

DRAFT AIA® Document B101™ - 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the « » day of « » in the year « 2023 »
(In words, indicate day, month and year.)

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

« Webb County, a political subdivision of the State of Texas »
« 1000 Houston Street »
« Laredo, Texas 78040 »
« Telephone: 956.523.4600 »
« Fax: 956.523.5065 »

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

« PDG, LLC d/b/a Heckenkemper Golf Course Design »
« 5314 South Yale Ave., Suite 510 »
« Tulsa, Oklahoma 74135 »
« »
« »

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

« Casa Blanca Golf Course Reconfiguration Project »
« Reconfigure the sequence of golf holes affected by the proposed Loop20/U.S. 59 right-of-way taking including, but not limited to, a review of the effect of the proposed right of way taking on the golf course property, the shifting of multiple greens & tee complexes and the relocation and replacement of the irrigation reservoir, irrigation lines, cart paths, pump house and telemetry along with other golf components and structures. »
« »

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.

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

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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.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

« »

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

« ».

§ 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.)

« Construction budget estimated range of \$2.0M-\$2.5M »

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

« »

.2 Construction commencement date:

«To be determined in a “Notice to Proceed” to the Contractor. »

.3 Substantial Completion date or dates:

« To be determined in a “Notice to Proceed” to the Contractor. »

.4 Other milestone dates:

« To be determined »

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

« Competitive Sealed Bid or otherwise as determined by Webb County Commissioners Court. »

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

« Not Applicable »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

« Tano E. Tijerina »
« Webb County Judge »
« 1000 Houston Street »
« Laredo, Texas 78040 »
« Telephone: 956.523.4600 »
« »

§ 1.1.8 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 contact information.)

« Luis Perez-Garcia, P.E.
Webb County Engineer
Webb County Engineering Department
1620 Santa Ursula, 2nd Floor
Laredo, Texas 78040
Telephone: 956.523.4055
Fax: 523-5158»

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

« To be Determined by Owner »

« »
« »
« »
« »
« »

- .2 Civil Engineer:
To be determined by the Owner
- .3 Surveying
To be Retained by Architect as a Supplemental Service.

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

«Conor Cummings»
«Golf Course Architect »
«Heckenkemper Golf Course Design »
«5314 South Yale Ave., Suite 510 »
«Tulsa, Oklahoma, 74135»
«Email Address: ccummings@pdgtulsa.com »

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

- .1 Structural Engineer:

«»
« »
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« »
« »

- .2 Mechanical, Electrical, and Plumbing Engineer:

«»
« »
«»
«»
«»
« »

Consultants not governed by Texas Occupations Code Chapter 1001 shall be licensed or registered as required by applicable law.

§ 1.1.11.2 Consultants retained under Supplemental Services:

«1. Top Site Civil Group
6262McPherson Road, Suite 206
Laredo, Texas 78041
Telephone: (956) 725-5057

§ 1.1.12 Scope of Work on which the Agreement is based:

« EXHIBIT A SCOPE OF WORK CASA BLANCA GOLF COURSE RENOVATIONS is incorporated herein by reference as if set out in full for all intents and purposes and sets forth the work and deliverables to be provided by Architect. »

§ 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 The parties may agree upon protocols, in writing governing the transmission and use of Construction Documents or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect shall provide professional services as set forth in this Agreement. Architect, prior to signing this Agreement and submitting it to the Owner, shall comply with the provisions of Texas Government Code Section 2252.908, requiring a Disclosure of Interested Parties filed with the Texas Ethics Commission. Architect certifies that Architect is a registered professional architect or engineer licensed to practice in the State of Texas. Pursuant to the Texas Occupations Code, any civil, structural, mechanical, or electrical plans, specifications, or opinions of probable cost for construction must be prepared by a registered professional engineer or a registered architect, whichever is appropriate, and who is licensed to practice in the State of Texas. Architect agrees to notify Owner should Architect's registration status change. Architect certifies that Architect and Architect's employees and agents are eligible to work under federal, state and local immigration laws and regulations.

§ 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 and as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect, as set out in Texas Local Government Code Section 271.904(d), hereinafter referred to as the "Standard of Care." The Architect shall further, perform its services and obligations required of it by applicable laws, codes, and ordinances in accordance with the Standard of Care. Owner's approval, acceptance, use of, or payment for all or any of Architect's services shall in no way alter Architect's obligations or Owner's rights hereunder.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. The identified Architect shall be the prime design professional for the Project.

§ 2.4 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.

§ 2.5 Prior to performing Architect's services under this Agreement, Architect shall procure, maintain and provide insurance certificates, policies and endorsements, in at least the following amounts, to protect Architect and Owner from claims arising out of the performance of the Architect's services under this Agreement and caused by any error, omission, negligent act or omission, or design defect by Architect, such insurance to be in a form approved by the Owner, with an effective date prior to the beginning date of design. Such insurance shall be written on an occurrence basis, if available, and on a claims-made basis, if occurrence basis insurance is not available. Architect shall maintain its insurance in full force and effect and uninterrupted during the term of this Agreement and after the completion of services under this Agreement until the completion of any applicable statute of limitations, such period to be not less than one year from Final Completion of all construction of this Project as to workers compensation, two years from the Final Completion of all construction of this Project as to commercial general liability, and comprehensive automobile liability, and not less than ten years from the Final Completion of all construction of this Project (or twelve years, as allowed by Texas Civil Practice and Remedies Code §16.008), as to errors and omissions insurance. Architect shall furnish to Owner insurance certificates, policies and endorsements upon request at any time. Architect shall name Owner as an additional insured under his policies for commercial general liability and comprehensive automotive liability. All insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than A-X in A.M. Best's

Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, www.ambest.com, and that permits waivers of subrogation. Deductibles or self-insured retention limits for all policies (except Architect's Errors or Omissions insurance) shall not exceed \$25,000 for a project budgeted at \$4 million or less, or \$50,000 for a project budgeted at more than \$4 million. The policies shall include a waiver of subrogation in favor of the Owner. Any deviation from these requirements can only be approved by Owner's Commissioners Court. To the extent that Architect is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Architect shall provide written notice to Owner's Commissioners Court. Any nonconformity may be grounds for termination or modification of the Contract. Such policies shall be primary and non-contributory. The limits of liability for such insurance shall be in at least the following amounts:

§ 2.5.1 Workers' Compensation

- | | | |
|----|-----------------------|--|
| .1 | State: | Statutory Benefits |
| .2 | Employer's Liability: | \$1,000,000.00 per accident
\$1,000,000.00 disease, policy limit
\$1,000,000.00 disease, each employee |

§ 2.5.2 Commercial General Liability with policy limits of not less than Two Million Dollars (\$ 2,000,000.00)

- | | | |
|----|--|--|
| .1 | Each occurrence: | \$1,000,000.00 each occurrence
\$2,000,000.00 aggregate |
| .2 | Medical Expense (per person) | \$ 5,000.00 each occurrence |
| .3 | Products & Completed Operations: | Not/Applicable |
| .4 | Personal & Advertising Injury | \$ 1,000,000.00 aggregate |
| .5 | Must include explosion, collapse, and underground (X, C, and U) coverage | |
| .6 | Must include Completed Operations coverage | |
| .7 | Must Include Contractual Liability Coverage | |
| .8 | Must Include General Aggregate Per Project Endorsement. | |

§ 2.5.3 Contractual Liability:

- | | |
|----|---|
| .1 | Property Damage shall be included in Commercial General Liability Coverage. |
| .2 | Insurance sufficient to cover Architect's contractual indemnities. |

§ 2.5.4 Business Automobile Liability (including owned, non-owned, hired, or any other vehicles): (Such minimum limits shall be stated as follows, or in a combined single limit policy in the amount of at least \$1,000,000.00.

- | | | |
|----|------------------------------|----------------|
| .1 | Bodily Injury (per person) | \$1,000,000.00 |
| .2 | Bodily Injury (per accident) | \$1,000,000.00 |
| .3 | Property Damage | \$1,000,000.00 |

§ 2.5.5 Professional Liability (E&O) Coverage in at least in the following amounts:

\$1,000,000.00 per occurrence

\$2,000,000 per aggregate

Deductibles or self-insured retention amounts shall not exceed \$25,000 for a project budgeted at \$4 million or less, or \$50,000 for a project budgeted at more than \$4 million.

.1 Architectural and engineering consultants shall carry Professional Liability (errors and omissions) insurance in an amount not less than One Million Dollars (\$1,000,000) per claim/ One Million Dollars (\$1,000,000.00) annual aggregate.

§ 2.5.6 Umbrella Excess Liability coverages shall be:

- .1 \$1,000,000.00 each occurrence
- .2 \$ 1,000,000.00 aggregate
- .3 \$ 1,000,000.00 aggregate Per Project Endorsement

§ 2.5.7 Texas Workers Compensation Insurance. Because Architect will be performing services on-site, a copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the Architect or his employees providing services on a Project is required for the duration of the Project.

- .1 Duration of the Project includes the time from the beginning of the Work on the Project until the Architect's Work on the Project has been completed and accepted by the Owner.
- .2 Persons providing services on the Project include all persons or entities performing all or part of the services the Architect has undertaken to perform on the Project, regardless of whether that person contracted directly with the Architect and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.
- .3 Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- .4 The Architect shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code § 401.011(44) for all employees of the Architect providing services on the Project for the duration of the Project.
- .5 The Architect must provide a certificate of coverage to the Owner prior to being awarded the contract.
- .6 If the coverage period shown on the Architect's current certificate of coverage ends during the duration of the Project, the Architect must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
- .7 The Architect shall obtain from each person providing services on a project, and provide to the Owner:
 - .1 A certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

- .2 No later than seven days after receipt by the Architect, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- .8 The Architect shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.
- .9 The Architect shall notify the Owner in writing by certified mail or personal delivery, within ten days after the Architect knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- .10 The Architect shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- .11 The Architect shall contractually require each person with whom it contracts to provide services on a project, to:
 - .1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code § 401.011(44) for all of its employees providing services on the Project for the duration of the Project;
 - .2 Provide to the Architect, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;
 - .3 Provide the Architect, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .4 Obtain from each other person with whom it contracts, and provide to the Architect:
 - .1 A certificate of coverage, prior to the other person beginning work on the Project; and
 - .2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
 - .6 Notify the Owner in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage for any person providing services on the Project; and
 - .7 Contractually require each person with whom it contracts to perform as required by items 1-7, with the certificates of coverage to be provided to the person for whom they are providing services.
- .12 By signing this contract or providing or causing to be provided a certificate of coverage, the Architect is representing to the Owner that all employees of the Architect who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the

appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Architect to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- .13 The Architect's failure to comply with any of these provisions is a breach of contract by the Architect that entitles the Owner to declare the contract void if the Architect does not remedy the breach within ten days after receipt of notice of breach from the Owner.
- .14 The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996.

The foregoing subsections are subject to 28 TAC §110.110(i).

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 Architect, prior to signing this Agreement and submitting it to the Owner, shall comply with the provisions of Texas Government Code Section 2252.908, requiring a Disclosure of Interested Parties filed with the Texas Ethics Commission. The Architect's Basic Services consist of those described in Article 3 and include usual and customary architectural services, structural, mechanical, plumbing, and electrical engineering services; architectural interior design; telecommunications and technology design and distribution; kitchen; site feasibility design; roofing consultant services unless otherwise approved by Owner; accessibility services; record drawings; professional renderings; design and construction database management; Texas Commission on Environmental Quality compliance services, if appropriate; and internal auditing and accounting services as necessary for Architect to fulfill Architect's responsibilities under this Agreement and as necessary to complete the Project. Architect shall provide all plans and specifications for all site development necessary for the Project, which shall include locating any building on-site, and developing all plans and specifications for site drainage, parking, landscaping, walkways, irrigation, and accompanying infrastructure, when appropriate. Services not set forth in this Article 3 are Supplemental or Additional Services. Architect certifies that Architect is a registered professional architect or engineer licensed to practice in the State of Texas. Pursuant to the Texas Occupations Code, any structural, mechanical, or electrical plans, specifications, or opinions of probable cost for construction must be prepared by a registered professional engineer or a registered architect, whichever is appropriate, and who is licensed to practice in the State of Texas. Architect agrees to notify Owner should Architect's registration status change. Architect certifies that Architect and Architect's employees and agents are eligible to work under federal, state and local immigration laws and regulations.

§ 3.1.1 The Architect shall perform and manage the Architect's services and administers the Project, in accordance with this Agreement as amended for this Project, and with the AIA Document A201-2017, General Conditions of the Contract for Construction, as amended for this Project, consult with Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner through the issuance of progress reports to Owner and Contractor, as more specifically defined hereafter. The Architect shall not be relieved of any obligation to perform in accordance with the standard of care applicable to licensed architects in the State of Texas under the same or similar circumstances, regardless of whether or not a specific responsibility or task is included or identified in this Agreement.

- .1 Upon request of the Owner's representative, the Architect shall make presentations to Owner's representative to review the design of the Project. In addition, the Architect shall make monthly presentations to Owner's Commissioners Court if requested.
- .2 The Architect shall submit design documents to the Owner at intervals appropriate to the design process as designated in this Agreement, as amended, for purposes of evaluation and approval by the Owner's Commissioners Court, as specified herein. The Architect shall be entitled to rely on approvals received from the Owner's Commissioners Court in the further development of the design, provided that nothing herein shall relieve Architect of responsibility or liability for design defects, errors, or omissions.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner 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. Architect shall also promptly respond in writing to notices from Owner regarding Owner's discovery of errors, omissions, or inconsistencies, and, if requested, shall promptly meet with Owner regarding same. Owner's notice or lack of notice shall not relieve Architect of any responsibility or liability for performance of Architect's contracted services.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services including the dates of Architect's design services and the completion of documentation required of the Architect. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion and Final Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. The schedule shall also include commencement of construction, timed sufficiently to achieve Owner's proposed dates of Substantial Completion and Final Completion as stated in this Agreement, as amended, and within Owner's budget. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect. With the Owner's prior written approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. If Contractor is a Construction Manager-at-Risk, then the Architect shall assist the Construction Manager-at-Risk in the preparation and periodic update of the Project schedule.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval. The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval. The Architect shall review, and be responsible for compliance with, laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. The Architect shall comply with all policies, regulations and rules of the Owner, including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, fraternization, harassment, and tobacco use), and fraud and financial impropriety. Architect shall certify that he has used the best professional judgment and reasonable care consistent with the practice of architecture and/or engineering in the State of Texas in executing the Construction Documents. Architect shall perform a building code search under applicable regulations that may influence the Project. In executing the certifications required under the provisions of this Section, Architect shall exercise his/her reasonable professional judgment and care consistent with the practice of architecture in the State of Texas and applicable law. Architect shall design the Project in such a manner that the Project or each part of the Project is readily accessible to and usable by individuals with disabilities, in compliance with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, federal regulations interpreting the Americans with Disabilities Act and Section 504, Texas Government Code Chapter 469, the Texas Accessibility Standards, all applicable requirements or standards of the Texas Department of Licensing and Regulation, and all applicable requirements or standards of the American National Standards Institute. It shall be the responsibility of Architect to address revisions or amendments to applicable codes or standards which become effective prior to the date of Substantial Completion. Revisions or amendments to applicable codes or standards which become effective after the date of Substantial Completion shall be addressed by the Architect, and shall be compensated as an Additional Service pursuant to Section 3.1.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall comply with to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201-2017, as amended for this Project as of the date of this Agreement, and Architect herein agrees to abide by same. Architect agrees that the AIA Document A201-2017 may be subject to subsequent amendments based upon negotiations between Owner, Architect and Contractor. As a condition of further service, Architect shall provide to Owner a signed statement stating Architect's agreement to adhere to any such negotiated amendments.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and specifications furnished by Owner to ascertain the specific requirements of the Project and shall arrive at a mutual written understanding of such requirements with Owner. Architect shall include all components of Owner's program in the Project, unless specific written agreement to delete a component is received from Owner.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project, and to ascertain that they are consistent with the requirements of the Project. The Architect shall notify the Owner, in writing, of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project. The Architect shall visit the Owner's Project site and shall provide to Owner a written report evaluating the feasibility of the Owner's site for the Project based on site conditions, and the Owner's program, schedule and budget for the Cost of the Work. The Architect shall include, in the written report, an identification and evaluation of the location, availability, adequacy, capacity, and sufficiency of all utilities necessary to serve the completed Project. The Architect shall address with the Owner any existing easements or rights-of-way which may interfere with Owner's Project.

§ 3.2.3 The Architect shall present its written preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach a written understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon in writing with the Owner, the Architect shall prepare and present, for the Owner's approval, a written preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design and Owner's schedule and budget for the Work, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall establish the conceptual design of the Project and illustrate the scale and relationship of the Project components. The Schematic Design 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 representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, 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 more advanced sustainable design services as an Additional Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider, and, if applicable, consult with the Construction Manager at Risk regarding 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 program, schedule, and budget for the Cost of the Work.

§ 3.2.6 When the Project requirements have been sufficiently identified, including Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities, the Architect, and, if applicable, the Construction Manager at Risk, shall prepare a preliminary estimate of the Cost of the Work prepared in accordance with Section 6.3. This estimate may be based on current area, volume or similar conceptual estimating techniques.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. Architect shall not proceed to the Design Development Document Phase without the approval of Owner's Commissioners Court, or the Court's designee; provided, however, this approval shall not relieve Architect of Architect's responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without required approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 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, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents, shall refine the Project design, 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 other elements outlined in this Agreement. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work. As the design process progresses through the end of the preparation of the Construction Documents, the Architect, shall prepare a preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. The Architect shall cooperate with the Owner in developing and designing the Project to satisfy Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of the equipment and facilities. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval as provided in § 3.3.3, and, in doing so, shall notify Owner in writing of the actions taken to bring the Project into Owner's budget. If Architect is unable to redesign the Project to meet Owner's budgetary, programmatic and quality needs, then the Architect shall make appropriate written 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, with Owner having the right to approve or reject such recommendations.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work redesign the Project to comply with Owner's budget, and request the Owner's approval. Architect shall not proceed to the Construction Documents Phase without the approval of Owner's Commissioners Court or Court's designee; provided, however, this approval shall not relieve Architect of Architect's responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without Commissioners Court approval.

§ 3.3.4 The Owner's decisions on matters relating to aesthetic effect shall be final. To the extent that Owner's Contractor or Construction Manager at Risk recommends aesthetic revisions to Owner, Architect shall be consulted.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 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. 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 and performance criteria of materials and systems and other requirements for the construction of the Work. "Construction Documents" means: all Drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants which shall set forth in detail the requirements for construction of the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor 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.

§ 3.4.1.1 Errors and Omissions.

§ 3.4.1.1.1 Completed plans and specifications are expected to be comprehensive and free of material errors and free of material errors and omissions, except minor discrepancies or other items that can be corrected by minor change at no cost to the Owner, in accordance with the Standard of Care.

§ 3.4.1.1.2 Procedures and meetings in schematic and design development phases allow for adequate interaction between Owner and Architect to minimize oversights in Project requirements. It is incumbent upon the Architect to thoroughly review his work product to detect errors and omissions before they become costly additions to the Project during construction.

§ 3.4.1.1.3 Professional services and costs, if any as required to correct errors in construction documents, are the responsibility of the Architect, including addenda during bidding to rectify errors in the contract documents.

§ 3.4.1.1.4 Deductive change orders may be applied to offset the change order cost applicable to the Architect only to the extent that such deductive change order resulted from an oversight in the Contract Documents that was not required by the Building Program or requested by the Owner. All other deductive change orders due to Owner scope modifications or other value engineering items and unused Allowances shall not apply to this offset provision.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. Architect shall design the Project in such a manner that the Project or each part of the Project is readily accessible to and usable by individuals with disabilities, in compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, federal regulations interpreting the Americans with Disabilities Act and Section 504, Texas Government Code Chapter 469, the Texas Accessibility Standards, all applicable requirements or standards of the Texas Department of Licensing and Regulation, and all applicable requirements or standards of the American National Standards Institute. It shall be the responsibility of Architect to address revisions or amendments to applicable codes or standards that become effective prior to the date of Substantial Completion. Revisions or amendments to applicable codes or standards which become effective after the date of Substantial Completion shall be addressed by the Architect, and shall be compensated as a Change in Service.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner and the Owner's Purchasing Agent in the development and preparation of (1) bidding competitive purchasing and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor or Construction Manager at Risk; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions), as amended for the Project. After Consultation with the Owner, the Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Project Specifications, and may include bidding or proposal requirements and sample forms. As required by law, all bid or proposal documents and contracts shall include, if applicable, all required information related to trench excavation safety. Texas Health and Safety Code Section 756.021 *et seq.* All outdoor lighting fixtures designed by Architect, if any, shall meet the statutory energy conservation and light pollution standards established by the Texas Department of Health. Architect shall also comply with 15 U.S.C. § 8003 (Drain cover standards) if applicable.

§ 3.4.3.1 As required by law, any bid or proposal document shall contain prevailing wage rates, which Architect may request from the Owner.

§ 3.4.3.2 Architect shall insert in the Project Specifications the requirement that all bonds comply with the requirements of Texas Insurance Code Section 3503.001 *et seq.* and Texas Government Code Chapter 2253 or their successors and that all insurance companies be licensed to do business in the State of Texas and, if bond amounts exceed \$100,000, hold a certificate of authority from the U.S. Secretary of the Treasury or reinsurance for liability in excess of \$100,000 from a reinsurer authorized and admitted as a reinsurer in the State of Texas and that is a holder of a certificate of authority from the U.S. Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. Owner and Architect reserve the right to rely on the Treasury list of companies holding certificates of authority to determine whether the surety or reinsurer complies with the legal requirement.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect

shall present the redesign to Owner for Owner's approval as provided herein, and, in doing so, shall notify Owner in writing of the actions taken to bring the Project into Owner's budget. If Architect is unable to redesign the Project to meet Owner's budgetary, programmatic and quality needs, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality or budget. Owner shall consider Architect's recommendations, but shall decide, in its discretion, what adjustments to make.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. Architect shall not proceed to the Bidding or Negotiation Phase without the approval of Owner's Commissioners Court, or Court designee; provided, however, this approval shall not relieve Architect of Architect's responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without required approval.

§ 3.4.6 The Owner's decisions on matters relating to aesthetic effect shall be final. To the extent that Owner's Contractor or Construction Manager at Risk recommends aesthetic revisions to Owner, Architect shall be consulted."

§ 3.4.7 Architect shall submit the Construction Documents for review and approval to the Texas Department of Licensing and Regulation any time the renovation, modification, or alteration of the Work has an estimated construction cost of \$50,000 or more, and shall notify Owner of same. Architect shall not allow Contractor to file an application with any local governmental entity for a building construction permit until after Architect's submission to the Texas Department of Licensing and Regulation.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Such assistance shall include, if necessary, testifying in any bid or proposal dispute. Architect shall disclose in writing to Owner any prior or current relationships which Architect may have had with any bidders or proposers. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction. The Architect shall cooperate with the Owner's legal counsel in the preparation of all Contract Documents and the General Conditions of the Contract for Construction, as amended or supplemented for the Project, to be used in the bidding or proposal documents. Architect shall ensure that his Supplementary or other Conditions of the Contract, if any, shall not contradict the provisions of Owner's AIA Document A201, as amended, except with Owner's prior written consent.

§ 3.5.2 Competitive Bidding or Purchasing

§ 3.5.2.1 Bidding Documents shall consist of bidding or competitive proposal requirements and proposed Contract Documents. The Contract Documents are enumerated in the Agreement, as amended, between the Owner and Architect (hereinafter the Owner/Architect Agreement) and consist of the Owner/Architect Agreement, Conditions of the Contract, as amended, (General, Supplementary and other Conditions), all sections of the Project Manual, including Drawings, Specifications, and Addenda issued prior to execution of the Contract.

§ 3.5.2.2 If requested by the Owner, the Architect shall assist the Owner in bidding or competitive purchasing the Project by:

- .1 procuring at Owner's cost the reproduction of Bidding Documents for distribution to prospective bidders, and distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, evaluating the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 In consultation with the Owner, the Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders and Owner.

§ 3.5.3 Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents. Proposal Documents shall consist of proposal requirements and proposed Contract Documents. The Contract Documents are enumerated in the Agreement, as amended, between the Owner and Architect (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract, as amended, (General, Supplementary and other Conditions), all sections of the Project Manual, including Drawings, Specifications, and Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract.

§ 3.5.3.2 If requested by Owner, Architect shall assist the Owner in obtaining proposals by:

- .1 procuring at Owner's cost the reproduction of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective proposers;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 evaluating proposals, participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 In consultation with the Owner, the Architect shall consider requests for substitutions if the Proposal Documents permit substitutions, and prepare and distribute addenda identifying approved substitutions to all prospective contractors and Owner. The Architect shall review, in conjunction with the Owner, the Owner's representative, if appropriate, and the Construction Manager at Risk or Contractor, alternative approaches to design and construction of the Project in order to preserve the Scope of the Work, the Scope of the Project, and the quality of the construction within Owner's overall budget for the Project.

§ 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 Contractor as set forth below and in AIA Document A201-2007 or A201™-2017, General Conditions of the Contract for Construction, as amended for the Project, and as specified in Section 3.1.6 herein. If the Owner and Contractor modify A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. While on Owner's property and throughout Architect's services under this Agreement, the Architect shall comply with all policies, regulations, and rules of the Owner, including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, fraternization, harassment, and tobacco on school property), and prohibitions against fraud and financial impropriety.

§ 3.6.1.2 The Architect shall be a representative of, and shall advise and consult with the Owner 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 Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. Any services by Architect made necessary due to Architect's failure to discover a construction defect or nonconforming work shall be at no additional cost to Owner. Any services by Architect made necessary by Architect's design errors or omissions shall be at no additional cost to Owner.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect or his authorized representative, as a representative of the Owner shall visit the site at least twice per month (or more per week when deemed necessary by the Owner's Representative or when necessary to

protect Owner's interest) and at other intervals appropriate to the stage of the Contractor's operations (1) to inspect the progress, quantity and quality of the Work completed; (2) to reject any observed nonconforming Work; (3) to become familiar with and to keep the Owner informed about; the progress and quality of the portion of the Work completed, (4) to guard Owner against defects and deficiencies in the Work, (5) to determine, if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents and on time, and (6) to document progress of the Work, in written and photographic form. Furthermore, a minimum of two job site meetings per month from commencement of construction through Final Completion will be initiated by the Architect. Attendees will include Owner, the Contractor's project manager and/or superintendent, Architect's project representative, and Architect. Architect or his authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or his authorized representative will provide on-site observations prior to covering up or closing up of portions of the construction that, if covered, would conceal problems with the structural integrity of the Project. Architect will advise Owner of the need for any third-party laboratory or testing services to assist the Architect, and will assist Owner in development of Requests for Proposals or other solicitations for any required testing services approved by Owner. On the basis of the site visits, on-site observations, or inspections by the Architect, Architect shall keep Owner and Owner's Contractor informed of the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Architect shall guard Owner against defects and deficiencies in the Work, and shall promptly notify Owner and Contractor orally regarding the defect or nonconforming Work, which notice shall be followed by notice in writing of defects and nonconforming work noted and corrective actions taken or recommended. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. Any services by Architect made necessary due to Architect's failure to discover a construction defect or nonconforming work shall be at no additional cost to Owner. Any services by Architect made necessary by Architect's design errors or omissions shall be at no additional cost to Owner.

§ 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 will shall recommend to Owner additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the 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 Contractor, Construction Manager-at-Risk, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Architect shall promptly notify Owner and Contractor, orally and in writing, of any observed fault or defect in the Project or nonconformance with Contract Documents, upon discovery of the defect or nonconformance, and shall notify Owner of all corrective actions taken or recommended. The testing or inspections required by this Section are subject to the requirements of Chapter 2269 of the Texas Government Code.

§ 3.6.2.3 The Architect shall interpret and make recommendations to Owner regarding matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. 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 recommendations 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 recommendations, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, and shall not be liable for results of interpretations or recommendations rendered in good faith. The Owners recommendations on matters relating to aesthetic effect shall be final.

§ 3.6.2.5 The Architect shall promptly render initial written recommendations on Claims, disputes, or other matters in question between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall observe the progress of the Work, critically evaluate, review and certify the amounts due the Contractor and shall sign and issue Certificates for Payment in such amounts if such amounts are valid, correct, and deemed due and owing, in Architect's professional opinion, within seven (7) days of receipt of Contractor's

application for payment. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations and/or evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, in Architect's professional opinion the quality of the Work is in accordance with the Construction Documents and the Contract Documents, and critically evaluated and certified that the amounts requested in the Application for Payment are valid and correct in the Architect's professional opinion. If Architect disputes the Contractor's payment application in whole or in part, Architect shall provide in writing to Owner and Contractor a detailed statement of the Architect's reason for withholding certification in accordance with Texas Government Code §2251.042(a) and as provided in §§9.4.1 and 9.5.1 of the AIA A201 for the project. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect in writing to Owner.

§ 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 suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor 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 and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawing, Product Data and Samples, for the purpose of checking for conformance with the Contract Documents and all laws, statutes, codes, and requirements applicable to Architect's design service. 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. If it is determined that any submittal does not comply with the requirements of the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples. The Architect is not authorized to approve changes involving major systems such as HVAC, roof, foundation, outward appearance, color schemes, floor plans, building materials, or mechanical equipment without Owner's prior written consent.

§ 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 Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not 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 Contractor'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 Contractor 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 and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy, accuracy and completeness of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, 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 the requests for information.

§ 3.6.4.5 The Architect shall maintain all records of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 With notice and consent to Owner, 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 Section 4.2, 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.

§ 3.6.5.3 The Architect shall accept requests by the Owner, and shall review properly-prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly-prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Construction Documents or the Contract Documents, then the Architect may issue an order for a minor change in the Work, with prior written notice to the Owner, or recommend to the Owner that the requested change be denied.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, then the Architect shall make a recommendation to approve or deny the requested change to the Owner. Based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to Additional Services of the Architect. If the Architect recommends approval, then the Architect shall incorporate those estimates into a proposed Change Order or other appropriate documentation for the Owner's Commissioners Courts approval and execution.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion and of Final Completion, using Owner's forms;
- .3 receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents;
- .4 issue a final Certificate for Payment based upon a final inspection indicating that to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents; and
- .5 For any Work that exceeds \$50,000, Architect shall schedule and ensure completion of inspections with the Texas Department of Licensing and Regulation as required by Texas Government Code Section 469.105.

§ 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 Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, 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 Contractor: (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 Contractor under the Contract Documents.

§ 3.6.6.5 Prior to the expiration of six months from the date of Substantial Completion, prior to the expiration of ten months from the date of Final Completion, and upon request of the Owner at any other time within one year of Final Completion, the Architect shall meet with the Owner and the Owner’s Designated representative to review the facility operations and performance; to identify defects, warranty issues, and proposed corrections; and to make appropriate written recommendations to the Owner.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services, but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provide in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project. The Architect shall not be entitled to additional compensation for Services listed below unless otherwise indicated.

(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming: Architect will work with Owner with a preliminary program for the project with Architect further refining the program during the Schematic Design Phase in conjunction with Owner.	Architect/Owner
§ 4.1.1.2 Multiple preliminary designs: The Architect shall prepare options for the facility for the Owner’s review and consideration to select an approved design at the conclusion of the Schematic Design Phase in order to proceed to the Design Development Phase of the work.	Architect
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning: The Architect with evaluate the proposed site and determine the suitability of the location for the facility. The Owner shall approve the placement of the facility and all related site work.	Architect
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Surveying	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design: The Architect will provide a material palette for Owner approval that includes all colors, materials, and finished for interior components included in the Construction Contract. Furniture and art work are not included.	Not Provided
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.13 On-site project representation: The Architect will schedule regular site visits and attend regular site meetings as per 4.2.3	Architect
§ 4.1.1.14 Conformed documents for construction. The Architect will provide the Owner with a complete set of conformed construction documents including all Addenda and Accepted Alternates prior to the construction phase.	Architect
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect as to surveying, geotechnical services and civil engineering
§ 4.1.1.21 Telecommunications/data design: The Architect's Technology Consultant will provide structured cabling design & construction documents as well as construction administration services to oversee the installation of the structural cabling system. The Architect's MEP subconsultant will provide design for data drop locations.	Not Provided
§ 4.1.1.22 Security evaluation and planning	Not Provided
§ 4.1.1.23 Commissioning	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design: All items. All items that are not part of the construction contract are classified as furniture, furnishing or other equipment shall be furnished & installed by Owner.	Not Provided
§ 4.1.1.29 Other services provided by specialty Consultants.	Not Provided
§ 4.1.1.30 Other Supplemental Services: Code Consulting and Third-Party Review Services	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service in Section 4.1.1 as the Architect's responsibility is provided below.

«1. 4.1.1.8 Surveying TASK 1 DETAILED SURVEY/BASE MAP DEVELOPMENT

- (a) Project Area: The survey area for the project consists of approximately 140 acres including the 18-hole golf course, driving range, maintenance building, clubhouse and parking lot area. The survey consultant will prepare a detailed topographic base map of the property with an aerial photograph of the site.
- (b) Prepare a detailed topographical survey for the project areas including all golf course features (tee boxes, cart trails, sand bunkers, putting surfaces, fairways, etc.) and all other substantial features (buildings, curb, sidewalk, paving, fences, grade breaks, signs, power poles, utilities etc.)

(c) Benchmarks and permanent network control points will be throughout the limits of surveying support to be used for construction and future development.

1. Calculate existing boundary and meander lines as provided from latest Texas County records and establish or confirm monumentation where required.
- 2.
3. Review by Professional Land Surveyor.
- 4.
3. Prepare deliverables including the following:
 - a. Network Control Data Sheets (for subsequent use)
 - b. Topographic Survey in CAD format
 - c. Right of Way survey (all property lines, platted parcels, un-platted parcels, section data) in CAD format
 - d. All other materials used during the course of preparing the deliverables (field notes, parcel data, filed Certified Corner References, plats, etc.)

(d) This task will be billed as a pass-through reimbursable expense. The Design Consultant will provide invoices of work as appropriate.

§ 4.1.2.2 SECTION INTENTIONALLY DELETED.

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§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 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 Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material significant change in the Project including but not limited to size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revisions of codes, laws, or regulations, including changing or editing previously prepared Construction Documents.;
- .3 Changing or editing previously prepared Construction Documents necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner 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;
- .5 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .6 Subsection Intentionally Deleted;
- .7 Subsection Intentionally Deleted;

- .8 Subsection Intentionally Deleted;
- .9 Subsection Intentionally Deleted;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification.

§ 4.2.2 SECTION INTENTIONALLY DELETED.

§ 4.2.3 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 « Three » (« 3 ») reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Two (2) visits to the site by the Architect per month during construction as required by 3.6.2.1
- .3 « Two » (« 2 ») inspections for each 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 « Two » (« 2 ») inspections for each portion of the Work to determine final completion.

§ 4.2.4 SECTION INTENTIONALLY DELETED.

§ 4.2.5 If Construction Administration Services covered by this Agreement have not been completed within «Eighteen» («18») months of the Notice to Proceed to Contractor, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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. The Architect shall review the program and specifications furnished by Owner to ascertain the specific requirements of the Project and shall arrive at a mutual written understanding of such requirements with Owner. Architect shall include all components of Owner's program in the Project, unless specific written agreement to delete a component is received from Owner.

§ 5.2 The Owner shall establish and update the Owner's budget for the Project, when required 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 update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. 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 Project's scope and quality.

§ 5.3 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. Owner's Commissioners Court, is the only representative of Owner, a political subdivision of the State, having the power to enter into or amend a contract, to approve changes in the Scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum, agree to an extension of the dates of Substantial Completion or Final Completion, or approve changes in the Architect's compensation. Owner's Commissioners Court may designate one or more representatives with authority to sign documents after Commissioners Court approval and/or to advise and consult with Architect for day-to-day operations under the agreement.

Owner's designated representative to sign contracts:

Name: Tano E. Tijerina Title: County Judge, or successor.

Owner's designated representative for day-to-day operations:

Name: Luis Perez Garcia, P.E. Title: County Engineer, or successor.

§ 5.4 Upon request of the Architect, the Owner shall furnish surveys known to the Owner describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the

site. Other than the metes and bounds noted in the legal description of the site, the Architect shall not be entitled to rely on the accuracy of information furnished by the Owner, but shall exercise proper precautions relating to the safe performance of the Work. Other than the metes and bounds noted in the survey if any, Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes or pipelines or the presence or absence of easements. Architect shall review this information and shall provide to Owner a written request for additional information needed, if any, for Architect to adequately perform services hereunder. Upon receipt of this request, the Owner will procure and provide to the Architect the information requested.

§ 5.5 The Owner may furnish services of geotechnical engineers, which may include 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.

§ 5.6 SECTION INTENTIONALLY DELETED.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 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 as the responsibility of the Architect 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 and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports that are required by law or the Contracts, to be furnished by the Owner. To the extent that tests, inspections and reports are not required by law or the Contract Documents to be furnished by Owner, but are deemed necessary by the Architect or Owner, then the Architect may receive Owner's written permission to charge Owner for the services or Owner agrees to separately contract for the services.

§ 5.10 Unless otherwise provided in this Agreement the Owner may, in its sole discretion furnish legal 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.

§ 5.11 The Owner shall provide prompt written notice to the Architect 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 and Architect shall have the reasonable amount of time required by Texas Government Code Chapter 2272 to cure its errors, omissions, or inconsistencies as a precondition to any dispute resolution proceeding involving the Owner and Architect. Architect acknowledges that he is the leader of the design team and is responsible for the design of the Project. Therefore, Owner shall be entitled to rely on the Construction Documents, services, and information furnished by the Architect. This Section shall not relieve Architect of any responsibility or liability for the performance of Architect's contracted services on the Project, in accordance with the Standard of Care.

§ 5.12 The Owner shall endeavor to include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall endeavor to promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 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 Contractor, including the General Conditions of the Contract for Construction.

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

§ 5.15 SECTION INTENTIONALLY DELETED.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of the Architect's compensation, 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 constructed by the Owner and shall include contractors' general conditions costs, overhead and profit. To the extent that the Project is not completed or constructed, the Cost of the Work shall include the estimated cost to the Owner of all elements of the Project designed by the Architect and accepted by the Owner but not constructed by the Owner. The Cost of the Work does not include elements of the Project designed by Architect but not accepted by the Owner. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect or the Architect's consultants; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work, alternate designs of the Architect that are not constructed or accepted by the Owner; or other costs that are the responsibility of the Owner. For purposes of the Architect's compensation, the Cost of the Work shall not include the fee for management and supervision of construction or installation provided by a separate Owner representative. For purposes of the Architect's compensation, the Cost of the Work shall include the Owner's cost of labor and materials furnished by the Owner in constructing portions of the Project, if the Work is designed and construction is overseen by Architect. For purposes of the Architect's compensation, the Cost of the Work shall only include the Owner's cost of fixtures, furnishing and equipment designed by the Architect, at the request of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as allowed under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, if the Architect's design is determined to exceed Owner's budget, then Architect agrees to redesign the Project, at Architect's expense and as part of Architect's Basic Services, to meet Owner's Budget.

§ 6.3 The Architect, and the Construction Manager at Risk, if applicable, shall prepare a preliminary estimate of the Cost of the Work, which shall incorporate Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. As the design process progresses through the end of the preparation of the Construction Documents, the Architect, and if applicable the Construction Manager at Risk, shall update and refine the preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. The Architect shall cooperate with Owner and, if applicable, the Construction Manager at Risk, in developing and designing the Project to, in accordance with Standard of Care, satisfy Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project with the prior consent of Owner's Commissioners Court; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work may be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval and, in doing so, shall notify Owner in writing of the actions taken to bring the Project into Owner's budget. If Architect is unable to redesign the Project to meet Owner's budgetary, programmatic and quality needs, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality or budget. Owner shall consider Architect's recommendation, but shall decide, in its discretion, what adjustments to make.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal prior to commencement of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time and/or authorize a different construction procurement method, consistent with State law;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work;
- .5 implement any other mutually acceptable alternative; or.
- .6 direct the Architect to redesign the Project to meet the Owner's budgetary, programmatic and quality needs.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4 or 6.6.5, the Architect without additional compensation shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents before commencement of the Work shall be the limit of the Architect's responsibility under this Article 6.

§ 6.8 If, after commencement of the Work, the Cost of the Work is exceeded due to the negligent errors or omissions of the Architect, then the Architect shall bear financial responsibility to Owner for the increases in the Cost of the Work, except for all materials, labor, and overhead related to the betterment obtained by the Owner. By way of example, the Architect shall bear responsibility for the difference between what would have been the original cost of that portion of the Work, but for Architect's negligent error or omission, and the actual cost of that portion of the Work performed to remedy the negligent error or omission. Further, Architect shall not be entitled to Architect's fee for the excess Cost of the Work. Unless Architect disputes the amounts due pursuant to the alternative dispute resolution process provided in Article 8 of this Agreement, as amended, Owner shall be entitled to withhold from sums due to Architect the amounts detailed above.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Construction Documents, 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.

§ 7.2 Architect shall provide to Owner all drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor (including the necessary number of paper and electronic copies) and other documents hereinafter referred to as "Construction Documents," that are within Architect's scope of services and that are sufficient for Owner to complete construction of the Project and are free from material defects or omissions. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Construction Documents, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights, provided, however, Architect and Architect's consultants shall not use the Construction Documents on another project without Owner's written permission. Submission or distribution of Construction Documents 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, reproduce and distribute the Architect's Construction Documents solely and exclusively for constructing, using, maintaining, and renovating the Project. 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 Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Construction Documents solely and exclusively for use in performing services for the Project.

§ 7.3.1 In the event the Owner uses the Construction Documents without retaining the authors of the Construction Document, 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 This nonexclusive license shall survive termination of this Agreement, and Architect hereby grants permission to Owner to use the Construction Documents for future renovations, repairs, additions or alterations to the Project. In the event the Owner uses the Construction Documents without retaining the author of the Construction Documents, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses.

§ 7.5 Except for the licenses granted in this Article 3, 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 Construction Documents 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 against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by this Agreement and by Texas law, but in any case not more than 8 years after the date of Substantial Completion of the Work, unless extended in accordance with Texas Civil Practice and Remedies Code Section 16.008. The Owner and Architect waive all causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.1.1. All claims, disputes, or matters in controversy between Owner and Architect shall be discussed by the parties in good faith, in an attempt to resolve the claim, dispute, or controversy. In the event such claim, dispute, or controversy cannot be resolved by good faith discussion between the parties, any such claim, dispute or matter in controversy shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

§ 8.1.1.2 Architect stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and/or liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

§ 8.1.2 Only 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 A201-2017, General Conditions of the Contract for Construction as amended for this Project, and if applicable. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect waives consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This waiver is applicable, without limitation, to all consequential damages due to Owner's termination of this Agreement. In any litigation arising under this Agreement, the types and amounts of damages recoverable shall be subject to Subchapter I of Texas Local Government Code Chapter 271.

§ 8.1.4 In any litigation under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party.

§ 8.1.5 When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Contractor's or Architect's opportunity to cure.

§ 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, unless the filing deadlines under applicable statutes of limitation and/or repose would otherwise expire. If suit is filed before mediation in order to avoid expiration of limitations and/or repose, then the parties agree to submit the matter to mediation as soon as reasonably possible. Claims for injunctive relief shall not be subject to this Section.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the mutually-acceptable person or entity administering the mediation. Owner and Architect agree to use a mediator residing in Webb County, Texas. In no event shall the request for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in controversy would be barred by applicable statute of limitations.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the County where Owner's main Administrative office is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be reduced in writing, considered for approval by the Owner's Commissioners Court, and if signed by the Parties, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 8.2.4 The parties agree that any claim, dispute, or other matter in controversy between them **shall not** be subject to mandatory arbitration. The parties may, however, mutually agree in writing to submit such claims, disputes, or matters in controversy to arbitration. Neither party may compel the other to arbitrate any claim, dispute, or matter in controversy between them. 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:

[] Litigation in a court of competent jurisdiction

§ 8.2.5 Architect stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and/or liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

§ 8.3 SECTION INTENTIONALLY DELETED.

§ 8.3.1 SUBSECTION INTENTIONALLY DELETED.

§ 8.3.1.1 SUBSECTION INTENTIONALLY DELETED.

§ 8.3.2 SUBSECTION INTENTIONALLY DELETED.

§ 8.3.3 SUBSECTION INTENTIONALLY DELETED.

§ 8.3.4 SUBSECTION INTENTIONALLY DELETED.

§ 8.3.4.1 SUBSECTION INTENTIONALLY DELETED.

§ 8.3.4.2 SUBSECTION INTENTIONALLY DELETED.

§ 8.3.4.3 SUBSECTION INTENTIONALLY DELETED.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make timely payments to the Architect for undisputed sums in accordance with this Agreement and Texas law, such failure shall be considered substantial nonperformance and cause for termination. If not cured after ten (10) days written notice to Owner of the delinquency 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 Owner shall pay the Architect 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. Architect shall be allowed to suspend Architect's performance of services under this Agreement for nonpayment by Owner only after the provision of ten (10) days' written notice, in accordance with Texas Government Code section 2251.051 *et seq.*

§ 9.2 If the Owner suspends the Project for more than ninety (90) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. The Architect's fees for the remaining services and the time schedules may be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than ninety (90) consecutive 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 twenty-one (21) days' written notice and opportunity to cure 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. The Owner may also terminate this Agreement on seven days' written notice if the budget for the Cost of the Work, prior to commencement of the Work, is exceeded by the lowest bona fide bid or negotiated proposal.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, together with Reimbursable Expenses then due.

§ 9.7 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Architect, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Architect makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Architect's performance. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Architect adequate assurance of future performance in accordance with the terms and conditions of this Agreement. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Architect's services in accordance with this Section.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Final Completion.

§ 9.9 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 Sections 9.7 and 11.9.

§ 9.10 This Agreement may be terminated by Owner if Architect engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Texas. Mandatory and exclusive venue for any dispute shall be in the state district courts of Webb County.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction as amended for the Project. As a material consideration of the making of this Agreement, the Modifications to this Agreement shall not be construed against the maker of said Modifications.

§ 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.

§ 10.4 If the Owner requests the Architect to execute certificates, the language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of 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, unless Architect knew, directed, or specified that, or allowed such hazardous materials be used in the Project. Architect shall promptly disclose in writing to Owner any hazardous materials specified for the Project or discovered on site, regardless of the date of discovery or the date on which Architect learns of the hazardous nature of the materials.

§ 10.7 With prior written consent of the Owner, the Architect may 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. Owner provides notice that confidential and proprietary information shall include, but not be limited to, all items listed in Section 10.8. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated 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. The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar written agreements to maintain the confidentiality of information specifically designated as confidential by the Owner. Owner herein designates the following as confidential information: security measures; security access codes; pending real estate purchases, exchange, lease or value; any information pertaining to litigation; student likenesses and student record information; employee information; and any other information deemed confidential by law. As to Owner, the parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Chapter 552 *et seq.* and the Texas Open Meetings Act, Texas Government Code, Chapter 551 *et. seq.*

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 **NO LIENS.** The parties agree that no architect, engineer, mechanic, contractor, materialman, artisan, laborer or subcontractor, whether skilled or unskilled, shall ever, in any manner have, claim or acquire any lien upon the Project of whatever nature or kind so erected or to be erected by virtue of this Agreement, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas, or upon any funds of Owner.

§ 10.11 **APPLICABLE LAW.** This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidation of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement.

§ 10.12 CONFLICT OF DOCUMENTS. To the extent of conflicts between the Contract Documents, amendments shall prevail over original forms.

§ 10.13 It is understood and agreed that the relationship of Architect to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Architect the servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Architect. Any direction or instruction by Owner or any of its authorized representatives in respect to the Architect's services shall relate to the results the Owner desires to obtain from the Architect, and shall in no way affect the Architect's independent contractor status.

§ 10.14 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 10.15 CHILD SUPPORT. By signing this Agreement, the undersigned certifies as follows: Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

§ 10.16 By executing this Agreement, Architect verifies that Architect does not boycott Israel or any Israeli-controlled territory, and will not boycott Israel or any Israeli-controlled territory during the term of this Agreement. Pursuant to Texas Government Code, Chapter 2271, as amended, if Architect is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Architect represents and warrants to the Owner that the Architect does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 10.17 Architect verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Architect misrepresents its inclusion on the list, then such omission or misrepresentation shall void this Agreement.

§ 10.19 The Architect verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers.

§ 10.20

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Architect agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the County or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the County in a fiscal year of the County. If the County receives a written request for public information related to this Contract that is in the possession or custody of the Architect and not in the possession or custody of the County, the County shall send, not later than the third business day after the date the County receives the written request, a written request to the Architect that Architect provide that information to the County.

.2 The Architect must:

Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Owner for the duration of the Contract;

Promptly, within four business days, provide to the Owner any requested contracting information that is in the custody or possession of the Architect upon request of the Owner; and,

On completion of the Contract, either:

Provide to the Owner at no cost all contracting information related to the Contract that is in the custody or possession of the Architect; or

Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Owner.

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Architect agrees that the contract can be terminated if the Architect knowingly or intentionally fails to comply with the requirements of that subchapter.

Further, under Texas Government Code Chapter 552.372(c), the Owner may not accept a bid for or awarding of a contract to an entity that the Owner has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the Owner determines and documents that the entity has taken adequate steps to ensure future compliance.

If an Architect fails to provide to the Owner the requested information, Texas Government Code Chapter 552.373 requires the Owner to notify the Architect in writing of the failure and allow 10 business days to cure the violation. Owner may terminate the Contract if Architect fails to remedy the failure, Owner determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

If Architect is not a sole proprietorship, has ten (10) or more employees, and the value of Contractor's bid or proposal has a value of \$100,000 or more, Contractor certifies by submitting Contractor's bid or proposal that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined by Texas Government Code Ann. Chapter 2274, and will not during the term of any contract with the Owner, unless excepted from that law.

As required by Texas Government Code Ann. Chapter 2274, if Contractor has ten (10) or more employees, is not a sole proprietorship, and if the value of Contractor's bid or proposal has a value of \$100,000 or more, Contractor certifies by submitting Contractor's bid or proposal that it does not boycott energy companies and will not during the term of any contract with the Owner, unless excepted by that law.

ARTICLE 11 COMPENSATION

1. **§ 11.1** For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect for all undisputed payments as set forth below. To the extent Owner disputes any payment allegedly due, Owner shall notify Architect that a dispute exists, shall list the specific reason for nonpayment, and shall give Architect an opportunity to cure the noncompliance or offer compensation for noncompliance that cannot be cured, in accordance with Texas Government Code Chapter 2251. Owner shall further have the right to withhold payments as specified in Sections 6.8 and 11.10.2.2 of this Agreement.

.1 Stipulated Sum

TWO HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$295,000.00) Payable as follows:

Task 1 the sum of:	\$48,900.	Completion and submittal of the final survey/base information for the Project areas. (To be performed by Top Site Civil Group)
Task 2 the sum of:	\$25,000.	Completion and submittal of all programming material, site analysis and Conceptual Design.
Task 3 the sum of:	\$50,000.	Completion and recommendation by the County for approval of the design development for the project.

Task 4 the sum of:	\$75,000.	Completion and acceptance by the County of the final plans and specifications for the project.
Task 5 the sum of:	\$10,000.	Award of the construction contract to the successful bidder.
Task 6 the sum of:	\$85,000.	Upon completion and final acceptance by the County of the completed project. Said amount is to be paid proportionately to the level of completion of the Design Consultant.
Task 7 the sum of:	\$1,600.	Upon satisfactory completion and acceptance of the as-built drawing.
.2	INTENTIONALLY DELETED	
.3	Other	

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1, the Owner shall compensate the Architect as follows:

- 1.
- 2.
- 3.
- 4.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

«As Agreed between the parties in writing, executed prior to the Architect beginning performance of the Additional Services »

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.3, shall be the amount invoiced to the Architect plus « Zero » percent («0 »%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for or Additional Services.)

« »

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

Schematic Design Phase	«See 11.1.1»	(« --»)	%
Design Development Phase	«See 11.1.1	(« --»)	%
Construction Documents Phase	«See 11.1.1»	(« --»)	%
Procurement Phase	« See 11.1.1»	(« --»)	%
Construction Phase	«See 11.1.1»	(« --»)	%
<hr/>					
Total Basic Compensation		()	%

§ 11.6 SECTION INTENTIONALLY DELETED.

§ 11.6.1 SUBSECTION INTENTIONALLY DELETED.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« »

Employee or Category	Rate (\$0.00)
Founding Principal	\$200.00

Principal/Project Manager	\$150.00
Project Architect	\$115.00
Design/Draftsman	\$80.00

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 SUBSECTION INTENTIONALLY DELETED.
- .2 SUBSECTION INTENTIONALLY DELETED.
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing and reproductions, plots, and standard form documents of Construction Documents, other than those required to be provided by Architect under this Agreement;
- .5 Postage, handling, and delivery of Construction Documents, other than those required to be provided by Architect under this Agreement;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance in writing by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner after architect’s provision of one model or mock-up of each building in the Project;
- .8 SUBSECTION INTENTIONALLY DELETED.
- .9 SUBSECTION INTENTIONALLY DELETED.
- .10 SUBSECTION INTENTIONALLY DELETED.
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 SUBSECTION INTENTIONALLY DELETED.

§ 11.8.2 For Reimbursable Expenses only the actual compensation shall be the expenses incurred by the Architect and the Architect’s consultants.

§ 11.9 Compensation for Use of Architect’s Instrument of Service. The parties agree that Architect’s compensation for Basic Services includes all licensing fees for Owner’s use of the Construction Documents, including use after termination of this Agreement.

« »

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 SECTION INTENTIONALLY DELETED.

§ 11.10.1.2 SECTION INTENTIONALLY DELETED.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments for undisputed amounts are due and payable within thirty (30) days after receipt of the Architect’s invoice to Owner’s designated representative. Undisputed amounts unpaid more than «Thirty» («30») days after the Owner’s receipt of invoice shall bear interest at the rate entered below,

As per Texas Government Code Section 2251.025 or its successor. Owner and Architect agree that Architect waives all attorneys’ fees, when disputing breach of timely payments pursuant to the “Prompt Payment Act” (Texas Government Code Section 2251) under a breach of contract claim.

§ 11.10.2.2 The Owner may withhold payments after appropriate notice as to reason for withholding to the Architect for the purposes of reimbursing Owner for any damages caused by the Architect for changes in the Cost of the Work which result in Architect’s compensation being reduced, for Architect’s failure to comply with the provisions of any part of this Agreement, if a claim has been filed Architect, or to secure performance of Architect’s services and obligations under any part of this Agreement.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be provided to the Owner upon presentation of Architect's progress payment applications.

§ 11.11 Architect shall reasonably cooperate with Owner, at no additional cost to Owner, in connection with a legal proceeding against Owner that relates to the Project.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

« »

§12.1 **INDEMNITY.** Approval of any Construction Documents by Owner shall not constitute and shall not be deemed to be a release of the responsibility and liability of Architect, its agents, employees, and subcontractors, for Construction Documents which are sufficient for Owner to complete the construction of the Project and are free from material defects or omissions, nor shall such approval be deemed to be an assumption of such responsibility and liability by Owner for any defect in the Construction Documents prepared by Architect, its agents, employees, subcontractors, or consultants, it being the intent of the parties that the approval by Owner signifies Owner's approval of only the general design concept of the improvements to be constructed. In this connection, ARCHITECT SHALL, DURING THE CONSTRUCTION OF SAID PROJECT AND FOR A PERIOD OF TEN YEARS AFTER SUBSTANTIAL COMPLETION (PLUS AN ADDITIONAL TWO YEARS IF THE CLAIM IS PRESENTED IN ACCORDANCE WITH SECTION 16.008(c) OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE), INDEMNIFY AND HOLD HARMLESS OWNER AND ALL OF ITS OFFICERS, ELECTED OFFICIALS, AGENTS, REPRESENTATIVES, SERVANTS, AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY, OR EXPENSE, INCLUDING ATTORNEY'S FEES, INCURRED BY OWNER ON ACCOUNT OF DAMAGE OR DESTRUCTION TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ANY OR ALL PERSONS, INCLUDING INVITEES AND EMPLOYEES OF THE OWNER, CONSTRUCTION MANAGER, ARCHITECT, OR SUBCONTRACTORS AND OF ALL OTHER PERSONS PERFORMING ANY PART OF THE WORK, THAT IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, COMMITTED BY THE ARCHITECT, OR THE ARCHITECT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL; provided and except, however, that this indemnification provision shall not be construed as requiring Architect to indemnify or hold Owner harmless for any loss, damage, liability, or expense on account of damaged property or injuries, including death to any person, which may arise out of or may be caused by any act of negligence or breach of obligation under this Agreement by Owner or Owner's employees or agents, except Architect.

§ 12.2 THE PROVISIONS OF SECTION 12.1 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

§ 12.3 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Paragraph 12.1, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

§ 12.4 It is understood and agreed that Article 12 above is subject to, and expressly limited by, the terms and conditions of Texas Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended.

§ 12.5 **RECORDS RETENTION.** Architect shall keep all accounting and construction records on the Project for a period of at least twelve years after Final Completion of the Project, and thereafter shall offer the records to the Owner in writing, in order for Owner to comply with its records retention requirements, per the Texas Government Code section 441.158 et seq. and the Texas Library and Archives Commission's Local Schedule GR (Government Records). In the alternative, Architect may provide such records to Owner for retention at any time if Owner agrees in writing to accept such records in lieu of Architect's retention under this Section.

§ 12.6 COMPLAINTS. The Texas Board of Architectural Examiner has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas under the Architects Registration Law. Texas Occupations Code Chapter 1051. The Texas Board of Architectural Examiners can be reached at P. O. Box 12337, Austin, Texas 78711-2337 or 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, by phone at (512) 305-9000, by fax at (512) 305-8900, or on the web at <http://tbae.state.tx.us>.

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 unless specifically provided for otherwise in the Agreement, as amended. This Agreement may be amended only by written instrument approved by Owner's Commissioners Court signed by both the Owners designated representative to execute contracts and Architect.

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

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect, as amended for this Project
- .2 Exhibit A, Scope of Work, Casa Blanca Golf Course Renovations.
- .3 Other documents:
(List other documents, if any, forming part of the Agreement.)
« »

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

OWNER:
Webb County

ARCHITECT:
PDG, LLC. d.b.a.
Heckenkemper Golf Course Design

Tano E. Tijerina
Webb County Judge

President

ATTEST:

Margie Ramirez-Ibarra
Webb County Clerk

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).