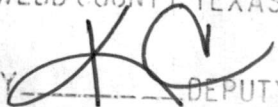


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WEBB COUNTY TEXAS

BY  DEPUTY

STATE OF TEXAS §

COUNTY OF WEBB §

DESIGN-BUILD CONTRACT
ARCHITECTURAL/ENGINEERING AND CONSTRUCTION
SERVICES
FOR WEBB COUNTY SPLASH PAD PROJECT

This **DESIGN-BUILD CONTRACT** (hereafter referred to as "Contract") is made and entered into by and between the County of Webb, a political subdivision of the State of Texas (hereafter referred to as "Owner" or "County") and SplashPadsUSA, Inc., a for profit Utah Corporation, with its principal place of business at 60 N Cutler Dr. Ste. 104, North Salt Lake, Utah 84054 (hereafter referred to as "Design-Builder").

This Contract is for the design and construction of a project identified as "The Webb County Splash Pad Project" where one splash pad is to be located in the City of Rio Bravo, 1600 Orquidia Lane, County of Webb, Texas, and where one splash pad is to be located at 303 12th Street in Bruni, County of Webb, Texas (hereafter referred as "the Project") which is being executed by the Owner, as approved by its Commissioners Court, and by Design-Builder for architectural and/or engineering and construction services hereinafter set forth in connection with the above designated Project for Owner.

ARTICLE I.
DEFINITIONS

As used in this Contract, the following terms shall have meanings as set out below:

- 1.1 **Architect/ of Record** means None, the representative of Design-Builder who is registered as an Architect pursuant to Texas Occupations Code Ann., Chapter 1051, which will provide professional architectural services, have direct responsibility for the design and supervision of the architectural/engineering work associated with the Project and will perform certain contract administration responsibilities, as set forth in the Contract.
- 1.2 **"Certificate of Substantial Completion"** means the document issued by Design-Builder with Owner's consent at the stage in the progress of the work when the work or designated portion of the work is sufficiently complete in accordance with the Contract so that Owner can occupy or use the work for its intended use.
- 1.3 **"County"** and **"Owner"** mean Webb County, a political subdivision of the State of Texas, as provided for in Article 2.1.1 of Owner's Design-Build General Conditions.
- 1.4 **"Claim"** is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Contract terms, the payment of money,

extension of time or other relief with respect to the term of the Contract. The term "Claim" also includes other disputes and matters in question between Owner and Design-Builder arising out of or relating to the Contract.

- 1.5 **"Compensation"** means amounts paid by Owner to Design-Builder for completed services under this Contract.
- 1.6 **"Construction Documents"** or **"Design Documents"** means all the design documents provided by Design-Builder and approved by Owner pursuant to the Contract including, without limitation, those for use in constructing the Project, performing the Work and the rendering of the Project fully operational, and shall include, without limitation, signed and sealed detailed plans, drawings, specifications, manuals, and related materials prepared by the Architect of Record.
- 1.7 **"Construction Work"** shall mean whatever is done by or required of Design-Builder to perform and complete its duties relating to the construction of the Project under the Contract, including, without limitation:
- 1.7.1 construction of the whole and all parts of the Project in full and strict conformity with this Contract;
 - 1.7.2 the provision, furnishing and prompt payment of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;
 - 1.7.3 the procurement and furnishing of all necessary building permits and other permits required for the construction of the Project;
 - 1.7.4 the creation and submission to Owner of detailed as-built drawings depicting all as-built construction;
 - 1.7.5 the furnishing of any required surety bonds and insurance as required by the Contract;
 - 1.7.6 the furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract or otherwise reasonably available to Design-Builder; and
 - 1.7.7 the furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 7 below.
- 1.8 **"Cost of the Construction Work"** shall mean costs necessarily incurred in the performance of the Construction Work during the Construction Phase, and paid or

payable by Design-Builder, and not included in the Management Fee, as set forth herein. Cost of the Construction Work is further defined in **Article 8.6** herein.

- 1.9 "Contract Drawings and Specifications"** means the Design Documents.
- 1.10 "Design-Builder"** means the legal entity that executes this Contract to provide design and construction services for the Splash Pad Project, its officers, partners, employees, agents and representatives, and all Sub-Consultants and/or Subcontractors, if any, and all other persons or entities for which Design-Builder legally is responsible.
- 1.11 "Design Criteria Consultant" or "Owner's Consultant"** means Owner's Architect/Engineering consultant which prepared the Programming Documents and will provide peer review services.
- 1.12 "Design Services"** means any and all architectural, engineering and design services required to be performed by Design-Builder pursuant to the Contract and all labor, materials, supervision, equipment, computers, documents and all other things necessary for the performance of such services.
- 1.13 "Director"** means the Webb County Engineer or the designated Project Manager identified by the Notice to Proceed.
- 1.14 Engineering Representative** means Ken Milne, P.E., Sunrise Engineering, the representative of Design-Builder who is registered as an Engineer, pursuant to the Tex. Occupations Code Ann., Chapter 1001, who will be responsible for compliance with:
- a) the engineering design requirements of the Project; and
 - b) all other applicable requirements of Chapter 1001, Occupations Code.
- 1.15 "Final Compensation"** means the final amounts paid by Owner to Design-Builder for completed design services under this Contract.
- 1.16 "Final Completion"** means, as stated herein and as an addition to **Article IX** of Owner's General Conditions for Design/Build Contracts, the completion of Design Services and all Construction Work required by, and in strict compliance with, the Contract, including Design-Builder's provision to Owner of all documents and things required to be provided by the Contract.
- 1.17 "Final Payment"** means the final amounts paid by Owner to Design-Builder for completed Construction Work under the construction contract.

- 1.18 **"Fixed Price"** means the approved Fixed Price Proposal and shall include the cost of the construction work and all other construction-related costs and shall be the maximum price for which all Construction Work necessary to deliver the Project, as required by Owner, within the construction schedule and the Project Budget.
- 1.19 **"Fixed Price Proposal"** means Design-Builder's proposed maximum price, which shall include the cost of the construction work and shall be the proposed maximum price for which all Construction Work necessary to deliver the Project, as required by Owner within the construction schedule and the Project Budget, and shall be subject to Owner's approval.
- 1.20 **"Guaranteed Maximum Price" or "GMP"** means the guaranteed maximum price for which all Construction Work will be completed within the construction schedule and the Project Budget.
- 1.21 **"Owner Designated Representative (ODR)"** means the person designated by Owner to act for Owner.
- 1.22 **"Owner's Project Criteria"** means all program elements, drawings, standards, schedules, reports, surveys, specifications and systems and product descriptions which are dated by Design Criteria Consultant and approved by Owner and used to prepare the Fixed Price Proposal or GMP, as applicable, and Construction Documents.
- 1.23 **"Programming Documents"** means all design development documents, schedules, reports, surveys, specifications and systems and product descriptions, which are dated by Design Professional and approved by Owner, used to prepare a Guaranteed Maximum Price or Fixed Price Proposal(s), as applicable.
- 1.24 **"Project"** means services to be provided by Design-Builder pursuant to this Contract for the design and construction of "The Webb County Splash Pad Project" one splash pad is to be located in the City of Rio Bravo, 1600 Orquidia Lane, County of Webb, Texas, and one splash pad is to be located at 303 12th Street in Bruni, County of Webb, Texas, as further set out in the Scope of Services attached hereto, labeled as Exhibit G and made a part of this Contract.
- 1.25 **"Schedule of Values"** means the values allocated to materials and various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as Owner may require.
- 1.26 **"Sub-Consultant"** means a qualified, licensed design professional who is not an employee of Design Builder, but is retained by Design-Builder or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents.

- 1.27 **“Subcontractor”** means an entity which has direct contract with Design-Builder to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors also shall include those furnishing specially fabricated equipment and materials for the Project.
- 1.28 **“Substantial Completion”** is, as stated herein and as an addition to **Article 9.7** of Owner’s General Conditions for Design/Build Contracts, that stage in the progression of the Construction Work, as approved by Owner in writing, when the Project sufficiently is complete in accordance with the Contract that Owner may enjoy beneficial use or occupancy of the entire Project and may utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by Owner of all necessary certificates of occupancy or other authorizations for the use and occupancy of the Project required by any governmental or regulatory authority. Owner reserves the right to occupy and use any part, phase or system of the Project when such part, phase or system substantially is completed, but such partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.
- 1.29 **“Supplier”** means an entity manufacturer, fabricator, Supplier, distributor, material man or vendor having a direct contract with Design-Builder, or with any subcontractor, to furnish or provide materials or equipment to be incorporated in the construction phase for the performance of the Construction Work.

ARTICLE II
REGULATORY GUIDELINES, REQUIREMENTS AND STANDARDS

- 2.1 **Generally.** Design-Builder shall perform all Design Services described in, contemplated by, inferable from or necessary to achieve the objectives stated in the Programming Documents and the Contract, including all Design Services necessary for the Project to be properly constructed by Design-Builder and used, operated and maintained by Owner in accordance with all applicable guidelines, requirements and standards. The Design Services shall be performed within the time provided by the Design Schedule for the performance of Design-Builder's Design Services as provided in **Section 3.3** of this Contract.
- 2.2 The Design-Builder shall be responsible for registering the Project with the Department of Licensing & Regulation, Architectural Barriers, and obtaining all reviews, inspections and approvals of Construction Documents required for compliance with all state and federal handicapped and Americans with Disabilities Act (hereafter referred to as “ADA”) requirements. Design-Builder also shall be responsible for ensuring that all facilities constructed in accordance with the Construction Documents created under this Contract comply with all state and federal handicapped and ADA requirements.

- 2.3 Design-Builder guarantees that the Project will be executed and constructed in strict compliance with Owner-approved Construction Documents. Design-Builder further agrees to keep Owner informed about the progress and quality of the portion of the Work completed, and to endeavor to guard Owner against defects in the Work.
- 2.4 **Owner's Review of Design Services.** Design-Builder shall submit all documents produced as part of the Design Services to Owner for review and approval in accordance with the terms of the Contract. However, any review or approval by Owner shall not relieve Design-Builder of or otherwise diminish its obligations under the Contract. Owner may direct Design-Builder to make changes to any Construction Documents to conform the documents to Owner's objectives. Any changes by Design-Builder ordered by Owner shall not relieve Design-Builder of its obligations under this Contract unless, and only to the extent that, Design-Builder notifies Owner in writing, within ten (10) days after receipt of Owner's directive to make changes, concerning any adverse impact on schedules, budgets, operational costs, operational performance, satisfaction of regulatory requirements or other adverse impact that may result from the directed changes.
- 2.5 **Preparation of Site Information.** Design-Builder shall prepare, as necessary, surveys and topographic information including aerial photographs needed to establish line and grade of sewers, location of property lines and easements. Sewer easements, both construction and permanent, shall be referenced to property lines by field surveys, and plans shall include the location of any improvement as it relates to property lines. **Owner expressly does not warrant any information provided by it to Design-Builder, in connection with preparation of the above-mentioned information;** Design-Builder, however, reasonably may rely on information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design-Builder from its responsibility to independently review information for deficiencies, flaws, errors, and omissions that a reasonable, prudent professional architect or engineer should or would detect and inquire about.
- 2.6 **Retention of Geotechnical Consultants.** In preparing the Construction Documents, Owner separately shall retain an experienced qualified geotechnical consultant to evaluate all geotechnical considerations relating to the design and construction of the Project. Design-Builder shall be responsible for designing the Project in accordance with the analysis and recommendations of the geotechnical consultant. Nothing in this paragraph, however, prevents Design-Builder from retaining its own geotechnical consultant to review design work, raise issues for mutual discussion, and obtain further information in connection with the geotechnical nature of the Project. **Owner expressly does not warrant any geotechnical information provided by it to Design-Builder for use in connection with preparation of the Construction Documents;** Design-Builder, however, reasonably rely on geotechnical information provided by Owner to the extent the

information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design-Builder from its responsibility to independently review information for deficiencies, flaws, errors, and omissions that a reasonable, prudent professional architect or engineer should or would detect and inquire about.

- 2.7 Quality of Design Services.** Design-Builder shall be responsible for the professional quality, completeness, accuracy and coordination of Construction Documents. Design-Builder shall provide Design Services that shall result in an operationally cost-efficient and economical facility that meets all environmental and regulatory requirements as of the date hereof, and uses the most appropriate available technology. Design-Builder shall provide for all quality control reviews required by sound professional architectural and engineering practices and by governmental authorities having jurisdiction over the Project.
- 2.8 Compliance with Laws and Regulatory Requirements.** In providing Design Services, Design-Builder shall comply with the lawful requirements of all federal, state, and local authorities having lawful jurisdiction over the Project. Design-Builder shall design the Project to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation, and operation of the Project including, without limitation, environmental standards, fire and safety regulations and requirements and compliance with all other applicable standards and codes.
- 2.9** The Design-Builder warrants that Services provided by Design-Builder and all of its Sub-Consultants and Subcontractors under this Contract will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession or trade currently practicing under similar circumstances in Webb County, Texas.
- 2.10 Duty to Correct Errors.** Design-Builder shall, without additional compensation, immediately correct any errors, omissions or deficiencies in its Design Services and Construction Documents.
- 2.11** Design-Builder acknowledges and agrees that the Architect of Record shall be responsible for all material aspects of the practice of architecture and shall have direct supervision of the architectural work associated with the Project. The Architect of Record shall have responsibility for compliance with the requirements of the Texas Occupations Code Ann., Chapter 1051.
- 2.12** The Design-Builder shall be represented by a registered professional Architect/Engineer licensed to practice in the State of Texas at meetings of any official nature concerning the Project including, but not limited to, scope meetings, review meetings, pre-construction meetings and other meetings as required by Owner.

- 2.13 Design-Builder acknowledges and agrees that the Engineering Representative shall be responsible for compliance with the engineering design requirements and shall have direct supervision of the engineering work associated with the Project. The Architect of Record shall have responsibility for compliance with the architectural requirements of the Texas Occupations Code Ann., Chapter 1001.
- 2.14 Design-Builder certifies that each individual or business entity which is an Engineer or Architect chosen to be a member of the Deigns-Build team was selected only on the basis of demonstrated competence and qualifications and is licensed in the State of Texas.
- 2.15 Acceptance of the final Construction Documents by Owner shall not constitute nor be deemed a release of the responsibility and liability of Design-Builder, its employees, associates, agents, Sub-Consultants or Subcontractors for the accuracy and competency of their designs, drawings, specifications or other documents and Services; nor shall such acceptance be deemed an assumption of responsibility or liability by Owner for any defect in the designs, working drawings, specifications or other documents and Work prepared by said Design-Builder, its employees, Sub-Consultants, Subcontractors and agents.

ARTICLE III
PRELIMINARY CONSULTATION AND PROJECT ANALYSIS

- 3.1 **Determining the Project Objectives.** Prior to the preparation of the Construction Documents, as required by Article IV herein, Design-Builder first shall consult in detail with Owner and carefully shall analyze any information furnished by Owner concerning requirements of the Project including, but not limited to, any design, construction, scheduling, budgetary or operational requirements, limitations and objectives, as well as the Design Scope Specification. Should the goals of the Project subsequently change, either Design-Builder or Owner may request a review of the anticipated Services, with an appropriate adjustment in compensation.
- 3.2 **Report On Project Requirements And Objectives.** Based on its study and analysis, and no later than ten (10) days after the effective date of the Contract, Design-Builder shall prepare and submit to Owner a written report detailing Design-Builder's understanding and analysis of Project requirements and identifying any design, construction, scheduling, budgetary, operational or other problems which may result from said requirements. The written report of Design-Builder also shall include proposed solutions, including design alternatives if appropriate, addressing each of the identified problems. Design-Builder shall review such report with Owner and shall implement such changes as Owner may require as provided in Paragraph 2.4 of this Contract.

3.3 **Schedule of Design Services.** Design-Builder shall, within five (5) calendar days after execution of the Contract and prior to Owner's issuance of a written Notice to Proceed, submit for Owner's approval the Design Schedule for the performance of Design-Builder's Design Services, which shall include allowance for reasonable time required for Owner's review of submissions and for approvals of authorities having jurisdiction over the Project. This Schedule shall, upon approval by Owner, be considered incorporated and made a part of this Contract, attached hereto and labeled as **Exhibit "E" Design-Builder's Design Schedule**. The Design Schedule, when approved by Owner, shall not, except for good cause, be exceeded by Design-Builder. Should Design-Builder at any time during the course of performing the Contract, have reason to believe that it will be unable to meet any completion date in accordance with the Design Schedule, it shall immediately notify Owner in writing, stating the reason for the delay, the party responsible for the delay (if any) and the steps being taken to remedy or minimize the impact of the delay. **Failure of Design-Builder to submit such notification shall constitute a waiver by Design-Builder of any claim Design-Builder may have for an adjustment to the Contract Price, the Design Schedule or the Contract Time.** All extensions of time shall be governed by **Article VIII** of Owner's General Conditions for Design/Build Contracts. Subject to the provisions of **Section 8.2** of said General Conditions, Owner shall review and approve, where appropriate, the Design Schedule or any portion thereof.

3.4 The Design-Build Firm shall include in any contract or team member agreement with a professional Architect and/or Engineer the following provisions:

The Architect/Engineer, whose work product and services are the subject of this Contract for professional services in connection with the Design-Build Contract for "The Webb County Splash Pad Project with the County of Webb, Texas, agrees to TO INDEMNIFY AND HOLD DESIGN BUILDER, OWNER, ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES ("Indemnified Parties") HARMLESS from and against claims, damages, losses and expenses, including but not limited to reasonable attorney's fees and cost of defense (collectively "claims") arising out of or resulting from the performance of the Architect/Engineer's services to the extent said claims are caused by either (1) the negligent acts or omissions of the Architect/Engineer and/or employees or (2) the Negligent Acts or Omissions of Architect/Engineer. Such obligation shall not be construed to negate abridge, or reduce other rights or obligations of indemnity or defense which the Indemnified Parties may have as additional insured under the Architect/Engineers policies if any. The Architect/Engineer's Indemnification obligation shall include defending and, as appropriate, promptly discharging any liens for services filed by any person or entity under contract with the Architect/Engineer who claims to have furnished materials, equipment, or services, to the Architect/Engineer on the Project for which the person or entity has not been paid, so long as such non-payment was not caused by Owner's wrongful failure or payment to Design-builder for the materials, equipment or services made the subject of the Lien for services rendered. The INDEMNITY provided for in this Section 3.4 shall not apply to any liability resulting from the negligence of Owner, its officers or employees, in instances where such negligence causes personal injury, death or property damage. In the event

Architect/Engineer and Owner are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to Owner under Texas law and without waiving any defenses of the parties under Texas law; and

(a) The professional Architect/Engineer shall add Owner and Design Builder as an additional insured in all insurance policies required for "The Webb County Splash Pad Project" professional liability coverage(s) excluding professional liability coverage(s).

ARTICLE IV CONSTRUCTION DOCUMENTS

- 4.1 **Time for Preparation.** Not later than the date called for in the Design Schedule attached hereto, made a part of this Contract and labeled as **Exhibit "E"**, after Owner has authorized Design-Builder to commence with the completion of the Construction Documents, Design-Builder shall prepare Construction Documents consisting of Drawings and Specifications and submit them to the Owner for approval at 50% and 100% completion.
- 4.2 **The Construction Documents.** The Construction Documents shall include all design documents, which shall describe with specificity all Owner requested elements, details, components, materials and other information necessary for the complete construction of the Project and the rendering of the Project fully operational for its intended purposes. The Construction Documents shall include satisfaction of all testing, permitting, qualifications, certifications, validations and obtaining regulatory approvals by all applicable regulatory authorities required to render Project and all its components operational and functionally and legally usable for their intended purpose. Owner shall review and approve, where appropriate, the Construction Documents, or any portion thereof.
- 4.3 **Fixed Price Proposal Includes Construction Documents.** The Fixed Price Proposal, as set forth in **Article VIII** herein, shall include the cost of constructing the Project in strict accordance with the requirements of the Construction Documents.
- 4.4 The Design-Builder shall submit the Design Documents to Owner in a PDF digital file, and obtain Owner's acceptance and approval. All models and documents shall also be provided in electronic format.
- 4.5 Upon acceptance, review and approval of said documents, Design-Builder shall provide and submit to Owner the following:
 - 4.5.1 Design-Builder shall submit three (3) sets of approved Plans and Specifications addressed to Owner's Engineering Department; for Owner's Engineer, Economic Development Department and Building Maintenance Department.

- 4.5.2 Design-Builder shall deliver one (1) set of approved Plans and Specifications in electronic format (PDF format) to Owner's Engineer.

ARTICLE V CONSTRUCTION SERVICES

- 5.1 **General Intent.** Design-Builder shall perform all Construction Work necessary to construct the Project in accordance with this Contract and to render the Project and all its components operational and functionally and legally usable for their intended purpose.
- 5.2 The Design-Builder shall ensure that the Architect of Record and/or the Engineering Representative make periodic visits to the site to ensure that all facilities have been constructed in strict compliance with the Construction Documents and endeavor to guard Owner against defects in the work.

ARTICLE VI TIME FOR CONSTRUCTION: THE CONTRACT TIME

- 6.1 **Work Progress Schedule.** Design-Builder shall submit Design-Builder's Work Progress Schedule the Construction Work no later than ten (10) calendar days after the effective date of the Notice to Proceed. The Work Progress Schedule must be approved by Owner and Design-Builder accepts and agrees that final completion of the Project shall be on or before One Hundred and Twenty Calendar Days (120) after the "Commencement Date as defined below. The Work Progress Schedule shall, upon approval by Owner, be considered incorporated and made a part of this Contract, attached hereto and labeled as **Exhibit "F" Design-Builder's Work Progress Schedule.**
- 6.2 **Notice to Proceed.** After Owner has approved the Construction Documents, Owner shall issue a Notice to Proceed for the Construction Work directing Design-Builder to proceed with the Work on the specified date indicated in the Notice to Proceed (hereafter referred to as the "Commencement Date"), which said date will be provided by Design Builder within twenty (20) days after Contract execution and where the "Commence Date" will not be earlier then when Design Builder is at the job site(s) beginning construction operations.
- 6.3 **Time for Completion.** Design-Builder shall commence Work on the Commencement Date, and the Work shall be carried out regularly and without interruption. Design-Builder shall substantially complete the Construction Work per the schedule provided for this Project, which shall become part of **Exhibit "F"** hereto, or such other date as later may be designated by Change Order (hereafter referred to as the "Scheduled Completion Date"). The number of calendar days between the Commencement Date and the Scheduled Completion Date is the

"Contract Time." Design-Builder shall achieve Final Completion of the Construction Work no later than thirty (30) calendar days after achieving Substantial Completion.

6.4 Liquidated Damages for Delay in Substantial Completion. Design-Builder shall pay Owner the sum of Two Hundred Dollars (\$200.00) per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the Scheduled Completion Date. For purposes of this Section 6.4 and Section 6.5 below, excused delays include, changes made by Owner or any other governmental agency; unavailability of materials required for the Project; unexpected adverse weather conditions, transportation delays, acts of God, pandemic, or any other condition which is out of the control of Design-Builder. Any sums due and payable hereunder by Design-Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Contract. Such liquidated damages shall apply regardless of whether Design-Builder has been terminated by Owner prior to Substantial Completion, so long as Design-Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design-Builder's performance hereunder for matters other than delays in Substantial Completion. When Owner reasonably believes that Substantial Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Design-Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design-Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design-Builder those funds withheld, but no longer applicable as liquidated damages.

6.5 Liquidated Damages for Delay in Final Completion. If Design-Builder fails to achieve Final Completion within thirty (30) calendar days after the date of Substantial Completion, Design-Builder shall pay Owner the sum of Three Hundred Dollars (\$300.00) per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by Design-Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Contract. Liquidated damages shall apply regardless of whether Design-Builder has been terminated by Owner prior to Final Completion, so long as Design-Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design-Builder's performance hereunder for matters other than delays in Final Completion. When Owner reasonably believes that Final Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design-Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when

Design-Builder overcomes the delay in achieving Final Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design-Builder those funds withheld, but no longer applicable as liquidated damages.

- 6.6 Time is of the Essence.** All limitations of time set forth in this Contract are material and time is of the essence of the Contract.

**ARTICLE VII
ADDITIONAL DUTIES AND RESPONSIBILITIES OF DESIGN-BUILDER**

- 7.1 Design-Builder to Perform All Work Required by Contract.** The intent of this Contract is to require complete, correct and timely execution of the Design Services and the Construction Work. Any and all Design Services that are required, reasonably implied or reasonably inferred by the Contract or any part of it, as necessary to produce the intended result, shall be provided by Design-Builder for the Design Services Fee as provided in **Article VIII** herein. In addition, any and all Construction Work that may be required reasonably implied or reasonably inferred by the Contract or any part of it, as necessary to produce the intended result shall be provided by Design-Builder for the Guaranteed Maximum Price or Fixed Price Proposal(s), as applicable, as provided in **Article VIII** herein.
- 7.2 Strict Compliance with the Contract Documents.** All Construction Work performed by Design-Builder shall be in strict compliance with this Contract. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with the Contract is defective.
- 7.3 Design-Builder's Schedule of Construction.** Design-Builder, within five (5) days after the Commencement Date, shall submit to Owner its Schedule of Construction for all of the Work which shall constitute Design-Builder's schedule for completing the Construction Work by the Scheduled Completion Date. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path management ("CPM") schedule in a form acceptable to Owner. The Work Progress Schedule and successive updates shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to Owner. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Design-Builder, and failure to strictly comply with said requirements shall constitute a material breach of the Contract. No claim for an increase in the GMP or Fixed Price Proposal, as applicable, shall be allowed as a result of Design-Builder basing the GMP/Fixed Price Proposal upon an early completion schedule or as a result of delays and costs attributable to completion later than the planned early completion date.
- 7.4 Review and Approval of Submittals.** Design-Builder shall review, study, approve or take other necessary action upon all Shop Drawings, Product Data,

Samples and other Submittals, to ensure that the Project will be constructed in a timely fashion in strict compliance with the Contract. No deviation from, substitution for or other modification from the Contract Documents shall be allowed by Design-Builder in a shop drawing or submittal without written approval, in the form of a Change Order, from Owner. Design-Builder shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule. Design-Builder shall use its best independent professional judgment in its review to determine compliance with the Contract Documents.

- 7.5 Owner's Option to Review Submittals.** Owner shall, in its discretion, have the right to review and approve Submittals and if Owner so elects, Design-Builder shall not perform any portion of the Construction Work of which Owner has required submittal and review until such Submittal has been submitted to and approved by Owner. Approval by the Owner, however, shall not be evidence that Construction Work installed pursuant to the Owner's approval conforms to the requirements of the Contract nor shall such approvals relieve Design-Builder of any of its responsibilities or warranties under the Contract. If Owner elects to review Submittals, Design-Builder shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any re-submittal, the date of any approval or rejection and the reason for any approval or rejection. Design-Builder shall have the duty carefully to review, inspect and examine any and all Submittals before submission of same to Owner. Shop Drawings and other Submittals from Design-Builder do not constitute a part of this Contract.
- 7.6 Procurement of Operations and Maintenance Documentation.** Design-Builder shall prepare or procure and shall transmit to Owner all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.
- 7.7 As-Built Drawings.** Design-Builder shall provide final as-built deliverable, which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.
- 7.8 Compliance with Labor Laws.** Design-Builder shall assume all labor responsibility for all personnel assigned to or contracted with for the performance of the Construction Work and agrees strictly to comply with all its obligations as employer, with respect to said personnel under all applicable labor laws.
- 7.9 Testing, Inspections, and Approvals.** Owner shall be responsible for procuring the services of special inspections and material testing.
- 7.10 Owner's Regulations and Applicable Laws.** Design-Builder shall, during the course of the Construction Work, comply with any regulations or guidelines

contained in the Contract or as mutually agreed upon in writing by the Parties. Design-Builder warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract including, without limitation, those relating to the terms and conditions of the employment of any person by Design-Builder in connection with the Construction Work to be performed under the Contract.

- 7.11 **Compliance with Construction Regulations.** Design-Builder shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Design-Builder and **Design-Builder shall fully indemnify and hold Owner harmless from all loss, damage and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations.**
- 7.12 **Conditions to Site Access.** While on Owner's property, all Design-Builder's employees, Sub-Consultants and Subcontractors shall confine themselves to areas designated by Owner and will be subject to Owner's badge and pass requirements, if any, in effect at the site of the Construction Work.
- 7.13 **Repair of Collateral Damage.** Unless otherwise instructed by Owner, Design-Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities and pre-existing site features affected by Design-Builder's performance of the Construction Work.

ARTICLE VIII CONTRACT PRICE

FIXED PRICE

- 8.1 **Contract Price.** The Contract Price is the sum of the Design Services Fee and the approved Fixed Price for Construction work. The quantities of the various elements of the Work to be done and material to be furnished are determined by Design-Builder. It is expressly understood and agreed by Owner and Design-Builder that the Contract Sum, including authorized adjustments, is the total amount payable by the Owner to Design-Builder and shall cover the cost for all Work required to complete the Project in accordance with the Contract Documents, regardless of what the final measurement of quantities is measured to be.
- 8.2 **Design Services Fee.** Owner shall pay, and Design-Builder shall accept, as full and complete payment for the Design Services, an amount not to exceed **FIFTEEN THOUSAND DOLLARS (\$15,000.00)**, payable upon contract execution.
- 8.3 The approved Fixed Price Proposal (FPP) and the Contract Documents are

intended to address all items for the performance of all Construction Work required by the Contract, and the performance of all other requirements of this Contract, to include assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work for the Fixed Price. Design-Builder shall provide a fully functional and operational facility as intended in the approved FPP.

- 8.4 The approved Fixed Price shall consist of the Cost of the Construction Work as defined in the Contract, plus Design-Builder's Management Fee, which is the Not-to-Exceed amount of **FIVE HUNDRED FORTY-TWO THOUSAND DOLLARS (\$542,000.00)**. Owner agrees to perform its responsibilities so as to assist Design-Builder to facilitate the completion of the Construction Work. Owner represents to Design-Builder that there will be sufficient funds available to pay Design-Builder up to the approved Fixed Price of the Not-to-Exceed amount of FIVE HUNDRED FORTY TWO THOUSAND DOLLARS (\$542,000.00), as adjusted by any Change Order. **The Fixed Price, unless changed by Supplemental Agreement or Change Order, represents the absolute limit of obligation or liability that Owner ever may have, insofar as the cost for full and final completion of the Construction Work as designed and the total of all payments to Design-Builder, its Sub-consultants or Subcontractors are concerned, except for the Design Services Fee.** Should additional amounts be required to be expended, over and above the approved Fixed Price, to achieve completion of the Construction Work, including Project construction and payment to Design-Builder, as designed and in accordance with this Contract, liability for and payment of such additional amounts shall be the sole responsibility of Design-Builder and its Contract Surety herein, and Owner never shall be liable for same. Design-Builder's absolute responsibility for the completion of the Project, in accordance with the Contract Documents/Plans/Specifications, within the agreed cost constraints, as well as Design-Builder's Contract to bear all costs in excess of the approved Fixed Price without recourse to Owner if such excess costs are necessary for the completion of the Construction Work, shall be incontrovertible and undisputable, and shall take precedence over all other terms and provisions of this Contract and the Exhibits hereto, no part of which shall be deemed to alter, diminish or waive such obligations.

FIXED PRICE

- 8.5 **Management of Construction Work.** In addition to the Construction Work Design-Builder will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project.
- 8.6 **Cost of Construction Work.** Owner agrees to pay Design-Builder for the Cost of the Construction Work as defined herein, subject to submission by Design-Builder of all backup substantiation as may be reasonably required by Owner. However, in no event shall the sum of payments for the Cost of the

Construction Work and any other Design-Builder compensation exceed the Fixed Price, as applicable, as adjusted by Change Order(s). The following items are considered to be part of the Cost of the Construction Work:

- 8.6.1 Wages paid for labor in the direct employ of Design-Builder in the performance of the Work under any applicable collective bargaining agreement, or under a salary or wage schedule agreed upon by Owner and Design-Builder, and including reasonable and customary benefits, if any, as may be payable with respect thereto. Such costs shall be at rates not higher than the standard rate of pay in the locality of the Construction Work except with prior consent of the Owner and shall include the items set forth below in this **Article VIII**. The reasonable cost of drug testing for all of Design-Builder's employees utilized on or hired for the Project, whether management or labor, shall also be a Cost of the Construction Work.
- 8.6.2 Salaries of Design-Builder's employees at or below the level of Project Design-Builder, when engaged on the Construction Work and stationed at the Field Office, in whatever capacity employed. Employees engaged, at shops or on the road in expediting the production or transportation of materials or equipment shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Construction Work.
- 8.6.3 Cost of reasonable and customary pension contributions, hospitalization insurance, medical insurance, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is reasonably based on wages, salaries, or other remuneration paid to employees of Design-Builder.
- 8.6.4 Cost of all materials, supplies and equipment incorporated in the Construction Work, including costs of transportation thereof.
- 8.6.5 Payments made by Design-Builder to Sub-Consultants and Subcontractors for Construction Work performed pursuant to a Subcontract entered into in the performance of this Contract.
- 8.6.6 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Construction Work, and cost less salvage value of such items used but not consumed which remain the property of Design-Builder.

- 8.6.7 Cost of the premiums for all bonds and insurance coverage required by this Contract, or deemed necessary by Design-Builder, in the normal pursuit of the Construction Work.
- 8.6.8 Taxes, if any, related to the Work. However, as Owner qualifies for exemption under Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act, Design-Builder shall alert all Sub-Consultants and Subcontractors to prevent erroneous payment of taxes covered by this exemption. Owner will provide exemption certificates to confirm this exemption upon request.
- 8.6.9 Minor expenses, such as telegrams, long-distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with and for the benefit of the Construction Work.
- 8.6.10 Cost of removal of debris. Removal of debris left by other contractors hired by the Owner is not a part of this Contract.
- 8.6.11 Cost incurred due to an emergency affecting the safety of persons and property.
- 8.6.12 Other costs incurred in the performance of the Construction Work, if and to the extent approved in advance in writing by Owner.
- 8.6.13 The reasonable and actual direct cost of data processing services, as required for the Project, if any. Such costs shall be specifically documented as having been done for the Project.
- 8.6.14 Legal costs growing out of prosecution of the Construction Work for Owner only will be reimbursable if such legal costs were incurred for the direct benefit of Owner and with prior written approval of Owner.
- 8.6.15 Cost or rental of temporary portable buildings and toilets as required; cost of utilities, ice, water, containers, cups, fire extinguishers, first-aid supplies, safety equipment, off-site storage space or facilities, progress photographs or video tape records.
- 8.6.16 All reasonable costs and expenditures necessary for the operation of the field office, such as stationery, supplies, blueprinting, furniture, fixtures, office equipment, etc.
- 8.6.17 Costs incurred by Design-Builder in preparing and maintaining progress schedules, budgets and reports required hereby.
- 8.6.18 Design-Builder shall be responsible for enforcing warranties and

for obtaining correction and/or replacement of all defective Construction Work not constructed or installed accordance with the Contract Documents. All such corrective or remedial Construction Work required by the Contract Documents shall be performed by responsible Subcontractors under the terms of their Subcontracts, without additional cost to the Owner. Costs incurred by Design-Builder to correct or remedy Construction Work performed by Design-Builder's own forces, or where the responsible Subcontractor fails to perform, shall **NOT** be a Cost of the Construction Work and shall be Design-Builder's sole responsibility, at no additional cost to Owner; provided, however, Design-Builder shall be entitled to the proceeds of any Subcontractor maintenance bond, where such Subcontractor has defaulted in this regard.

8.6.19 Salaries of Design-Builder's Project Design-Builder and Contract Design-Builder, Safety Engineer, M/WBE Coordinator, and Procurement Specialist (for coordinating, costing, scoping and purchasing of major Work items), earned after the date of approval and funding of the GMP, whether stationed at the Field Office or at the Main Office of Design-Builder, for that portion of their time spent on this Construction Work.

8.6.20 Where not otherwise included in the Cost of the Construction Work, the cost of central accounting services in connection with the Construction Work, such as payment of invoices, maintaining material cost records, computer services, preparation of W-2 Reports, payroll tax reporting and preparation of other reports.

ARTICLE IX PAYMENT OF THE CONTRACT PRICE

- 9.1 **Payment Procedure.** Owner shall pay the Contract Price to Design-Builder in accordance with the procedures set forth in this **Article IX** and, for purposes of the Construction Work, the applicable provisions of **Article IX** of County's General Conditions for Design/Build Contracts to the extent they do not conflict with this **Article IX**.
- 9.2 **Internet Submissions.** Owner will accept digital submissions. In such case, Design-Builder shall conduct communication through this media. This includes correspondence, submittals, requests for information, vouchers, payment requests and processing, amendments, change orders and other administrative activities.
- 9.3 **Draws via internet submission.** All draws may be submitted digitally via internet submission. Prior to submittal of the first draw, Design-Builder

will submit a schedule of values for payment to be approved by Owner, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the System.

9.4 Request for Payment for Design Services. Design Builder will be paid for its Design services (Engineering Plan) as provided under section 8.2 of the Design Build Contract upon contract execution. .

9.5 Request for Payment for Construction Work. Payments for Construction Work shall be made in accordance with **Article IX** of County's General Conditions for Design/Build Contracts; however, Owner does agree to pay Design-Builder the Construction Work Amount as set out in Section 8.4 (\$542,000.00) as follows:

1. 20% Upon (Webb County) receiving and verification of Splash Pad Equipment which equals \$108,400.00;
2. 30% Upon completion of All Drains, Tanks, Piping, and piping pressure tests which equals to \$162,600.00;
3. 15% Upon completion of Splash Pad Concrete Pour and Splash Pad Recirculating Equipment Installation which equals to \$81,300.00;
4. 15% Upon installation of all above ground features with Splash Pads operational (not including Deck Coating) which equals to \$81,300.00;
5. 10% Concrete Coating completion, Maintenance Instructions submitted and explained to Webb County, Splash Pads Sign off pipework which equals to \$ 54,200.00;
6. 10% upon Final Completion & Inspection which equals to \$54,200.00 plus release of all retainage amounts withheld by Webb County.

Note: Under Section 9.6.2 of the General Conditions of the Contract, Webb County will retain 5% on each above invoiced amount until final payment is due Design Builder when Project is completed.

9.6 Right to Audit. Owner shall be entitled to rely upon the accuracy and completeness of the information furnished by Design-Builder in connection with any request for payment under this Contract. Owner reserves the right to audit, at Owner's election, all of Design-Builder's records and billings relating to the performance of Design Services or Construction Work under this Contract. Design-Builder agrees to retain its Project records for a minimum of four (4) years following completion of all Services under this Contract, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute. Owner agrees that it will exercise the right to audit only at reasonable hours and if Design-Builder stores the documents at a site outside Webb County it shall provide any requested documentation electronically or in hard copy as may be requested by Owner. Owner may review any and all of the services performed by Contractor under this Contract. Owner is granted the right to

audit, at Owner's election, all of Contractor's records and billings relating to the performance of this Contract. Contractor agrees to retain such records for a minimum of four (4) years following completion of this Contract, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute. Any payment, settlement, satisfaction or release made or provided during the course of performance of this Contract shall be subject to Owner's rights as may be disclosed by an audit under this subsection. In the event Owner determines that Design-Builder has been paid any sums not due or earned by Design-Builder, same shall be reimbursed by Design-Builder to Owner within forty-eight (48) hours of demand by Owner.

- 9.7 Condition Precedent to Final Payment.** Notwithstanding any other provision in the Contract Documents, final payment shall not be made to Design-Builder until Design-Builder fully has performed all of its obligations under the Contract and the Design Services and the Construction Work fully are complete.
- 9.8 Owner's Review of Pay Requests.** Owner shall have the right to review all pay requests for the Design Services and the Construction Work to determine whether the quantity and quality of the Design Services and the Construction Work is as represented in the pay request and as required by the Contract.
- 9.9 Conditions Precedent to Payment.** In addition to all other conditions precedent contained in this Contract and in County's General Conditions for Design/Build Contracts it shall be a condition precedent to payment of any pay request under this Contract that Design-Builder has submitted properly updated revised schedules for the performance of its Design Services and Construction Work, as required by this Contract.
- 9.10 Passage of Title to Construction Work.** Notwithstanding progress payments made by Owner under this Contract, title to Construction Work under this Contract does not pass to Owner until final completion of the Project, at which point title to all Construction Work is deemed to pass immediately to Owner. The risk of loss regarding completed Construction Work is paid for by Owner prior to final completion remains with Design-Builder.
- 9.11 Design-Builder's Use of Progress Payments.** Upon receipt of any payment from Owner, Design-Builder promptly shall pay all Sub-Consultants, Subcontractors, materialmen, laborers and Suppliers such amounts as they are entitled for the Construction Work covered by such payment. Design-Builder also shall comply with the requirements of County's General Conditions for Design/Build Contracts relating to payments to Sub-Consultants and Subcontractors.
- 9.12 Use of Joint Checks.** If Owner becomes informed that Design-Builder has not paid a Sub-Consultant, Subcontractor, materialman, laborer or Supplier as provided herein, Owner shall have the right but not the duty to issue checks and payment then or thereafter otherwise due to Design-Builder naming Design-Builder and any such

Sub-Consultant, Subcontractor, materialman, laborer or Supplier as joint payees. Such joint check procedure, if employed by Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit Owner to repeat the procedure in the future nor to create any contractual or other relationship of any kind between Owner and such person or entity.

9.13 Payment Not a Waiver or Acceptance: No payment to Design-Builder, nor any use or occupancy of the Project by Owner, shall be interpreted or construed to constitute acceptance of any Construction Work not in strict compliance with the Contract, and Design-Builder expressly accepts the risk that defective Construction Work may not be detected:

- (1) during any inspection by Owner;
- (2) prior to making of any payment to Design-Builder; or
- (3) before Owner's occupancy of the Project.

9.14 Withholding of Payment: Owner shall have the right to refuse to make payment for Construction Work and, if necessary, may demand the return a portion or the entire amount previously paid to Design-Builder in an amount then believed by Owner to be adequate to cover the penalties, damages and potential losses resulting or likely to result from:

- 9.14.1 the quality of a portion, or all, of Design-Builder's Construction Work not being in accordance with the requirements of this Contract;
- 9.14.2 the quantity of Design-Builder's Construction Work not being as represented in Design-Builder's pay request, or otherwise;
- 9.14.3 Design-Builder's rate of progress being such that, in Owner's opinion, Substantial Completion, Final Completion or both may inexcusably be delayed;
- 9.14.4 Design-Builder's failure to use Contract funds, previously paid to Design-Builder by Owner, to pay Design-Builder's Project-related obligations including, but not limited to, Sub-Consultants, Subcontractors, laborers and material and equipment Suppliers;
- 9.14.5 evidence that the balance of the Construction Work cannot be completed, in accordance with the Contract, for the unpaid balance of the Contract Price;
- 9.14.6 claims made, or likely to be made, against Owner or its property;

- 9.14.7 loss or damage caused by Design-Builder;
- 9.14.8 Design-Builder's failure or refusal to perform any of its obligations to Owner; or
- 9.14.9 any other basis for withholding of payment specified in the General Conditions.

In the event that Owner makes written demand upon Design-Builder for amounts previously paid by Owner, as contemplated in this **Section 9.14**, Design-Builder promptly shall comply with such demand.

- 9.15 Unexcused Failure to Pay.** If Owner, without cause or basis, fails to pay Design-Builder any amounts due and payable under this Contract to Design-Builder within thirty (30) days after the date established in this Contract for payment of such amounts, then the payment shall bear interest in accordance with the Texas Prompt Payment Act, as amended. Provided, however, that Owner shall not be liable for interest due on any late or delayed progress payment or final payment caused by any good faith claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the request for payment or as a precondition to payment under the Contract Documents, or due to any payment Owner has a right to withhold or not certify under the Contract Documents.

ARTICLE X OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

- 10.1** In addition to payment and notwithstanding any other provision herein to the contrary, Owner shall undertake to perform the following:
- 10.1.1 Min. 1" culinary and back flowed water line source to equipment room area.
 - 10.1.2 Electrical 220v brought to equipment room along with pump hook up, grounding of equipment, all other electrical needs and associated electrical diagrams on engineered plans (see attached electrical req. as provided by Design-Builder).
 - 10.1.3 All permits, permit fees, and inspections.
 - 10.1.4 Sewer line in equipment area for tank flush out or other method approved by County.
 - 10.1.5 Provide access to Equipment area for all piping to tank and splashpad.

- 10.1.6 Replace concrete in any other existing concrete areas removed for pipe access the County wishes to replace.
- 10.1.7 [Intentionally left blank]
- 10.1.8 **Provide Project Information.** Owner shall provide Design-Builder with information regarding Owner's requirements for the Project, including any desired or required design or construction schedule.
- 10.1.9 **Review of Documents.** Owner shall review any documents submitted by Design-Builder requiring Owner's decision and shall render any required decisions pertaining thereto.
- 10.1.10 **Provide Notice of Defects.** In the event Owner knows of any material fault or defect in the Construction Work, nonconformance with the Contract or of any errors, omissions or inconsistencies in the Construction Documents, Owner shall give prompt notice thereof in writing to Design-Builder.
- 10.1.11 **Access to the Site and the Construction Work.** Owner shall provide Design-Builder access to the site and to the Construction Work and shall provide Design-Builder with such information, existing and reasonably available, necessary to Design-Builder's performance of the Contract as Design-Builder may request.
- 10.1.12 **Site Preparation.** Owner shall be responsible for preparing the site as specified in the bid proposal, as provided pursuant to section 10.1.1 through section 10.1.6. Owner shall give Design-Builder at least five (5) business days advance written notice of the date the site will be ready for Design-Builder's work.
- 10.1.13 **Cooperation to Secure Permits, censes, Approvals and Authorizations.** Owner shall cooperate with Design-Builder securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.
- 10.1.14 **Timely Performance.** Owner shall perform the duties set forth in this **Article X** in a reasonably expeditious fashion so as to permit the orderly and timely progress of Design-Builder's Design Services and of the Construction Work.
- 10.1.15 **Owner's Reviews, Inspections, Approvals, and Payments Not a Waiver.** Owner's review, inspection or approval of any Construction Work, Design Documents, Submittals or pay requests by Design-Builder solely shall be for the purpose of determining

whether such Construction Work and such documents are generally consistent with Owner's construction program and requirements. No review, inspection or approval by Owner of the Construction Work or documents shall relieve Design-Builder of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents or Contract Documents shall not relieve Design-Builder of responsibility for the strict performance of its obligations under the Contract. Payment by Owner, pursuant to the Contract, shall not constitute a waiver of any of Owner's rights under the Contract or at law and Design-Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner.

- 10.1.16 **Delay or Forbearance Not A Waiver.** Owner's agreement not to exercise any right under the Contract, Owner's delay or failure to exercise any right under the Contract or Owner requiring strict compliance with any obligation of Design-Builder under the Contract shall not be a waiver of Owner's right to exercise such right or to insist on such compliance at any other time or on any other occasion.
- 10.1.17 **Documents Requested By Design/Builder.** Owner shall furnish to Design-Builder, prior to the execution of this Contract, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Design-Builder only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, Owner does not represent, warrant or guarantee its accuracy or completeness, either in whole or in part. **Owner expressly does not warrant any geotechnical or site information provided by it for use in connection with preparation of the Construction Documents;** Design-Builder, however, may reasonably rely on geotechnical information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design-Builder from its responsibility to independently review information for deficiencies, flaws, errors and/or omissions that a reasonable and prudent professional Architect or Engineer should or would detect and inquire about. If Design-Builder requests it in writing, Owner also shall furnish surveys, legal limitations, utility locations (if known) and a legal

description of the Project site.

10.1.18 Approvals and Easements. Owner shall obtain any and all easements required for construction and shall pay for necessary assessments and charges required for use and occupancy of the Construction site. Design-Builder shall render such assistance as Owner may request in obtaining such easements, certificates of occupancy, and the like.

10.1.19 Right to Stop Construction Work. In the event Design-Builder fails or refuses to perform the Construction Work in strict accordance with the Contract, or otherwise in breach of this Contract in any way, Owner may, at its option, direct Design-Builder to stop the Work, in accordance with County's General Conditions for Design/Build Contracts, and/or direct Design-Builder to carry out the Work in accordance with County's General Conditions for Design/Build Contracts and Design-Builder warrants that it will comply with any direction given by Owner.

ARTICLE XI PROJECT DOCUMENTATION

11.1 Maintenance of Project-Related Records. Design-Builder shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute and for any longer period of time as may be required by law or good management practice.

11.2 Availability of Project-Related Records to Owner: All Project Records which are in the possession of Design-Builder, Design-Builders Sub-Consultants and/or Subcontractors shall be made available to Owner for inspection and copying upon Owner's request at any time. Additionally, such records shall be made available upon request by Owner to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings or other writings or things which document the Project, its design or its construction. Said records include those documents reflecting the cost of design and construction to Design-Builder.

11.2.1 Design-Builder must notify Owner immediately if Design-Builder receives a request for documents from a third party. Owner must be given the opportunity to assert any proprietary interest it may have.

- 11.2.2 Design-Builder must impose on its Sub-Consultants and its Subcontractors, if any, all record retention obligations of this Contract.

ARTICLE XII OWNERSHIP OF PROJECT DOCUMENTS AND COPYRIGHTS

- 12.1** All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including the copyrights thereto; provided, however: Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project.
- 12.2** All completed documents submitted by Design-Builder, its Sub-Consultants and its Subcontractors for final approval or issuance of a permit shall bear the seal with signature and the date adjacent thereto of a Texas registered professional for all plans, Work and Deliverables prepared by them for this Contract.
- 12.3** Design-Builder may make copies of any and all documents and items for its files. Design-Builder shall have no liability for changes made to or use of the drawings, specifications and other documents made by Architects/Engineers or persons other than Design-Builder. Design-Builder appropriately shall mark all changes or modifications on all drawings, specifications and other documents made by Architect/Engineers or persons other than Design-Builder, including electronic copies.
- 12.4** Copies of documents that may be relied upon by Owner are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by Design-Builder. Files in editable electronic media format of text, data, graphics or other types, (such as DGN) that are furnished by Design-Builder to Owner only are for convenience of Owner. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. However, any reuse without specific written verification or adaptation by Design-Builder will be at Owner's sole risk and without liability or legal exposure to Design-Builder.
- 12.5** Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Design-Builder including, but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by Design-Builder or its Suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Design-Builder to provide the services or protect deliverables to Owner including, without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Design-Builder or its Suppliers.

**ARTICLE XIII
INSURANCE REQUIREMENTS**

Prior to the commencement of any work under this Project, Design-Builder shall purchase and maintain insurance, as set forth in Owner's General Conditions for Design/Build Contracts, and any Supplementary General Conditions or Special Conditions, if applicable.

**ARTICLE XIV
DESIGNATED REPRESENTATIVES**

14.1. Owner's Designated Representatives.

Owner designates the individual listed below or his designee as its Architect or Engineer Representative, said individual having the authority and responsibility for avoiding and resolving disputes in project delivery, addressing project management issues and for avoiding and addressing technical disputes regarding architectural and engineering design services provided under the provisions of this Contract.

Webb County Engineer
1620 Santa Ursula
Laredo, TX 78040

Owner designates the individual listed below as its Owner's Designated Project Management Representative (ODR), said individual having the authority and responsibility for day-to-day Project management activities as set forth in this Contract.

Webb County Engineer
1620 Santa Ursula
Laredo, TX 78040

14.2. Design-Builder's Designated Representatives:

Design-Builder designates the individual listed below as its Senior Representative (hereafter referred to as "Design-Builder's Designated Representative"), said individual having the authority and responsibility for avoiding and resolving disputes under the provisions of this Contract.

Mr. Rick Funk
SplashPadsUSA
60 North Cutler Drive, Ste. 104
North Salt Lake, UT 84054

**ARTICLE XV
MISCELLANEOUS PROVISIONS**

- 15.1 Dispute Resolution.** All disputes against Owner that arise from this Contract or any Project shall be resolved in accordance with the procedures and limitations set out Owner's General Conditions for Design/Build Contracts. Owner designates the Director or his Department Designee as its officer(s) for examining, negotiating and resolving claims and counterclaims.
- 15.2 Force Majeure.** Neither party shall be deemed to be in breach or default of this Agreement if there is any total or partial failure in the performance by it of its duties and obligations hereunder occasioned by any acts of God, fire, act of federal or state government, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, pandemic, priorities, strike, labor disputes and any other reason beyond such party's reasonable control.
- 15.3 Continued Performance.** Upon the occurrence of any excusable delay the Parties shall endeavor to continue to perform their obligations under this Agreement so far as reasonably practical. Toward that end, Design-Builder and County each hereby agree that it shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay and shall use its commercially reasonable efforts to ensure resumption of performance of its obligations under this Agreement after the occurrence of any excusable Delay. The Parties shall use and continue to use all commercially reasonable efforts to prevent, avoid, overcome and minimize any delay.
- 15.4 Texas Family Code Child Support Certification.** Pursuant to Section 231.006, Texas Family Code, Design-Builder certifies that it is not ineligible to receive the award of or payments under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- 15.5 Payment of Debt or Delinquency to Owner.** It is the policy of Owner that any person or entity doing business with Owner shall, at all times, remain in financial good standing with all Owner Departments. In that regard, Design-Builder warrants that it has no outstanding obligations to any County of Webb Department at the time of the execution of this Contract, and hereby covenants that it timely will pay, as they come due, any and all taxes, fees, fines or any other charges assessed by any County of Webb Department whether imposed by statute, ordinance or contract, without regard to whether these charges are associated with this Contract or Design-Builder's operation under this Contract.
- 15.6 Contract Documents; Merger.** The Contract Documents form the entire and integrated Contract between Owner and Design-Builder and supersede all prior negotiations, representations or agreements, either written or oral. This Contract and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Design-Builder and Owner.

15.7 Captions. The captions of sections in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

15.8 Notices. In addition to the written Notice Provision in County's General Conditions for Design/Build Contracts, all notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when:

15.8.1 Delivered in person to the designated representative of Design-Builder or Owner for whom it is intended; or

15.8.2 Sent by U. S. Mail, certified mail, return receipt requested, to the last known business address of the designated representative; or

15.8.3 Transmitted by fax machine to the last known business fax number of the designated representative.

15.8.4 Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing. Notices of claims or disputes or other legal notices required by this Contract shall be sent to the following persons at the indicated locations. The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

If to Owner:
County of Webb
Webb County Engineer
1620 Santa Ursula
Laredo, TX 78040

With a copy to:
Economic Development Department
Attn: Director
1308 San Agustin
Laredo, Texas 78040

If to Design-Builder:
SplashPadsUSA
Attn: Mr. Rick Funk
60 N Cutler Dr., Ste. 104
North Salt Lake, UT 84054

15.9 Severability. Should any term or provision of this Contract be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Contract shall be construed as if the invalid or unenforceable term or

provision had never been included.

15.10 Illegal Dumping. Design-Builder shall ensure that it and all of its Sub-Consultants, Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

15.11 Equal Employment Opportunity and Affirmative Action. Design-Builder shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

BY SIGNING BELOW, the Parties have bound themselves to this terms and conditions of this Contract as of the date shown below their signatures.

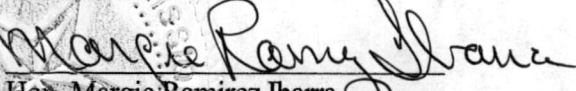
OWNER
County of Webb

By: 

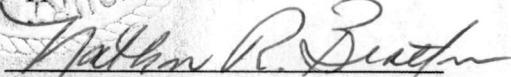
Hon. Tano E. Tijerina
Webb County Judge

Date: 3/16/2021

ATTEST:


Hon. Margie Ramirez Ibarra
Webb County Clerk

Approved as to Form:


Nathan R. Bratton
General Counsel
Civil Legal Division*

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

Design-Builder
Splash PadsUSA, Inc.

By: 

Mr. Rick Funk

Title: VP OPERATIONS

Date: 3/9/2021