

STATE OF TEXAS
COUNTY OF HIDALGO

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5010-15-0306-5000-1500-UCP-GVG

Professional Services Agreement

This Agreement, entered into this 16th day of August, 2011 by and between Hidalgo County, a political subdivision of the State of Texas, joined by the City of Donna, (hereinafter called the "Party") and Alcocer Garcia Associates, duly authorized Architect, herein acting by George A. Garcia, (hereinafter called the "Architect").

WITNESSETH THAT:

WHEREAS, Hidalgo County has received CDBG funds from the U.S. Dept. of Housing and Urban Development to be used by Urban County Participants. It is understood and agreed that the Party's obligation under this Agreement is contingent upon the actual receipt of adequate federal funds to meet the liabilities under this Agreement; and

WHEREAS, the Party is interested in obtaining Architectural Services; and

WHEREAS, the Architect, duly licensed and registered to practice Architectural in the State of Texas, has the professional abilities to undertake the study, evaluation, analysis and Architectural recommendations in a manner which shall provide the necessary public service while preserving and enhancing to the greatest degree possible the natural and proposed environment in the PROJECT area; and

WHEREAS, the Party desires to engage the Architect to render certain services in connection therewith;

NOW, THEREFORE, Parks, Recreational Facility Improvements-(Mario Leal Park in Elsa, Texas), hereinafter called the "Project", the participants do mutually agree as follows:

**SECTION I
EMPLOYMENT OF THE ARCHITECT**

The Party agrees to employ the Architect to furnish and provide the plural services as stated in the following sections and upon receipt of such satisfactory services, the Party agrees to pay the Architect as stated in the sections to follow.

**SECTION II
BASIC SERVICES OF THE ARCHITECT**

The Architect shall perform the following Basic Services in connection with the proposed Parks, Recreational Facility Improvement Project (Little League and Donna Square) Account(s) 5010-15-0306-5000-1500-UCP-GVG. (See Exhibit A)

2.1 Preliminary Phase

- a. Attend preliminary conferences with the Party and, if requested, with the funding agency and other government agencies or interested parties regarding the project.
- b. As may be required, comply and receive the Party and the funding agencies approval on all work.
- c. Prepare preliminary Architectural plans on the Project in sufficient detail to indicate clearly the problems involved and solutions recommended with the cost estimates.
- d. Obtain the Party's approval of the work of this Preliminary Phase before proceeding with the next phase.

2.2 Design Phase

- a. Attend the respective Party's meetings as requested for the purpose of explaining completed design work activities.
- b. Advise the Party of any soil investigations or tests which, in the opinion of the Engineer, may be required for the proper execution of the Project.
- c. Provide all field information and surveys required for the design of the Project.
- d. Plot field data and other survey information for the design of the Project.
- e. Prepare detailed plans specification and contract documents and drawings (reproducible tracings) for construction authorized by the Party.
- f. Furnish, if requested, the Architectural data necessary for the Party to obtain permits required by local, state, and federal authorities.
- g. Prepare cost estimates of authorized construction, based on prices for work. If such estimated costs exceed the monies available, the Party shall be consulted so that revisions can be made to reduce the cost as required.
- h. Prepare all documents required for the advertisement and bidding of the Project in cooperation with the Party's staff.
- i. Preparation of property or easement descriptions.

2.3 Construction Phase

The Construction Phase will commence with the execution of the prime construction contract(s). The Party will issue a ten (10) day commence work notice which will signal the commencement of work under any construction contracts and will terminate upon the Party's approval of the Architect's written approval of final payment to the Contractor(s). During the Construction Phase, the Architect will:

- a. Assist the Party in opening and tabulating bids for the construction of the Project, and advise the Party in establishing the procedure for entering into construction phase.
- b. Prepare the formal Contract Documents for the Contractor.
- c. Make periodic visits to the site as required pursuant to the standards of Professional practice on projects of this nature, to observe and provide brief and concise written reports to the Party, the progress and quality of the executed work and to determine if the work is proceeding in accordance with the contract documents.
- d. Consult and advise with the Party and issue all instructions and Change Orders to the Contractor requested by the Party.
- e. A monthly progress report will be prepared which will give the Party a quick glance at the Project insofar as monies spent, construction time elapsed, percent of Project completed, a brief narrative of what problems have been encountered and the anticipated completion date.
- f. Review shop and working drawings furnished by Contractors for general compliance with design concept and with information given in contract documents.
- g. Review and provide a recommendation concerning samples, catalog data, schedules, shop drawings, laboratory, shape and mill tests of material and equipment and other data which the Contractor is required to submit, in compliance with the Contract Documents.
- h. Prepare monthly and final estimates for payments to Contractors.
- i. Upon receipt of notification by the Party that the work has been completed, the Architect shall accompany the Party on the Final Inspection to assure that the total work has been completed in accordance with the Contract Documents.
- j. Prior to the Party's dispersal of any retainage of funds, the Architect shall render a written opinion to the Party that the construction has been completed according to the Contract Documents and provide the Party with a certificate of completion and release of lien documents from the contractor and their subcontractors.
- k. Provide the Party with one (1) set of 22" x 34" mylar sepia copies of as-built drawings of the constructed improvements, when requested.
- l. The Architect will be responsible for interim and final inspection.

- m. Furnish to the Party of City of Donna Four (4) sets of 22" x 34" Construction Drawings and four (4) sets of specifications and contract documents.

**SECTION III
ADDITIONAL SERVICES OF THE ARCHITECT**

If authorized in writing by the Party, the Architect will furnish or obtain from others Additional Services of the following types which are not considered normal or customary basic services; these will be paid for by the Party as indicated in Section VI.

- 3.1 Services of a Resident Project Representative, and other field personnel as required, for on-the-site observations of construction, other than periodic visits covered in Section 2.3a herein.
- 3.2 Detailed mill, shop and/or laboratory inspection of materials or equipment.
- 3.3 Major revision of Contract drawings as distinguished from modifications due to change orders, modifications to reduce the cost of the project or modifications requested to meet federal, state, or local regulations.

**SECTION IV
REIMBURSABLE EXPENSES**

- 4.1 Travel and subsistence required for the Architect and authorized by the Party to points other than within the County and Project site.
- 4.2 Additional copies of reports and specifications over four (4) copies and additional prints of drawings over four (4) copies.
- 4.3 Reimbursable expenses as provided in Section IV herein shall be paid to the Architect on the basis of 1.1 times the Architect's actual cost.

**SECTION V
THE PARTY'S RESPONSIBILITIES**

The Party will:

- 5.1 Provide full information as to requirements for the Project.
- 5.2 Assist the Architect by providing all available information pertinent to the Project including reports and any other data relative to design and construction of the Project.
- 5.3 Furnish the Architect services or data as required such as appropriate professional interpretations of all of the foregoing; property, boundary, easement, right-of-way, zoning, and deed restrictions; all of which the Architect may rely upon in performing his services under this agreement.

- 5.4 Guarantee access to and make all provisions for the Architect to enter upon public and private property as required for the Architect to perform his services under this Agreement.
- 5.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the Architect.
- 5.6 Pay for all costs incident to advertising and obtaining bids or proposals from Contractors.
- 5.7 Provide such legal and accounting services required to discharge the Party's responsibility under the terms of this Agreement and any Agreement with any governmental agency as may be required for the project, and such auditing services as the Party may require to ascertain how or for what the purpose any Contractor has used the monies paid to him under the construction contract.
- 5.8 Give prompt written notice to the Architect whenever the Party observes or otherwise becomes aware of any defect in the Project.

SECTION VI PAYMENTS TO THE ARCHITECT

The Party agrees to pay the Architect for completed services as identified by the Party:

- 6.1 The Architect shall be paid a total fixed amount of **\$9,668.00** or 10% of the Lowest Responsive Bid Amount, whichever is less for services rendered under this contract. Payment shall be based on request for reimbursements with documentation requested by the Party. The Engineer's fee shall be due and payable as outlined in Sections 6.2, 6.3, and 6.4 as follows.
- 6.2 At Architect's completion and Party's approval of the Architect's services under the Preliminary Phase, Section II of this Agreement, Party shall pay a maximum of 15% of the sum set forth in Section 6.1 above.
- 6.3 At Architect's completion and Party's approval of the Architect's services under the Design Phase, Section II of this Agreement, Party shall pay a maximum of 60% of the sum set forth in Section 6.1 above.
- 6.4 At Architect's completion and Party's approval of the Architect's services under the Construction Phase, Section II of this Agreement, Party shall pay a maximum of 25% of the sum set forth in Section 6.1 above. Such sum to be paid periodically proportionately to the percentage of construction completed by the Contractor as determined by Architect's reports.
- 6.5 For Additional Services as provided in Section III herein the Architect shall be paid a sum of 1.1 times the Architect's actual cost for such services.

**SECTION VII
OWNERSHIP OF DOCUMENTS**

Original documents, plans, designs and survey notes developed in connection with services performed hereunder belong to, and remain the property of the Party, in consideration of which it is mutually agreed that the Party will use them solely in connection with the Project and as base material for possible future projects.

**SECTION VIII
TERMINATION**

The Party may terminate this Agreement at any time by a 30-day notice in writing to the Architect. Upon receipt of such notice, the Architect shall, unless the notice directs otherwise immediately discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement. As soon as practical after receipt of notice of termination, the Architect shall submit a statement showing in detail the actual services that were performed under this Agreement to date of termination, the date such services were performed and the length of time spent by each person or party engaged in performing such services on each day,

The Party shall pay the Architect a sum of money equal to the reasonable value of the service rendered by the Architect to the Party in connection with the services performed under this Contract, less payments previously made by the Party to Architect on work performed and expenses incurred by Architect under the provisions of this Contract. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the Party when and if this Agreement is terminated, but subject to the restrictions as to their use, as set forth above.

Notwithstanding the above, the Architect shall not be relieved of liability to the Party for damages sustained by the Party arising from Architect's negligent acts, errors or omissions related to Architect's obligations created under this Agreement.

**SECTION IX
COUNTY AND CITY OFFICIALS**

Architect agrees that no County or City official or Party employee shall be personally liable for any of the obligation created under this Agreement, or for any matter which may arise out of the Project, or any activities related thereto and hereby holds the Party, its political bodies and its employees harmless from and indemnifies them from any liability from any matter arising from Architect's negligent acts, errors or omissions related to Architect's obligations created under this Agreement.

**SECTION X
SUCCESSORS AND ASSIGNS**

Party and Architect each binds themselves, their partners, successors, executors, administrators, and assigns to the other party of Agreement in respect to all covenants of this Agreement. Neither the Party nor Architect shall assign, sublet, or transfer interest in this Agreement without the written consent of the other.

**SECTION XI
TIME OF PERFORMANCE**

The Architect contracts and agrees to commence work within ten (10) days from the date of written authorization to proceed and will complete the preparation of the preliminary phase and estimates by 90 days and will proceed upon authorization with final drawings, specifications, and contracts documents and complete same within the earliest practical time from such notice to proceed.

**SECTION XII
VENUE**

Venue and jurisdiction of any suit, right or cause of action arising under or in connection with this Contract shall lie exclusively in Hidalgo County, Texas.

**SECTION XIII
CHANGES**

The Party may, from time to time, request changes in the Scope of Services of the Architect as may be mutually agreed to be performed hereunder. Such changes, including any increase or decrease in the amount of the Architect's compensation, which are mutually agreed upon by and between the Party and the Architect shall be incorporated in written amendments to the Contract.

**SECTION XIV
COMPLIANCE WITH LOCAL LAWS**

The Architect shall comply with all applicable laws, ordinances, and codes of the State and local governments, and the Architect shall save the Party harmless with respect to any damages arising from any Architect negligence done in performing any of the work embraced by this Contract.

**SECTION XV
ASSIGNABILITY**

The Architect shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the Party thereof; provided however, that claims for money due or to become due to the Architect from the Party under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Party.

**SECTION XVI
GENERAL**

16.1 Audit: The Party and/or any of its duly authorized representatives shall have access to any books, documents, papers, and records of the Architect which are directly pertinent to this project for the purpose of making the audit, examination, excerpts, and transcriptions.

- 16.2 The Architect agrees to compliance with the following Executive orders, Titles and Program Regulations, including any additional requirements that may be set forth by the Party.
- a. Title VI of the Civil Rights Act - requires that no one may be denied access to benefits from projects which receive federal assistance.
 - b. Section 109 of the Housing and Community Development Act of 1974 - Nondiscrimination related to benefits from projects funded specifically under Title I of the Act.
 - c. Section 3 of the HUD Act of 1968 - requires that maximum effort be made to provide employment, training, and business opportunities to low income families and/or residents of the project area.
 - d. The Architects shall give the United States Department of Housing and Urban Development, the Inspector General, the Comptroller General of the United States, the Auditor of the State of Texas, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by Architect pertaining to this Agreement. Such rights to access shall continue as long as the records are retained by Architect. Architect agrees to maintain such records in an accessible location for a period of three (3) years.
 - e. Executive Order 11246 (paragraph a-c for contracts under \$10,000; paragraphs a-g for contracts over \$10,000) - Equal Employment Opportunity.

Executive Order 11246. Executive Order 11246 and the regulations issued pursuant thereto (24 CFR Part 130) which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federal or federally assisted contracts. Such consultants or subcontractors shall take affirmative action to ensure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination rates of pay or other forms of compensation and selection for training and apprenticeship.

Equal Employment Opportunity for Activities and Contracts not Subject to Executive Order 11246, as amended. In carrying out the program, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Architect shall take affirmative action to ensure that applicants for employment are employed and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not limited to the following: Employment, upgrading, demotion, or transfer; recruitment or other forms of compensation; and selection for training, including apprenticeship. The Architect shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this paragraph in all of its contracts for program work and will require all of its consultants for such work to incorporate such requirements in all subcontracts for program.

- 16.3 Interest of Certain Federal Officials: No member of or Delegate to the Congress of the United States and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

16.4 Interest of Members, Officers, or Employees of Public Body, Member of Local Governing Body, or other Public Officials: No member, officer, or employee of the County or City, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure for one year thereafter, shall have any interest, direct or indirect, to be performed in connection with the program assisted under the Agreement. The Architect shall incorporate or cause to be incorporated in all such interest pursuant to the purpose of this Section.

SECTION XVII INSURANCE

The Architect shall obtain and keep in force during the term of its engagement on the Project, the insurance as follows:

- 17.1 A comprehensive automobile liability policy covering liability exposure to bodily injury and property damages. The Architect shall furnish Party Certificates of Insurance showing the comprehensive automobile liability insurance policies to be in effect, commencing when Architect commence operations under this Agreement, in the sum of \$300,000 for bodily injury and \$100,000 for property damages.
- 17.2 Uninsured/Underinsured motorist coverage in an amount equal to the bodily injury limits set forth immediately above;
- 17.3 A Five Hundred Thousand Dollar (\$500,000.00) Comprehensive General Liability Insurance Policy providing additional coverage to all underlying liabilities of County consistent with potential exposure of County under the Texas Tort Claims Act;
- 17.4 Workers Compensation Insurance in amount established by Texas law, under the bidder is specifically exempted from the Texas Worker's Compensation Act, Texas Labor Code Chapter 401, et. seq.
- 17.5 All insurance policies must be written by an insurance company or companies acceptable to the Party.

SECTION XVIII WARRANTY

- 18.1 Architect represents and warrants to **Party** all services rendered to Owner under this Agreement shall, at a minimum, comply with the Texas Architectural Practices Act (Tex. Civ. St. Ann., Article 3271) and rules of the Texas Board of Professional Engineers.

**SECTION XIX
EFFECTIVE DATE**

The effective date of this Contract shall be **16th day of August, 2011** Such date being the date the County Commissioners' Court approved entering into contract with Architect.

This Agreement is hereby approved this _____ day of _____, 2011.

Architect Signature

Firm Name: **Alcocer Garcia Associates, Inc.**

Address: **1333 East Jasmine Avenue**

City/ST/ZIP: **McAllen, Texas 78501**

FED ID #ISS #: _____.

**STATE OF TEXAS
COUNTY OF HIDALGO**

This instrument was acknowledged before me on this the ____ day of _____, 20____.
by _____ of and on behalf of (a corporation)(a partnership)(a sole proprietorship).
(title)

My commission Expires

Notary Public State of Texas

Urban County Program

Witness

Diana R. Serna, UCP Director