

# AIA® Document C172™ - 2014

## Standard Form of Agreement Between Owner and Owners Representative for use on a Single Project

AGREEMENT made as of the 29<sup>th</sup> day of April in the year 2021

BETWEEN the Owner's Representative client identified as the Owner:

Webb County a Political Subdivision  
Of the State of Texas  
1000 Houston St.  
2nd Floor  
Laredo, Texas 78040

and the Owners Representative:

Gilpin Engineering Company  
11204 McPherson Rd.  
Suite 109  
Laredo, Texas 78045-6577  
JGilpin@gilpinengineering.com


for the following Project:

Webb County Fairgrounds Project

The Owner and Owner's Representative 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.

BY  DEPUTY  
WEBB COUNTY, TEXAS  
2021 MAY 11 AM 10:26  
MARSIE R. J. BARRA  
COUNTY CLERK  
FILED

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

**TABLE OF ARTICLES**

- 1 INITIAL INFORMATION**
- 2 OWNER'S REPRESENTATIVE'S RESPONSIBILITIES**
- 3 SCOPE OF OWNER'S REPRESENTATIVE'S BASIC SERVICES**
- 4 SUPPLEMENTAL SERVICES**
- 5 OWNER'S RESPONSIBILITIES**
- 6 COPYRIGHTS AND LICENSES**
- 7 CLAIMS AND DISPUTES**
- 8 TERMINATION OR SUSPENSION**
- 9 MISCELLANEOUS PROVISIONS**
- 10 COMPENSATION**
- 11 SPECIAL TERMS AND CONDITIONS**
- 12 SCOPE OF THE AGREEMENT**

**ARTICLE 1 INITIAL INFORMATION**

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1.

*NOT APPLICABLE*

**§ 1.2 Definitions**

§ 1.2.1 Unless otherwise specifically defined in this Agreement, terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction.

The term “Existing Master Plan” shall refer to the Master Plan developed by Hanson Professional Services, Inc. and dated November 20, 2018.

**§ 1.3 Project Information**

§ 1.3.1 The Owner’s program for the Project:

The Fairgrounds Project consists of the phased demolition, renovation and redevelopment of the Webb County Fairgrounds facilities including existing and proposed utilities, roadways, parking, buildings, arenas, stables and associated support buildings and infrastructure.

It is desired that project will have a construction budget of \$45 Million. Amended Master Plan and phasing of master planned components are still being determined in order to set the construction budget for the first phase of improvements as well as to project the budget for future phases of improvements.

The Owner's Program includes an investigative report into “Existing Master Plan” percentage completion and practicality of “Existing Master Plan” and submittals. The Program shall first consider changes to the Master Plan such as, but not limited to, adjustments to layout, consideration of existing buildings to be renovated and/or repurposed.

The “Existing Master Plan” project includes construction of offsite and onsite infrastructure including potable water and fire protection, wastewater, irrigation water facilities, site grading and drainage, parking, roadways, electrical lighting, landscaping, etc. New construction will include a main public entrance, a 4,000-seat air-conditioned Main Events Arena, a Community Center/Banquet Hall, a Show Ring/Animal Exhibition Building, a 100 stall Horse Barn, an outdoor Arena Building, an outdoor stage and potentially other sports complex facilities. A series of livestock

show barns are presently located on the property. The majority of facilities will be demolished. A select few buildings will be completely refurbished to host support functions associated with the new facilities. The Buildings will be linked by a partially covered walkway/concourse accented by towers, pavilions and other visual focal points.

The "Existing Master Plan" indicates that all buildings will be pre-engineered metal building type structures. Most will have concrete floor slabs. All public buildings will have restrooms, ticketing counters and concessions areas that will be accessible from the outside as well as the inside to accommodate a variety of events. All facilities must comply with Texas Accessibility Standards required by the Texas Department of Licensing and Regulations.

The "Existing Master Plan" includes a proposed new Main Events Arena to be a 4,000-fixed seat air-conditioned building with a 150'x 300' floor area. The fixed stadium seating will be washable self-lifting seats typical of multipurpose ag-expo facilities. A full food-service kitchen will be located in the Main Events Arena. Above the seating bowl will be a continuous wide concourse providing access to concessions, restrooms and open display and dining areas. Sections of the concourse exterior walls will include overhead doors to allow operation of the building for certain events without operating the climate control system.

The "Existing Master Plan" includes a proposed new Community Center/Banquet Hall will be a multi-purpose air-conditioned facility with 20,000 square feet of Meeting/Banquet space, a full food-service kitchen and will include administrative office space. The Meeting/Banquet space will be fully carpeted acoustically treated and have high ceilings. The Meeting/Banquet space will have the ability to be divided into separate function areas by means of full-height moveable acoustical partition walls.

The Show Ring/Animal Exhibition Building will be utilized for animal exhibition events as well as other commercial trade and consumer shows. This will be an air-conditioned building with large roll-up doors for ventilation when weather permits. The building will include 1,500 fixed and moveable bleacher seats to accommodate spectators for the 60' x 80' show ring.

The "Existing Master Plan" includes a proposed new Horse Barn with approximately 26,000 square feet of roof, housing one hundred 10' x 10' animal stalls. A small office area, a lockable storage area and an animal wash area will be provided under the roof.)

The "Existing Master Plan" includes proposed new Festival Grounds and will have a new outdoor performance stage with concert sound and light power supply. New Stations for concessions/vendor hook-ups are also included as well as new facilities for ticketing and security control.

The "Existing Master Plan" calls for LIFE Pavilion to be completely refurbished and repurposed to provide approximately 5,000 square feet of storage and equipment maintenance space.

The "Existing Master Plan" address's locations for potential other sports complex facilities and/or events.

### § 1.3.2 The Project's physical characteristics:

Attached by reference are the following items:

1. Existing Conditions Survey by Gilpin Engineering Company
2. "Existing Master Plan" by Hanson dated: November 20, 2018
3. Final of Construction Manager at Risk Contract
4. Final of Architect Contract
5. Final of Civil Engineer Contract
6. Final of Geotechnical Engineer Contract

### § 1.3.3 Preliminary assessment of the condition of existing facilities or site, if any:

To be assessed upon execution of the contract and the project site is located on the north side of Hwy 59 east of Laredo at 6010 E Saunders Street, Laredo, Texas 78041 as described by the Hanson Master Plan.

### § 1.3.4 Funding source:

Webb County Certificate of Obligations (Bonds)

**§ 1.3.5 The Owner's budget for the Project:**

The owner has set budget at \$45 Million for construction costs.

**§ 1.3.6 The Owner's intended procurement or delivery method for design and construction of the Project:**

Government Code Sec. 2269.251 Sub-Chapter F Construction Manager at Risk. Other items outside of the scope the CMAR contract, the owner's representative will present all options for the owner to consider.

**§ 1.3.7 Anticipated scheduling information:**

**.1 Anticipated dates of Project commencement and completion:**

**.1 Commencement of design, if other than the date of this Agreement: TBD**

**.2 Completion of design:**

To Be Determined (TBD)

**.3 Commencement of construction:**

To Be Determined (TBD)

**.4 Completion of construction:**

To Be Determined (TBD)

**.2 Other Project scheduling information:**

To Be Determined (TBD)

**§ 1.3.8 Other information regarding the Project:**

Upon contract execution, Owners Representative will provide an analysis of all existing structures, facilities and existing infrastructure in order to evaluate the "Existing Master Plan" developed by Hanson on November 20, 2018. The benefits will be to consult with the owner and formally adopt all elements the owner would like to incorporate into an "Amended Master Plan" and to set up the Project Program Requirements with the design team in order to incorporate them into the schematic design phase, design development phase and construction document phase.

**§ 1.3.9 The Owner's anticipated sustainable objective for the Project, if any:**

Prioritize energy efficiency of buildings by use of open-air facilities with some combination full-time open air and part-time open air/climate-controlled buildings.

**§ 1.4 Project Team**

**§ 1.4.1 The Owner will retain the following consultants and contractors:**

Owner's Representative /Owner's Representative

Architect and it's approved subcontractors

Civil Engineer and it's approved subcontractors

Geotechnical Engineer / Testing Engineer and it's approved subcontractors

Construction Manager at Risk

Contractor and its approved subcontractors

§ 1.4.2 The Owners Representative will retain the consultants identified in Sections 1.4.2.1 and 1.4.2.2:

§ 1.4.2.1 Consultants retained under Basic Services:

Prime Consultant:  
Gilpin Engineering Company  
11204 McPherson Road, Suite 109  
Laredo, Texas 78045-6577  
JGilpin@gilpinengineering.com

Sub-Consultant:  
Cavazos Architects  
9114 McPherson Road, Suite 2501  
Laredo, Texas 78045  
memo@cavazosarch.com

Sub-Consultant:  
Brighton Group, LLC  
2805 Fountain Boulevard, Suite A-2  
Edinburg, Texas 78539  
[joseph@brightongroup.org](mailto:joseph@brightongroup.org)

Sub-Consultant:  
GDJ Engineering  
2805 Fountain Boulevard, Suite A-1  
Edinburg, Texas 78539  
[anthony@gdjeng.com](mailto:anthony@gdjeng.com)

§ 1.4.2.2 Consultants retained under Supplemental Services:

Prime Consultant:  
Gilpin Engineering Company  
11204 McPherson Road, Suite 109  
Laredo, Texas 78045-6577  
JGilpin@gilpinengineering.com

Sub-Consultant:  
Cavazos Architects  
9114 McPherson Road, Suite 2501  
Laredo, Texas 78045  
memo@cavazosarch.com

Sub-Consultant:  
Brighton Group, LLC  
2805 Fountain Boulevard, Suite A-2  
Edinburg, Texas 78539  
[joseph@brightongroup.org](mailto:joseph@brightongroup.org)

Sub-Consultant:  
GDJ Engineering  
2805 Fountain Boulevard, Suite A-1  
Edinburg, Texas 78539  
[anthony@gdjeng.com](mailto:anthony@gdjeng.com)

§ 1.4.3 The Owner identifies the following representative in accordance with Section 5.4:

County Judge Tano Tijerina  
Webb County  
1110 Washington St.  
Suite 101  
Laredo, Texas 78040

§ 1.4.4 The persons or entities, in addition to the Owner's representative, who are required to review and approve the all submittals to the Owner are as follows:

Prime Consultant:  
Gilpin Engineering Company  
11204 McPherson Road, Suite 109  
Laredo, Texas 78045-6577  
JGilpin@gilpinengineering.com

Sub-Consultant:  
Cavazos Architects  
9114 McPherson Road, Suite 2501  
Laredo, Texas 78045  
memo@cavazosarch.com

Sub-Consultant:  
Brighton Group, LLC  
2805 Fountain Boulevard, Suite A-2  
Edinburg, Texas 78539  
[joseph@brightongroup.org](mailto:joseph@brightongroup.org)

Sub-Consultant:  
GDJ Engineering  
2805 Fountain Boulevard, Suite A-1  
Edinburg, Texas 78539  
[anthony@gdjeng.com](mailto:anthony@gdjeng.com)

§ 1.4.5 The Owners Representative identifies the following representative in accordance with Section 2.4:

Prime Consultant:  
Gilpin Engineering Company  
11204 McPherson Road, Suite 109  
Laredo, Texas 78045-6577  
JGilpin@gilpinengineering.com

§ 1.5 Other Initial Information on which the Agreement is based: None

§ 1.6 The Owner and Owners Representative may rely on the Initial Information. Both parties, however, recognize that such information may materially change, and in that event, the Owner and the Owner's Representative shall appropriately adjust the schedule, the Owner's Representative's services, and the Owner's Representative's compensation.

## ARTICLE 2 OWNERS REPRESENTATIVE RESPONSIBILITIES

§ 2.1 The Owners Representative shall provide the services as set forth in this Agreement.

§ 2.2 The Owner Representative shall perform its services consistent with the skill and care ordinarily provided by Owner's Representatives practicing in the same or similar locality under the same or similar circumstances. The

Owners Representative shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

**§ 2.3** The Owner's Representative, as soon as practicable after execution of the Agreement, shall confirm in writing to the Owner the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Owner's Representative proposed key staff members, the Owner may reply to the Owner's Representative in writing stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection. The Owner's Representative shall not staff any employees on the Project to whom the Owner has made reasonable and timely objection. The Owner's Representative shall not change its key staff members without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 2.4** The Owner's Representative shall identify a representative authorized to act on behalf of the Owner's Representatives with respect to the Project.

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

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

**§ 2.7 Insurance.** The Owners Representative shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Owners Representative normally maintains, the Owner shall reimburse the Owners Representative for any additional cost as set forth in Section 10.6.3.

**§ 2.7.1** Commercial General Liability with policy limits of not less than two million dollars (\$2,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

**§ 2.7.2** Automobile Liability covering vehicles owned by the Owners Representative and non-owned vehicles used by the Owners Representative with policy limits of not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate for bodily injury and property damage along with any other statutorily required automobile coverage.

**§ 2.7.3** The Owners Representative may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.7.1 and 2.7.2.

**§ 2.7.4** Workers' Compensation at statutory limits and Employers Liability with policy limits of not less than one million dollars (\$1,000,000).

**§ 2.7.5** Professional Liability covering negligent acts, errors, and omissions in the performance of professional services, with policy limits of not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate.

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

**§ 2.7.7** The Owners Representative shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.7. The certificates will show the Owner as an additional insured on the Commercial General Liability, Automobile Liability, and any excess policies.

## ARTICLE 3 SCOPE OF OWNERS REPRESENTATIVE BASIC SERVICES

### § 3.1 General

§ 3.1.01 Upon contract execution, Owners Representative will provide an analysis of all existing structures, facilities and existing infrastructure in order to evaluate the "Existing Master Plan" developed by Hanson on November 20, 2018. The Owners Representative will collaborate with the design team and CMAR contractor in order to develop Project Program Requirements and recommendations to the Owner of all elements to be considered in the development of an Amended Master Plan. The Owner will provide input so that a formal proposed Amended Master Plan, Project Program Requirements and Budget(s) can be developed and presented to the Owner for formal approval and will be incorporated in the schematic design phase, design development phase and construction document phase.

The primary role of the Owner's Representative is to represent the interest of Owner with regards to recommendations affecting the design and the quality of both materials and workmanship as well as compliance with construction plans and specifications to be approved by Owner. The Owner's Representative is independent of the contracted design team and Construction Manager at Risk Contractor throughout the planning, design and construction phases of the Webb County Fairgrounds Project. The Owner's Representative shall assist Owner to deliver the project within the Owner's approved budget.

The Owner's Representative's Basic Services will include all items listed in Articles 3 as follows.

§ 3.1.1 The Owners Representative Basic Services consist of those described in this Article 3. The Owner's Representative shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Owners Representative shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs employed in connection with the construction of the Project, nor shall the Owners Representative be responsible for the failure of the Owner's consultants or contractors to perform services for, or the construction of, the Project in accordance with the plans, specifications, or other contract or legal requirements. The Owners Representative shall be responsible for the Owner's Representative'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 Owner's consultants or contractors.

§ 3.1.2 The Owners Representative shall provide the Owner with a preliminary evaluation of the Owner's program, schedule, and construction budget requirements, each in terms of the other.

§ 3.1.3 The Owners Representative shall assist the Owner in determining the Owner's need for retaining consultants to provide professional and other services for the Project and assist the Owner in reviewing qualifications and selecting any such consultants. The Owners Representative shall periodically review the development of the design for the Project, and provide recommendations to the Owner for systems, materials, equipment, and techniques that may be utilized to achieve design standards for the Project and or cost saving alternatives, if any.

§ 3.1.4 The Owners Representative shall assist the Owner in selecting the services of independent testing laboratories, review their reports, and make recommendations, if any, to the Owner based on that review.

§ 3.1.5 The Owners Representative shall assist the Owner in coordinating the professional services of surveyors, special consultants, and testing laboratories required for the Project.

§ 3.1.6 The Owners Representative shall assist the Owner in retaining the architect and civil engineer.

§ 3.1.7 The Owners Representative shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project as appropriate.

§ 3.1.8 The Owners Representative shall develop a strategy, procedure, and schedule to assist the Owner in obtaining the required reviews and approvals of authorities having jurisdiction over the Project; and shall assist the Owner in connection with the Owner's responsibility for filing documents required for such approvals. The Owners Representative shall assist the Owner in obtaining building permits, if required, and special permits for permanent improvements, except for permits required to be obtained directly by the CMAR Contractor. The Owners Representative shall verify that the Owner has paid applicable fees and assessments, as well as the CMAR contractor.



§ 3.1.9 The Owners Representative and the Owner shall discuss the feasibility of incorporating sustainable objectives in the Project.

§ 3.1.10 The Owner Representative shall retain all Project related documents and information it receives. Upon reasonable notice, the Owner shall have access to all such documents and information. Project participants shall have access to such documents and information only as approved by the Owner. The Owners Representative shall preserve such documentation and information for a period of one year from the date of Substantial Completion and at that time provide a copy to the Owner.

### § 3.2 Project Management Plan

§ 3.2.1 In order to ascertain the requirements of the Project, the Owners Representative shall review and discuss with the Owner the Initial Information, along with any other information to be furnished by the Owner and listed below.

Amended Master Plan Approved by the owner upon completion.

§ 3.2.2 The Owners Representative shall develop and document a Project Management Plan with recommendations for the Owner's internal management of the Project, including a description of, and requirements pertaining to, the following:

- .1 Project management approach and organization, including executive, management and team staffing plan and responsibilities.
- .2 Project planning and development activities, including strategic planning; prioritizing; and defining scope, schedule, and overall budget for the Project to include elements outside of the CMAR project schedule and budget.
- .3 Cost estimates, if selected in Section 4.1.
- .4 Project management controls, including scope, budget/cost, schedule, and quality management plan.
- .5 Procurement strategies and procedures, including strategy for procurement of design services and construction; procedures for pre-purchase of material, systems, and equipment; procedures for evaluating and approving substitutions; and strategy for affirmative action or diversity planning.
- .6 Authorization processes and procedures, including administrative approval processes and responsibilities, and key documentation for: professional services and preconstruction services; processes and procedures for Project construction procurement, such as award, contracting, notice to proceed, Change Orders, payment certification; and Project closeout.
- .7 Project communication procedures, including systems, meetings, reporting, investigation, and records.
- .8 ~~Development of design process guidelines, including coordination and permit process.~~
- .9 ~~Development of construction process guidelines, including preconstruction and construction administration services, construction phase processes and procedures, program coordination, Change Order management, commissioning, and Project closeout procedures; and~~
- .10 Project acceptance and turnover guidelines relating to contract completion and closeout management, including record documentation, manuals and warranties.

~~§ 3.2.3 The Project Management Plan shall also include the Owner's Representative's recommendations regarding the delivery method for design and construction of the Project.~~

§ 3.2.4 The Owners Representative shall obtain the Owner's approval of the Project Management Plan, and any subsequent revisions to the Project Management Plan.

### § 3.3 Information Management and Standards

§ 3.3.1 The Information Management System is a web-based system used to distribute Project related information. Unless otherwise indicated in Section 3.3.2 below, the Owner's Representative shall implement a File Sharing System, as described in Section 3.3.3, as the Information Management System for the Project.

§ 3.3.2 If the Owners Representative is to implement an Information Management System other than the File Sharing System, check the appropriate box below. If the Owner's Representative is not going to implement an Information Management System, select "None" below. Nothing in this Section 3.3 is intended to relieve the Owner's Representative of the information retention obligations set forth in Section 3.1.10.

Project Management Information System (pursuant to section 3.3.4 below)

Other Information Management System

*(Describe in detail the web-based system to be implemented, maintained and upgraded, as necessary, by the Owner's Representative.)*

None

**§ 3.3.3 File Sharing System.** The Owners Representative shall implement, maintain, and upgrade as necessary, a web-based File Sharing System to be used to receive and distribute Project Reports, Project Schedules, and other information as agreed by the Owner and the Owner's Representative.

**§ 3.3.4 Project Management Information System.** The Owners Representative shall implement, maintain, and upgrade as necessary, a web-based Project Management Information System to be used to receive, distribute, and maintain Project Reports, Project Schedules, and other information as agreed by the Owner and the Owners Representative. Activities under the Project will be scheduled and documented through the Project Management Information System. The Project Management Information System shall organize information by activity or other relevant categories, as determined by the Owners Representative and Owner. The Owners Representative shall collect information pertaining to the project and update the Project Management Information System on a weekly basis unless otherwise agreed. The Project Management Information System shall contain, at a minimum, the current status on contracts, budget, and schedule, and the documents identified in this Section 3.3.4, including the following:

- .1 The Contract Documents
- .2 Addenda
- .3 Change Orders and Construction Change Directives
- .4 Modifications
- .5 Construction schedules and submittal schedules
- .6 Requests for information and any responses, logs, or compilations pertaining to requests for information
- .7 Approved Shop Drawings, Product Data, and similar required submittals
- .8 Certificates of insurance received from the Contractor
- .9 Consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment
- .10 Affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens
- .11 Minutes for any meeting the Owner's Representative attends
- .12 Any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals
- .13 Other
  - A. Project Reports by Owners Representative
  - B. Site Observation reports by Consultants, if provided

**§ 3.3.5** The Owner shall have access to all information in the Information Management System. Other Project participants shall have access to specific information only as approved by the Owner. The Owners Representative shall preserve the documentation and information contained in the Information Management System for a period of one year from the date of Substantial Completion and at that time provide a copy of all documentation and information contained in the Information Management System to the Owner.

**§ 3.3.6** The Owners Representative shall develop protocols and standards for the exchange and use of information in digital form to be integrated into the Information Management System. The Owners Representative shall provide information to the Owner and the Owner's consultants and contractors, as required, regarding the use of the Information Management System.

**§ 3.4 Project Report.** On a monthly basis, or as otherwise agreed to by the Owner, the Owners Representative shall prepare a Project Report. The Project Report shall include the following:

- .1 A summary update of the Project status, including photographs to document the progress of the Project
- .2 An updated Project Schedule
- .3 Actual and anticipated costs related to the Project

- .4 Cost and payment reports for each consultant and construction contract
- .5 Updated cash flow projections
- .6 Tests and inspection reports
- .7 A status report of nonconforming and rejected Work
- .8 Proposed and approved Change Orders
- .9 Any actual or potential claims pertaining to the Project
- .10 A status update of the Contractor's submittals
- .11 Other

### § 3.5 Overall Project Budgets

§ 3.5.1 The Owners Representative will consolidate maintain and update master project budget to include costs for all professional services, future GMP bid(s) by the CMAR and all defined budgets for all elements to the project to include the costs for the Owner's Representative's services, the costs of the services of the Owner's other consultants, the costs for design and construction of the Project, reasonable cost contingencies, and additional cost projections and information as necessary. The Owner shall review and approve the Project Budget in writing. On a monthly basis, or as otherwise agreed to by the Owner, the Program shall update and provide reports on the Project Budget. If a Project Management Information System is selected in Section 3.3, the Owner's Representative shall organize the Project Budget in a manner that will allow costs to be tracked using the Project Management Information System.

§ 3.5.2 The Owners Representative shall develop and implement a system of budget and cost controls to assist the Owner in the management of Project costs. The Owners Representative shall prepare cash flow projections of costs for the Project.

§ 3.5.3 The Owners Representative shall share information regarding the overall Project Budget with the Owner's consultants as authorized by the Owner.

§ 3.5.4 The Owners Representative shall report the impact on the overall Project Budget of contracts and Modifications proposed by the Owner and the Owner's consultants and contractors.

### § 3.6 Overall Project Schedules

§ 3.6.1 The Owners Representative shall prepare a consolidated Project Schedule showing priorities, sequences, durations, and responsible parties, for major design, pricing, construction, and Owner activities. The Project Schedule shall also identify critical milestone dates and schedule contingencies. As the Project progresses, the Owners Representative shall update the status and expand the level of detail of the Project Schedule. The Project Schedule shall also incorporate or identify

- .1 Dates for approvals and permits.
- .2 The design and construction schedules, including dates of commencement and completion, and other project milestones;
- .3 Project components that need to be ordered or procured by the Owner, if any.
- .4 The Owner's occupancy requirements, and any portions of the Project having occupancy priority.

§ 3.6.2 The Owners Representative shall provide recommendations for sequencing and phasing to meet overall Project objectives.

§ 3.6.3 The Owners Representative shall monitor and report on the progress of the Project and advise the Owner of observed deviations from the Project Schedule or key milestones that may impact Substantial Completion or final completion. The Owners Representative shall include the reports in the Project Management Information System if selected in Section 3.3. The Owners Representative shall consult with the Owner and the Owner's consultants and contractors and assist the Owner in developing recovery plans when the schedules or objectives are not being met.

### § 3.7 Project Quality Control

§ 3.7.1 The Owners Representative shall establish quality control guidelines, that the Owner may include in agreements between the Owner and the Owner's consultants or contractors, and distribute them through the Information Management System, if one is selected in Section 3.3.

§ 3.7.2 The Owners Representative shall confirm that the Contractor has prepared a safety program and quality control plan.

§ 3.7.3 Unless the Owners Representative shall provide on-site representation as a supplemental service pursuant to Section 4.2.1, the Owners Representative shall visit the site at intervals appropriate to the state of construction, or at the specific intervals or milestones set forth in Section 3.7.3.1, to become generally familiar with the progress and quality of the portion of the Work completed.

§ 3.7.3.1 If the Owners Representative is required to visit the site at specific intervals or milestones, set forth such intervals or milestones below.

The Owners Representative shall visit the site on a weekly basis during the Construction Phase to provide inspection of work and document all findings in a standardized report that will be adopted.

§ 3.7.4 The Owners Representative shall advise the Owner of observations it makes regarding deficiencies in the performance of the Owner’s consultants and contractors.

**§ 3.8 Other Services**

§ 3.8.1 Subject to Sections 4.3.1 and 4.5.1, upon the Owner’s written request, the Owners Representative shall provide reasonable assistance in the areas of community and public relations, in order to enhance and maintain public awareness in furtherance of the interests of the Project and the Owner.

§ 3.8.2 The Owners Representative shall schedule and conduct meetings with the necessary Project participants to coordinate the progress of the Project. The Owners Representative shall also prepare minutes of such meetings. The Owners Representative shall include its meeting minutes, as appropriate, in the Project Management Information System if selected in Section 3.3.

§ 3.8.3 The Owners Representative shall assist the Owner in preparing construction contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by the Contractor.

§ 3.8.4 The Owners Representatives shall assist the Owner in selecting the dispute resolution procedures to be included in the agreements between the Owner and consultants and contractors for disputes arising out of the Project.

§ 3.8.5 Upon the written request of the Owner, the Owners Representative shall evaluate and provide input to the Owner on claims arising out of the Project.

**ARTICLE 4 SUPPLEMENTAL SERVICES**

Supplemental Services listed below are not included in Basic Services but may be required for the Project.

**§ 4.1 Cost Estimating Services**

The Owners Representative shall provide to the Owner only the services in this Section that are designated by a check or “X” in the box adjacent to the listed service. The Owner shall compensate the Owners Representative for the Supplemental Services selected in this Section 4.1 as set forth in Section 10.3.

X	<p>§ 4.1.1 Based on the preliminary design and other design criteria prepared by the Architect and or Engineer and provided by the Owner, the Owners Representative shall prepare a written preliminary estimate of the Cost of the Work using area, volume, or similar conceptual estimating techniques. If the Architect suggests alternative materials and systems, at the request of the Owner the Owners Representative shall provide written cost evaluations of those alternative materials and systems and may also provide its own suggestions for review and consideration by the Owner. 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 or Engineer and shall include the Contractor’s general conditions costs, overhead, and profit. The Cost of the Work does not include the compensation of the Architect, Engineer or Owners Representative, the costs of the land, rights-of-way, financing, contingencies for changes in the Work, or other costs that are the responsibility of the Owner.</p>
X	<p>§ 4.1.2 As the Architect or Engineer progresses with the preparation of the schematic design, design development, and construction documents, the Owners Representative shall prepare and update, at appropriate intervals agreed to by the Owner and Owners Representative, written estimates of the Cost of the Work in increasing detail and refinement. The Owners Representative shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. The Owners Representative shall advise the Owner in writing if</p>

	it appears that the Cost of the Work may exceed the Project Budget and make recommendations for corrective action to be considered by the Owner and Architect, and if appropriate, incorporated by the Architect or Engineer.
X	§ 4.1.3 The Owners Representative shall provide written recommendations regarding add and deduct alternates to be considered by the Owner and Architect / Engineer, and if appropriate, incorporated by the Architect / Engineer in the Drawings and Specifications.

**§ 4.2 Construction Contract Administration Services**

The Owners Representative shall provide to the Owner only the services in this Section that are designated by a check or "X" in the box adjacent to the listed service. The Owner shall compensate the Owners Representative for the Additional Services selected in this Section 4.2 as set forth in Section 10.3.

X	§ 4.2.1 The Owners Representative shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Owners Representative shall determine in general that the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner and Architect in writing of observed defects and deficiencies in the Work.
X	§ 4.2.2 The Owners Representative shall review information regarding tests and inspections provided by the Contractor, and provide written comments to the Owner, for consideration by the Owner and Architect, regarding any questions or concerns the Owners Representative has with the information provided by the Contractor.
X	§ 4.2.3 If the Owners Representative reasonably believes the Architect should reject Work or require additional inspection or testing of the Work, the Owners Representative shall promptly recommend such actions to the Owner and Architect in writing. The Owners Representative shall also recommend to the Owner, in writing, courses of action when requirements of a contract are not being fulfilled. The Owners Representative shall include all recommendations required by this Section 4.2.3 in its Project Reports.
X	§ 4.2.4 The Owners Representative shall review the Contractor's Applications for Payment and provide written recommendations, if any, to the Owner and Architect / Engineer.
X	§ 4.2.5 If requested by the Architect/Engineer and Owner, the Owners Representative shall evaluate Contractor requests for information regarding the Contract Documents and provide written recommendations to the Owner and Architect / Engineer.
X	§ 4.2.6 When requested by the Owner, the Owners Representative shall review requests for changes, assist the Owner and Architect in evaluating and negotiating Contractors' proposals, and submit written recommendations to the Architect and Owner. Upon request by the Owner, the Owners Representative will review Change Orders and Construction Change Directives prepared by the Architect/Engineer and provide written comments regarding any questions or concerns the Owners Representative has regarding the Change Orders or Construction Change Directives.
X	§ 4.2.7 The Owners Representative shall review the Contractor's daily logs and other similar relevant data as the Owner may require and provide written comments to the Owner regarding any questions or concerns the Owners Representative has regarding the daily logs or other data.
X	§ 4.2.8 The Owners Representative shall evaluate whether the Work, or a designated portion thereof, is substantially complete and provide its written recommendations to the Owner and Architect/Engineer. Upon the Contractor's completion of the Work, the Owners Representative shall inspect the Work and provide written recommendations to the Owner and Architect/Engineer.
X	§ 4.2.9 With the Architect/Engineer and the Owner's maintenance personnel, the Owners Representative shall observe the Contractor's final testing and start-up of utilities, operational systems and equipment, and observe any commissioning as the Contract Documents may require.
X	§ 4.2.10 The Owners Representative shall assist the Owner in establishing a procedure for tracking and submission of records, warranties, guarantees, and documents pertaining to systems verification and Project close-out. The Owners Representative shall deliver to the Owner all keys, manuals, record drawings, and maintenance stocks it receives from the Contractor.
X	§ 4.2.11 The Owners Representative shall review the Contractor's final Application for Payment and provide written recommendations, if any, to the Owner and Architect/Engineer.
X	§ 4.2.12 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Owners Representative shall, without additional compensation, attend a meeting with the Owner and Architect/Engineer to review the facility operations and performance.

§ 4.3 The Owners Representative shall provide the listed Additional Services only if specifically designated in the table below as the Owners Representative's responsibility, and the Owner shall compensate the Owners Representative as provided in Section 10.3.

Services	Responsibility (Owners Representative, Owner or not provided)	Location of Service Description (Section 4.4 below or in an exhibit attached to this document and identified below)
§ 4.3.1 Community communications not included in Section 3.8.1	NOT PROVIDED	
§ 4.3.2 Capital campaign support	NOT PROVIDED	
§ 4.3.3 Assistance with sustainability certifications	NOT PROVIDED	
§ 4.3.4 Affirmative action/diversity compliance and outreach	NOT PROVIDED	
§ 4.3.5 Existing facilities analysis	PROGRAM MANGER	
§ 4.3.6 Site Selection Analysis (B203™-2007)	NOT PROVIDED	
§ 4.3.7 Economic analysis	NOT PROVIDED	
§ 4.3.8 Programming (B202™-2009)	NOT PROVIDED	
§ 4.3.9 Amended Master Plan	PROGRAM MANGER	
§ 4.3.10 Design standards services	NOT PROVIDED	
§ 4.3.11 Early procurement of materials and equipment	NOT PROVIDED	
§ 4.3.12 FF&E procurement coordination	PROGRAM MANGER	
§ 4.3.13 Life cycle analysis	NOT PROVIDED	
§ 4.3.14 Move management	NOT PROVIDED	
§ 4.3.15 Coordination of hazardous material testing or abatement	NOT PROVIDED	
§ 4.3.16 Payroll compliance services	NOT PROVIDED	
§ 4.3.17 Stakeholder relationships management	NOT PROVIDED	

§ 4.4 Insert a description of each Additional Service designated in Section 4.3 as the Owners Representative’s responsibility, if not further described in an exhibit attached to this document.

4.3.5 Existing Facilities Analysis - Owners Representative will provide an analysis of all existing structures, facilities and existing infrastructure in order to evaluate the “Existing Master Plan” developed by Hanson on November 20, 2018. The benefits will be to consult with the owner and formally adopt all elements the owner would like to incorporate into an “Amended Master Plan” and to set up the Project Program Requirements with the design team in order to incorporate them into the schematic design phase, design development phase and construction document phase.

4.3.9 Amended Master Plan - Upon contract execution, Owners Representative will provide an analysis of all existing structures, facilities and existing infrastructure in order to evaluate the “Existing Master Plan” developed by Hanson on November 20, 2018. The Owners Representative will collaborate with the design team and CMAR contractor in order to develop Project Program Requirements and recommendations to the Owner of all elements to be considered in the development of an Amended Master Plan. The Owner will provide input so that a formal proposed Amended Master Plan, Project Program Requirements and Budget(s) can be developed and presented to the Owner for formal approval and will be incorporated in the schematic design phase, design development phase and construction document phase. The Owners Representative will provide an initial presentation of Master Plan major elements within approximately four (4) weeks after contract execution and continue to present updates based upon Project Team and Owner input, approximately every four (4) weeks thereafter. Owners Representative will provide all deliverables, renderings and supporting documents to the Owner.

4.3.12 FF&E procurement coordination- The Owners Representative will provide the Owner all FF&E needs that are not part of the construction contracts and coordinate procurement options, coordination and overall assistance in receiving.

§ 4.5 Additional Services may be provided after execution of this Agreement without invalidating this Agreement. Except for services required due to the fault of the Owners Representative, any Additional Services provided in accordance with this Section 4.5 shall entitle the Owners Representative to compensation pursuant to Section 10.4.

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

- .1 Services necessitated by a change in the Initial Information; a change to previous instructions or approvals given by the Owner; or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's Project Schedule or Project Budget, or procurement or delivery methods listed in Section 1.3.6.
- .2 Services necessitated by the enactment or revision of codes, laws or regulations, or by official interpretations, after the date of this Agreement.
- .3 Preparation for, and attendance at, public presentations, meetings, or hearings, in excess of 20 total hours.
- .4 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Owners Representative is party thereto.
- .5 Services required to assist in the repair or replacement of any elements of construction for any cause except the negligence of the Owners Representative; or
- .6 Services required by deficiencies in the performance or default of Owner's consultants or contractors.

§ 4.5.2 If the services covered by this Agreement have not been completed within 48 months of the date of this Agreement, through no fault of the Owner's Representative, an extension of the Owner's Representative's services beyond that time shall be compensated as Additional Services pursuant to Section 10.4.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 The Owner shall provide and update information regarding requirements for, and limitations on, the Project in a timely manner, including the information in Article 1; information pertaining to other objectives, schedule constraints and criteria, and site requirements; and any other information either described in Article 5 or required for the Owners Representative to perform its services.

§ 5.2 The Owner shall collaborate with the Owners Representative to establish and periodically update the Project Budget including (1) the Owners Representative's costs, (2) design and constructions costs, (3) the Owner's other costs, and (4) reasonable contingencies related to all of these costs. The Owner shall promptly notify the Owners Representative if the Owner if significantly increases or decreases the Project Budget.

§ 5.3 The Owner shall retain all contractors and consultants necessary to carry out the Project except for those consultants retained by the Owner's Representative as listed in Section 1.4.2. The Owner shall provide the Owners Representative with a copy of all executed agreements between the Owner and its consultants and contractors, and any modifications to those agreements. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided and require that its contractors maintain commercial general liability insurance and other liability insurance as appropriate to the services or work provided. The Owner shall require all contractors to name the Owners Representative and its consultants as Additional Insureds on all insurance policies where available.

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

§ 5.5 If the Owners Representative has not already received, the Owner shall furnish surveys to describe the physical characteristics, legal limitations, utility locations and written legal description of the Project site. The survey and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to an appropriate benchmark.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for ensuring transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It highlights the need for consistent and reliable data collection processes to ensure the validity of the results.

3. The third part of the document describes the different types of data that are collected and analyzed. It includes information on both quantitative and qualitative data, as well as the various sources from which the data is gathered.

4. The fourth part of the document discusses the various statistical methods and techniques used to analyze the data. It covers topics such as descriptive statistics, inferential statistics, and regression analysis, among others.

5. The fifth part of the document discusses the importance of interpreting the results of the data analysis. It emphasizes that the results should be interpreted in the context of the research objectives and the underlying theory.

6. The sixth part of the document discusses the various ways in which the results of the data analysis can be presented and communicated. It includes information on the use of tables, graphs, and charts, as well as the importance of clear and concise communication.

7. The seventh part of the document discusses the various ethical considerations that must be taken into account when conducting research. It includes information on the importance of informed consent, confidentiality, and the protection of personal data.

8. The eighth part of the document discusses the various challenges that are associated with conducting research. It includes information on the importance of careful planning, the need for adequate resources, and the importance of maintaining a high level of accuracy and reliability.

9. The ninth part of the document discusses the various ways in which research can be used to inform decision-making. It includes information on the importance of evidence-based decision-making and the need for ongoing evaluation and monitoring.

10. The tenth part of the document discusses the various ways in which research can be used to advance knowledge and understanding in a particular field. It includes information on the importance of peer review and the need for ongoing research and innovation.



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

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

§ 5.8 The Owner shall furnish all legal, financing, 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.

§ 5.9 The Owner shall provide, and shall require that its consultants and contractors provide, prompt written notice to the Owner's Representative if they become aware of any fault or defect in the Project, including errors, omissions or inconsistencies in any documents produced by, or services provided by, the Owners Representative.

§ 5.10 In the agreements between the Owner and the Owner's consultants or contractors, the Owner shall include a duty that the consultant or contractor cooperate with the Owners Representative and provide information and documents reasonably necessary for the Owners Representative to prepare and update the Project Management Plan or as otherwise required for the Owners Representative to perform its services.

§ 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Owners Representative's consultants through the Owners Representative about matters arising out of or relating to the Project. The Owner shall communicate with its own forces, consultants, and contractors, and coordinate its own internal information and communications that are necessary for the Project. The Owner shall notify the Owners Representative of any such communication that affects the Project. The Owner shall promptly notify the Owners Representative of any direct communications that may affect the Owners Representative's services.

§ 5.12 The Owner shall provide the Owners Representative access to the Project site and other facilities under the Owner's control and associated with the Project. The Owner shall obligate its contractors to provide the Owners Representative access to the Project site wherever Work is in preparation or progress.

§ 5.13 The Owner shall require contractor to purchase and maintain, or require its contractors to purchase and maintain, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial contract sum, plus the value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. This policy shall cover reasonable compensation for Owners Representative's services and expenses required as a result of such insured loss.

## ARTICLE 6 COPYRIGHTS AND LICENSES

§ 6.1 The Owners Representative assigns to the Owner its rights, including copyright, in its Instruments of Service. The Owner's Representative shall obtain a similar assignment to the Owner from the Owner's Representative's consultants consistent with this Agreement. For purposes of this Agreement, Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Owners Representative, the Owner, and their consultants and contractors under their respective services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models, and other similar materials.

§ 6.2 The Owners Representative and Owner warrant that in transmitting any information, including Instruments of Service, 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.

§ 6.3 The Owner shall have exclusive ownership of all data in the Information Management System and the Project Management Plan developed or contributed by the Owners Representative or the Owners Representative's consultants and contractors. Ownership of the data in the Information Management System and the Project Management Plan does not include ownership of any proprietary software developed and owned by the Owners Representative and used in connection with the collection, manipulation, or publication of the data in the Information Management System and the Project Management Plan. Unless the Owner pays the licensing fee described in Section 10.7, the Owner's right to use any such proprietary software shall terminate at the time of

termination of this Agreement. The Owners Representative shall take all steps reasonably necessary to allow the Owner to exercise the Owner's rights to own and utilize the data in the Information Management System and the Project Management Plan after termination of the Owner's rights to use any proprietary software. The Owners Representative shall include provisions consistent with the provisions in this Section 6.3 in the Owner's Representative's agreements with the Owners Representative's consultants. If the Owners Representative rightfully terminates this Agreement for cause as provided in Section 8.4, the Owners Representative's obligations under, and the Owner's rights to further use of proprietary software granted in, this Section 6.3 shall terminate. Ownership of data obtained from, or compiled, developed or contributed by, the Owner's consultants or contractors will be controlled by the terms of the Owner's agreements with those consultants or contractors.

## **ARTICLE 7 CLAIMS AND DISPUTES**

### **§ 7.1 General**

**§ 7.1.1** The Owner and Owners Representative shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other, arising out of or related to this Agreement, in accordance with the requirements of the method of binding dispute resolution selected in this Agreement, within the period specified by applicable law, but in any case, not more than 10 years after the date of Substantial Completion of the Work on the Project. The Owner and Owner's Representative waive all claims and causes of action not commenced in accordance with this Section 7.1.1.

**§ 7.1.2** To the extent damages are covered by property insurance required under Section 5.13, the Owner and Owner's Representative 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 Section 5.13. The Owner or the Owner's Representative, as appropriate, shall require of their contractors, consultants, and agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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

**§ 7.1.4** The Owner's Representative and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 8.7.

### **§ 7.2 Mediation**

**§ 7.2.1** 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.

**§ 7.2.2** The Owner and Owner's Representative shall endeavor to resolve claims, disputes, and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 7.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 7.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 7.2, the method of binding dispute resolution shall be the following:

---

AIA Document C172™ - 2014. Copyright © 2014 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:33:28 ET on 02/03/2021 under Order No.3911252737 which expires on 11/26/2021, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents' Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
User Notes:

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

- Arbitration pursuant to Section 7.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: (Specify)

### **§ 7.3 Arbitration**

**§ 7.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

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

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

### **§ 7.3.4 Consolidation or Joinder**

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

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

**§ 7.3.4.3** The Owner and Owner's Representative grant to any person or entity made a party to an arbitration conducted under this Section 7.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Owner's Representative under this Agreement.

## **ARTICLE 8 TERMINATION OR SUSPENSION**

**§ 8.1** If the Owner suspends the project, the program fails to make payments to the Owner's Representative in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Owner's Representative's option, cause for suspension of performance of services under this Agreement. If the Owner's Representative elects to suspend services, the Owner's Representative shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Owner's Representative 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's Representative shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Owner's Representative's services. The Owner's Representative's fees for the remaining services and the time schedules shall be equitably adjusted.

AIA Document C172™ – 2014. Copyright © 2014 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:33:28 ET on 02/03/2021 under Order No.3911252737 which expires on 11/26/2021, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).

User Notes:

(1647343993)

§ 8.2 The Owner has a right to suspend the services of the Owner's Representative with seven days notice. The Owners Representative shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Owner's Representative shall be compensated for expenses incurred in the interruption and resumption of the Owner's Representative's services. The Owner's Representative's fees for the remaining services and the time schedules shall be equitably adjusted.

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

§ 8.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 8.6 In the event of termination not the fault of the Owner's Representative, the Owner's Representative shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 8.7.

§ 8.7 Termination Expenses are in addition to compensation for the Owner's Representative's services and include expenses directly attributable to termination for which the Owner's Representative is not otherwise compensated.

§ 8.8 In the event of termination of this Agreement, the Owner's rights to use information and materials provided by the Owner's Representative are set forth in Article 6.

#### ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 7.3.

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

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

§ 9.4 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 Owner's Representative.

§ 9.5 Unless otherwise required in this Agreement, the Owner's Representative 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.

§ 9.6 The Owner's Representative shall have the right to include photographs of the Project among the Owner's Representative's promotional and professional materials. The Owner's Representative shall be given reasonable access to the Project to take photographs. However, the Owner's Representative's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Owner's Representative in

writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Owner's Representative in the Owner's promotional materials for the Project.

§ 9.7 If the Owner's Representative or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 9.7.1.

§ 9.7.1 If the Owner's Representative or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it 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 9.7.

§ 9.8 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 9.9 The Owner agrees not to solicit or hire the Owner's Representative's employees who are involved with the Project prior to one year after completion of the Project. If the Owner hires a Owner's Representative's employee involved with the Project prior to one year after completion of the Project, the Owner agrees to pay the Owner's Representative an amount as set forth below.

*(Insert stipulated sum or method of calculation for the amount to be paid to the Owner's Representative.)*

\$150,000

## ARTICLE 10 COMPENSATION

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

The fee is \$800,000 and will be paid out through a payment schedule listed on 10.8.2.

§ 10.2 The hourly labor cost rates and billing rates for services of the Owner's Representative and the Owner's Representative's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Owner's Representative's and Owner's Representative's consultants' normal review practices.

### Employee or Category

Architect: \$250/Hour

Engineer: \$250/Hour

Surveyor: \$250/Hour

Design Technician: \$110/Hour

Surveying Technician: \$100/Hour

Contract Administrator: \$170/Hour

Inspector: \$150/Hour

§ 10.3 For Supplemental Services designated in Sections 4.1, 4.2, or 4.3, the Owner shall compensate the Owner's Representative as follows:

The fee is \$600,000 and will be paid out through a payment schedule listed on 10.8.2.

§ 10.4 For Additional Services that may arise during the course of the Project, including those under Section 4.5, the Owner shall compensate the Owner's Representative as follows:

### Employee or Category

Architect: \$250/Hour

Engineer: \$250/Hour

Surveyor: \$250/Hour

Design Technician: \$110/Hour  
Surveying Technician: \$100/Hour  
Contract Administrator: \$170/Hour  
Inspector: \$150/Hour

§ 10.5 Compensation for Additional Services of the Owner's Representative's consultants when not included in Sections 10.3 and 10.4 shall be the amount invoiced to the Owner's Representative plus five percent (5%), or as otherwise stated below:

No additional billing under 10.3 and 10.4 shall be accepted by Owner unless requested by Owner in writing and approved by Owner in writing through a formalized contract amendment.

#### § 10.6 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence.
- .2 ~~Long distance services, dedicated data and communication services, teleconferences.~~
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project.
- .4 Fees paid for testing, surveys or other data obtained at the request of the Owner.
- .5 Printing, reproductions, plots, standard form documents;
- .6 Postage, handling, and delivery;
- .7 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .8 Professional photography and presentation materials requested by the Owner;
- .9 Owner's Representative's consultants' expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Owner's Representative's consultants;
- .10 All taxes levied on professional services and on reimbursable expenses;
- .11 Site office expenses, if authorized in advance by the Owner;
- .12 ~~Customization of the Information Management System; and~~
- .13 ~~Other similar Project-related expenditures.~~

§ 10.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Owner's Representative and the Owner's Representative's consultants plus five percent (5%) of the expenses incurred.

§ 10.6.3 If the insurance requirements listed in Section 2.7 exceed the types and limits the Owner's Representative normally maintains and the Owner's Representative incurs additional costs to satisfy such requirements, the Owner shall reimburse the Owner's Representative for such costs as set forth below:

No billing under Article 10.6 shall be accepted by the Owner unless requested by Owner in writing and approved by Owner in writing through a formalized contract amendment.

#### § 10.7 Compensation for Use of Owner's Representative's Proprietary Software

If the Owner terminates the Owner's Representative for its convenience under Section 8.5, or the Owner's Representative terminates this Agreement under Section 8.3, or upon completion of the Owner's Representative's services under this Agreement, the Owner shall pay a licensing fee, as compensation for the Owner's continued use of the Owner's Representative's proprietary software developed and owned by the Owner's Representative in accordance with Section 6.3, as follows:

No billing under Article 10.7 shall be accepted by the Owner unless requested by Owner in writing and approved by Owner in writing through a formalized contract amendment.

#### § 10.8 Payments to the Owners Representative

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

§ 10.8.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Owner's Representative invoice. Amounts unpaid (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Owner's Representative.

Pursuant to the Texas Prompt Payment Act

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

§ 10.8.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of three years after the termination or completion of this Agreement.

#### ARTICLE 11 SPECIAL TERMS AND CONDITIONS

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

None.

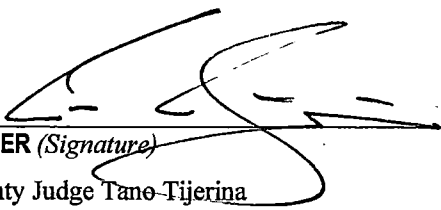
#### ARTICLE 12 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document C172™-2014, Standard Form Agreement Between Owner and Owner's Representative for use on a Single Project
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:
- .3 Other documents:  
None

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

  
\_\_\_\_\_  
OWNER (Signature)  
County Judge Tano Tijerina  
Webb County  
1110 Washington St.  
Suite 101  
Laredo, Texas 78040  
\_\_\_\_\_  
(Printed name and title)

  
\_\_\_\_\_  
Owner's Representative (Signature)  
Judd Gilpin, Gilpin Engineering Company  
11204 McPherson Rd.  
Suite 109  
Laredo, Texas 78504-6577  
Jgilpin@gilpinengineering.com  
\_\_\_\_\_  
(Printed name and title)