.1 and 2.6.2. the coverage required under Sections 2.6.1. and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

~~§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with policy limits of not less than (\$ —)limits.~~

~~§ 2.6.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, Employers' Liability with policy limits of not less than (\$ —) per claim and (\$ —) in the aggregate. One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) disease each employee, and One Million Dollars (\$1,000,000) disease policy limit.~~

~~§ 2.6.6 The Owner shall be an additional insured on the Architect's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (2,000,000) in the aggregate.~~

~~§ 2.6.7 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as additional insureds on the Commercial General Liability, Automobile Liability, and any excess policies. Owner shall be an additional insured on the Architect's primary and excess insurance policies for commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.~~

§ 2.6.8 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as additional insureds on the Commercial General Liability, Automobile Liability, and any excess policies.

**PAGE 8**

§ 3.1.7 The Architect shall, ~~shall~~ at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental ~~authorities~~ authorities, including accessibility standards required by the Texas Department of Licensing and Regulation, and by such entities providing utility services.

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§ 3.2.3 Upon authorization by the Owner, and ~~subject to Section 4.3.1.15,~~ the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

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§ 3.6.1.2 ~~Subject to Section 4.3, the~~ The Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or the Owner's issuance of a Notice to Proceed to the Construction Manager. ~~Subject to Section 4.3, the~~ The Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

...

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, ~~or as otherwise required in Section 4.3.3,~~ to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed 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. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

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§ 3.6.4.4 ~~Subject to the provisions of Section 4.3, the~~ The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. ~~Subject to the provisions of Section 4.3, the~~ The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

...

§ 4.1 Additional Services listed below are ~~not included in Basic Services but may be~~ and are required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.responsibility.

...

<del>§ 4.1.1</del> Assistance with selection of the Construction Manager		
<del>§ 4.1.2</del> Programming (B202™ 2009) <del>§ 4.1.1.1</del> Programming	<u>Architect/Owner</u>	<u>4.2.1</u>
<del>§ 4.1.3</del> <del>§ 4.1.1.2</del> Multiple preliminary designs	<u>Architect/Owner</u>	<u>4.2.2</u>
<del>§ 4.1.4</del> <del>§ 4.1.1.3</del> Measured drawings	<u>Not Provided (NP)</u>	
<del>§ 4.1.5</del> <del>§ 4.1.1.4</del> Existing facilities surveys	<u>Architect</u>	<u>4.2.3</u>
<del>§ 4.1.6</del> <del>§ 4.1.1.5</del> Site evaluation and planning (B203™ 2007)	<u>Architect/Owner</u>	<u>4.2.4</u>
<del>§ 4.1.1.6</del> Building information model Management Responsibilities	<u>Architect</u>	<u>4.2.5</u>
<del>§ 4.1.7</del> Building information modeling (E203™ 2013) <del>§ 4.1.1.7</del> Development of Building Information Models for post construction use	<u>NP</u>	
<del>§ 4.1.8</del> <del>§ 4.1.1.8</del> Civil engineering (on-site only)	<u>Architect</u>	<u>4.2.6</u>
<del>§ 4.1.9</del> <del>§ 4.1.1.9</del> Landscape design	<u>Architect</u>	<u>4.2.7</u>
<del>§ 4.1.10</del> <del>§ 4.1.1.10</del> Architectural interior design(B252™ 2007)	<u>Architect</u>	<u>4.2.8</u>
<del>§ 4.1.11</del> <del>§ 4.1.1.11</del> Value analysis (B204™ 2007)	<u>Architect</u>	<u>4.2.9</u>
<del>§ 4.1.1.12</del> Detailed cost estimating beyond that required in Section 6.3	<u>NP</u>	
<del>§ 4.1.12</del> Detailed cost estimating		
<del>§ 4.1.13</del> <del>§ 4.1.1.13</del> On-site project representation (B207™ 2008)	<u>Architect</u>	<u>4.2.10</u>
<del>§ 4.1.14</del> <del>§ 4.1.1.14</del> Conformed construction documents	<u>NP</u>	
<del>§ 4.1.15</del> <del>§ 4.1.1.15</del> As-designed record drawings	<u>NP</u>	
<del>§ 4.1.16</del> <del>§ 4.1.1.16</del> As-constructed record drawings	<u>Architect</u>	<u>4.2.11</u>
<del>§ 4.1.17</del> <del>§ 4.1.1.17</del> Post occupancy evaluation	<u>NP</u>	
<del>§ 4.1.18</del> <del>§ 4.1.1.18</del> Facility support services (B210™ 2007)	<u>NP</u>	
<del>§ 4.1.19</del> <del>§ 4.1.1.19</del> Tenant-related services	<u>NP</u>	
<del>§ 4.1.20</del> <del>§ 4.1.1.20</del> Architect's Coordination of Owner's consultants	<u>Architect</u>	<u>4.2.12</u>
<del>§ 4.1.21</del> <del>§ 4.1.1.21</del> Telecommunications/data design (conduit only)	<u>Architect</u>	<u>4.2.13</u>
<del>§ 4.1.22</del> <del>§ 4.1.1.22</del> Security evaluation and planning (B206™ 2007)(B206™ 2007)	<u>NP</u>	
<del>§ 4.1.23</del> <del>§ 4.1.1.23</del> Commissioning (B211™ 2007)	<u>NP</u>	
<del>§ 4.1.1.24</del> Sustainable Project Services pursuant to Section 4.1.3	<u>NP</u>	
<del>§ 4.1.24</del> Extensive environmentally responsible design		
<del>§ 4.1.1.25</del> Fast-track design services (B214™ 2012)	<u>Architect</u>	<u>4.2.14</u>
<del>§ 4.1.25</del> LEED® certification (B214™ 2012) <del>§ 4.1.1.26</del> Multiple bid packages	<u>Architect</u>	<u>4.2.15</u>
<del>§ 4.1.1.27</del> Historic Preservation (B253™ 2007)	<u>NP</u>	
<del>§ 4.1.26</del> Historic preservation (B205™ 2007)		
<del>§ 4.1.27</del> <del>§ 4.1.1.28</del> Furniture, furnishings, and equipment design(B253™ 2007)	<u>Architect</u>	<u>4.2.16</u>
<del>§ 4.1.1.29</del> Performing Arts Consultant	<u>Architect</u>	<u>4.2.17</u>
<del>§ 4.1.1.30</del> Updated boundary/ROW Surveys	<u>Architect</u>	<u>4.2.18</u>
<del>§ 4.1.1.31</del> Topographic survey-Facilities location survey	<u>Architect</u>	<u>4.2.19</u>
<del>§ 4.1.1.32</del> Aerial photography through UAV (Un-manned Aerial Vehicle)	<u>Architect</u>	<u>4.2.20</u>

<u>§ 4.1.1.33 Subsurface investigation for geotechnical soil Parameters/presence of rock for excavation Purposes</u>	<u>NP</u>	
<u>§ 4.1.1.34 Utility line locate surveys/pipeline location Surveys</u>	<u>Architect</u>	<u>4.2.21</u>
<u>§ 4.1.1.35 TxDOT Permit</u>	<u>Architect</u>	<u>4.2.22</u>
<u>§ 4.1.1.36 TCEQ Construction Site Stormwater Permit</u>	<u>NP</u>	
<u>§ 4.1.1.37 Utility availability coordination with City of Laredo</u>	<u>Architect</u>	<u>4.2.23</u>
<u>§ 4.1.1.38 Specialty testing/inspections</u>	<u>NP</u>	

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§ 4.2.1 Programing: Owner and Architect to review the Master Plan document and refine the programing for all buildings and improvements.

§ 4.2.2 Multiple Preliminary Designs: For each planned building or improvement, the Architect, in conjunction with input from the Owner, shall prepare multiple preliminary designs, as needed, with sufficient detail and notations to develop a preliminary budget estimate for the building or improvement. The number of preliminary plans per building or improvement shall be no more than five (5) each without a subsequent agreement defining the number of additional preliminary plans greater than five and additional compensation for same, if any.

§ 4.2.3 Existing Facilities Survey: The Architect will document the location and condition of any existing buildings or facilities that are to remain.

§ 4.2.4 Site Evaluation and Planning: The Architect, with input from the Owner, will evaluate the existing fairgrounds site for suitability with each planned building or improvement. The Architect and Owner will determine the placement of buildings or improvements based on the site evaluations.

§ 4.2.5 Building Information Model Management Responsibilities: The Architect will manage the development of 3-D models of the buildings and/or site for presentation purposes only. The 3-D model will not be sufficiently accurate or detailed for use by the CMAR for estimating or construction purposes nor for use by the Owner for facilities management.

§ 4.2.6 Civil Engineering: The Architect will include on-site civil engineering design and construction administration as part of the Basic Services provided by the Architect. In addition to design of all on-site utilities, grading, drainage and paving, Civil Engineering scope will include:

§ 4.2.6.1 Traffic study to be conducted and coordinated with TxDOT based on the estimated future traffic demands of the new Fairgrounds improvements. . On-site improvements suggested by the traffic study will be included as part of Basic Services provided by the Civil Engineer. Off-site traffic improvements are beyond the scope of this agreement and will be addressed by a separate agreement after the traffic study is completed.

§ 4.2.6.2 Design of on-site access roadways connecting to US HWY 59.

§ 4.2.6.3 Feasibility studies of alternate vehicular access connecting to State Representative Henry Cuellar Roadway. If feasible, design and construction documents of alternate access roadways will be included as part of the Basic Services of the Civil Engineer.

§ 4.2.6.4 Off-site traffic improvements that are not included in the Capitol Costs Estimate in the Masterplan report but are included in the scope of this agreement upon approval by the Owner. Approval of off-site traffic improvements by the Owner presumes that the project construction budget will be adjusted accordingly for the new scope of work.

§ 4.2.6.5 Off-site utility and infrastructure improvements that are not included in the Capitol Costs Estimate in the Masterplan report but are included in the scope of this agreement upon approval by the



Owner. Approval of off-site utility and infrastructure improvements by the Owner presumes that the project construction budget will be adjusted accordingly for the new scope of work.

§ 4.2.7 Landscape Design: Landscape design including irrigation systems is included in the Basic Services of the Architect.

§ 4.2.8 Architectural Interior Design: Interior design, including selection of colors, fabrics, flooring, tile, etc. is included in the Basic Services of the Architect.

§ 4.2.9 Value Analysis: The Architect will provide value analysis of the cost estimates and schedules developed by the CMAR in accordance with Article 3 for the Schematic Design Phase, Design Development Phase, Construction Documents Phase and for the Final Guaranteed Maximum Price. In addition, the Architect will provide value analysis of any cost proposals or schedule modifications requested by the CMAR or Owner during the Construction Phase of the project.

§ 4.2.10 On-Site Project Representative: As part of Basic Services, the Architect will provide an on-site Project Representative for the duration of the Construction Phase.

§ 4.2.11 As-Constructed Record Drawings: The Architect will review for completeness and forward a record copy of the As-Constructed Record Drawings prepared by the CMAR to the Owner.

§ 4.2.12 Architect's Coordination of Owner's Consultants: As part of Basic Services, the Architect will coordinate the designs prepared or recommended by the Owner's Consultants with the Architect's work. The Architect will also assist with the coordination of the Owner's Construction Phase Consultants such as Materials Testing Laboratories.

§ 4.2.13 Telecommunications/Data Design: As part of Basic Services, the Architect will coordinate and provide secured, climate-controlled space with adequate number of separate power circuits for telecommunications and/or data systems designed by the Owner or the Owner's Consultants. The Architect's design documents will include conduit and data/network outlet locations distributed throughout the facility as directed by the Owner or Owner's Consultant. Purchase and installation of the telecommunications and/or data systems, including wiring, cabling, cable terminations, network outlets, data processors and controllers, will be by the Owner.

§ 4.2.14 Fast-Track Design Services: As part of Basic Services, the Architect will prepare phased design packages in cooperation with the CMAR in order to Fast-Track the construction process. Fast-Track schedules and phased design packages will be proposed jointly by the Architect and CMAR with final approved and acceptance by the Owner.

§ 4.2.15 Multiple Bid Packages: As part of Basic Services, the Architect will generate construction documents separated into multiple phased bid packages as requested by the Owner in order to facilitate fast-track construction schedules and/or budgetary and funding decisions by the Owner.

§ 4.2.16 Furniture, Furnishings and Equipment Design: As part of Basic Services, the Architect will include the design of selected FF&E elements included in the budget for the Cost of the Work. Design of selected FF&E elements included under Basic Services is limited to:

§ 4.2.16.1 Fixed audience seating for the Main Events Center (Approximately 4,000 seats.)

§ 4.2.16.2 Kitchen equipment for Main Events Center, Banquet Hall, Show Ring and other facilities with planned inside cooking or concessions serving areas.

The design of other FF&E elements may be added to the scope of this agreement upon approval by the Owner in accordance with Section 4.3.

§ 4.2.17 Performing Arts Consultant: As part of Basic Services, the Architect will hire a Performing Arts Consultant for recommendations on theatrical lighting, stage and acoustics recommendations for the Main Events Arena.

§ 4.2.18 Updated Boundary/ROW Survey: As part of Basic Services, the Architect will provide updates to the Fairground site boundary, ROW easements and utility easements that are modified or added during the execution of the project.

§ 4.2.19 Topographic Survey – Facilities Location Survey: As part of Basic Services, the Architect will provide an updated survey of the site indicating the as-constructed location of buildings and improvements.

§ 4.2.20 Aerial Photography through UAV (Un-Manned Aerial Vehicle): As part of Basic Services, the Architect will utilize UAVs to obtain periodic record photographs of the Fairgrounds site and construction progress. The frequency of obtaining aerial photographs will be determined by the Architect and the Owner at a later time. Photographs will not be suitable for controlled scale mapping or measurements.

§ 4.2.21 Utility Line Locate Survey/Pipeline Location Survey: As part of Basic Services, the Architect will attempt to locate and indicate on the site construction documents any known existing underground utilities and/or pipelines that traverse the Fairground site. Historical property records, easement records and historical photographs, if available, will be utilized for the survey. In addition, the Texas811 statewide utility notification center will be contacted so that underground utility owners can be notified of excavations planned at the Fairground site.

§ 4.2.22 TxDOT Permit: As part of Basic Services, the Architect will prepare, modify and update all required TxDOT permit documents related to the Fairground site for review by TxDOT. Final approval and acceptance of the permit documents will be solely at the discretion of TxDOT.

§ 4.2.23 Utility Availability Coordination with City of Laredo: As part of Basic Services, the Architect will coordinate water, gas and sanitary sewer utility requirements as well as storm drainage conveyance requirements with the City of Laredo. The Architect will assist with the coordination and scheduling of the Fairground construction with off-site utility and drainage improvement projects implemented for the purpose of serving the Fairground site.

§ 4.3 Additional Services may be provided after execution of this the Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any and Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.2 and 11.3 and an appropriate adjustment in the Architect's schedule. Architects schedule. Prior to performing Additional Services the Architect shall receive Authorization To Proceed from the Owner.

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- ~~1~~ Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- ~~2~~ Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- ~~3~~ Services necessitated by the Owner's request for extensive sustainable design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- ~~4~~ Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations, or official interpretations;
- ~~5~~ 2 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

- ~~.6~~ — Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- ~~.7~~ — Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- ~~.8~~ — Preparation for, and attendance at, a public presentation, meeting or hearing;
- ~~.9~~ .3 — Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- ~~.10~~ — Evaluation of the qualifications of bidders or persons providing proposals;
- ~~.11~~ — Consultation concerning replacement of Work resulting from fire or other cause during construction;
- ~~.12~~ — Assistance to the Initial Decision Maker, if other than the Architect;
- ~~.13~~ — Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- ~~.14~~ — Services necessitated by the Owner's delay in engaging the Construction Manager; and
- ~~.15~~ — Making revisions in Drawings, Specifications, and other documents resulting from substitutions included in the agreed-to assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

**§ 4.3.2** To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- ~~.1~~ — Reviewing a Construction Manager's submittal out of sequence from the submittal schedule agreed to by the Architect;
- ~~.2~~ — Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- ~~.3~~ — Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
- ~~.4~~ — Evaluating an extensive number of Claims as the Initial Decision Maker;
- ~~.5~~ — Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom; or
- ~~.6~~ — To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier. If the services covered by this Agreement have not been completed within Thirty-One (31) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

**§ 4.3.3** The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- ~~.1~~ — ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- ~~.2~~ — ( ) visits to the site by the Architect over the duration of the Project during construction
- ~~.3~~ — ( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- ~~.4~~ — ( ) inspections for any portion of the Work to determine final completion

**§ 4.3.4** If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

~~§ 5.6 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~ services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

~~§ 5.7 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.~~ coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

~~§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.~~ furnish tests, inspections and reports required by law such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

~~§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.~~ all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

~~§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.~~ provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

~~§ 5.11 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.~~ contemporaneously provide the Architect with any communications provided to the Construction Manager about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

~~§ 5.12 The Owner shall contemporaneously provide the Architect with any communications provided to the Construction Manager about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.~~ Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.



~~§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction, access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.~~

~~§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.~~

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~~§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.~~

...

~~§ 6.3.2 Subject to Section 4.3, if If the Owner engages a Cost Consultant and a discrepancy exists between the Construction Manager's estimate and the Cost Consultant's estimate, the Architect shall assist the Cost Consultant and Construction Manager as necessary to conform the estimates to one another.~~

...

~~§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, shall make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment. Work.~~

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~~§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.~~

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☐ — Arbitration pursuant to Section 8.3 of this Agreement

☐ — ☒ Litigation in a court of competent jurisdiction in Webb County, Texas

☐ Other: *(Specify)*

*(Paragraphs Deleted)*

## § 8.3 Arbitration

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation~~

shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

**§ 8.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

**§ 8.3.2** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### **§ 8.3.4 Consolidation or Joinder**

**§ 8.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 8.3.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 8.3.4.3** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

...

**§ 9.6** 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 Expenses then due and all Termination Expenses as defined in Section 9.7.due.

**§ 9.7** Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect. The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Section 1.3, Article 7 and Section 11.9.

**§ 9.8** The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

**§ 10.1** This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.located.

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**§ 10.8** If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, ~~or~~ (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential ~~information~~ information or (4) as otherwise provided by State or Federal Law.

...

11.1.1      10% Total Fee for Basic Services in connection with the first \$50,000,000 of Total Construction Cost comprised of:

8% of Total Construction Costs for Design Services and

2% of Total Construction Costs for Construction Administration Services.

11.1.2      9% Total Fee for Basic Services in connection with the next \$20,000,000 of Total Construction Cost, i.e. \$50,000,001 through \$70,000,000, comprised of:

7.2% of Total Construction Costs for Design Services and

1.8% of Total Construction Costs for Construction Administration Services.

11.1.3      8.5% Total Fee for Basic Services in connection with the next \$20,000,000 of Total Construction Cost, i.e. \$70,000,001 through \$90,000,000, comprised of:

6.8% of Total Construction Costs for Design Services and

1.7% of Total Construction Costs for Construction Administration Services.

**§ 11.2** For Additional Services ~~designated in Section 4.1,~~ that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

~~(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)~~ compensation.)

Compensation shall be in accordance with the attached schedule, "Basis of Payment, consulting services (Form 19 Rev 0)" plus direct expenses.

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**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

~~(Insert amount of, or basis for, compensation.)~~ Compensation for Additional Services of the Architect's consultants shall be the amount invoiced to the Architect plus ten percent (10 %).

...

**§ 11.4** ~~Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus — percent ( — %), or as otherwise stated below:~~

When compensation for Basic Services is based on a stipulated sum or percentage basis, the proportion of compensation for each phase of services shall be as follows:

<u>Schematic Design Phase</u>	<u>Fifteen</u>	<u>percent (</u>	<u>15</u>	<u>%)</u>
<u>Design Development Phase</u>	<u>Twenty-Five</u>	<u>percent (</u>	<u>25</u>	<u>%)</u>
<u>Construction Documents Phase</u>	<u>Forty</u>	<u>percent (</u>	<u>40</u>	<u>%)</u>

<u>Construction Phase</u>	<u>Twenty</u>	<u>percent (</u>	<u>20</u>	<u>%)</u>
<u>Total Basic Compensation</u>	<u>one hundred</u>	<u>percent (</u>	<u>100</u>	<u>%)</u>

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services as appropriate.

**§ 11.5** Where compensation for Basic Services When compensation is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

<u>Schematic Design Phase</u>	<u>percent (</u>	<u>%)</u>
<u>Design Development Phase</u>	<u>percent (</u>	<u>%)</u>
<u>Construction Documents Phase</u>	<u>percent (</u>	<u>%)</u>
<u>Construction Phase</u>	<u>percent (</u>	<u>%)</u>
<u>Total Basic Compensation</u>	<u>one hundred</u>	<u>percent ( 100 %)</u>

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services as appropriate. Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.4 based on (1) the Owner-accepted Guaranteed Maximum Price Amendment or Control Estimate, as applicable, or (2) if the Guaranteed Maximum Price proposal or Control Estimate has not been accepted by the Owner, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

**§ 11.6** When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the Owner-accepted Guaranteed Maximum Price Amendment or Control Estimate, as applicable, or (2) if the Guaranteed Maximum Price proposal or Control Estimate has not been accepted by the Owner, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

See attached schedule "Basis of Payment, Consulting Services" (Form 19, Rev 0)

*(Table Deleted)*

**§ 11.7** The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

### **§ 11.7 Compensation for Reimbursable Expenses**

**§ 11.7.1** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;

- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's consultants' expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;

§ 11.7.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

### **§ 11.8 Compensation for Use of Architect's Instruments of Service**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

TBD

### **§ 11.9 Payments to the Architect**

#### **§ 11.9.1 Initial Payments**

§ 11.9.1.1 An initial payment of zero (\$0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

#### **§ 11.9.2 Progress Payments**

§ 11.9.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

1-1/2% One and a half percent monthly

§ 11.9.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.9.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

### **Employee or Category**

### **Rate (\$0.00)**

### **§ 11.8 Compensation for Reimbursable Expenses**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

- ~~.8 — Architect's consultants' expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;~~
- ~~.9 — All taxes levied on professional services and on reimbursable expenses;~~
- ~~.10 — Site office expenses; and~~
- ~~.11 — Other similar Project-related expenditures.~~

~~§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus — percent (— %) of the expenses incurred.~~

~~§ 11.8.3 If the insurance requirements listed in Section 2.6 exceed the types and limits the Architect normally maintains and the Architect incurred additional costs to satisfy such requirements, the Owner shall reimburse the Architect for such costs as set forth below:~~

### **§ 11.9 Compensation for Use of Architect's Instruments of Service**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

### **§ 11.10 Payments to the Architect**

~~§ 11.10.1 An initial payment of — (\$ —) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.~~

~~§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid — (—) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.~~

~~(Insert rate of monthly or annual interest agreed upon.)~~

~~—%~~

~~§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~

~~§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.~~

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§ 12.1 In recognition of the relative risks and benefits of the Project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees that for the compensation herein provided the Architect cannot expose itself to damages disproportionate to the nature and scope of the Architect's services or the compensation payable to it hereunder. Therefore, the Owner agrees to limit its remedies against the Architect arising from the Architect's professional acts, errors or omissions, in any action based on strict liability, breach of contract, negligence or any other cause of action, such that the total aggregate amount of the Owner's damages shall not exceed the Architect's total net fee for services rendered on the Project. This limitation pertains to the Architect and to its subcontractors and sub consultants, and applies as a single aggregate amount to all work performed under the Agreement, including all work performed under an amendment or modification. If the Owner desires a limit greater than that provided above, the Owner and the Architect shall include in this Agreement the amount of such limit and the additional compensation to be paid to the Architect for assumption of such additional risk.

...

- .1 AIA Document B133™–2014, Standard Form Agreement Between Owner and Architect, ~~Construction Manager as Constructor Edition~~
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

.3—Other documents:

...

Basis of payment, consulting services (Form 19, Rev 0)

This Agreement entered into as of the day and year first written above.

WEBB COUNTY

HANSON PROFESSIONAL SERVICES INC.

**OWNER** *(Signature)*

**ARCHITECT** *(Signature)*

Tano E. Tijerina  
Webb County Judge

John A. Michael, P. E.  
Senior Vice-President

*(Printed name and title)*

*(Printed name and title)*

**ATTEST:**

Margie Ramirez Ibarra  
Webb County Clerk

Approved as to Form:

Nathan R. Bratton  
General Counsel  
Civil Legal Division\*

\*The General Counsel, Civil Legal Division's office, may only advise or approve contracts or legal documents on behalf Webb County, its client. 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).

## **Certification of Document's Authenticity**

### **AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:48:40 ET on 09/26/2019 under Order No. 2541838030 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B133™ – 2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)