

DRAFT AIA® Document B133™ – 2014

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

Final Draft October 31, 2017

AGREEMENT made as of the « » day of « » in the year 2017
(In words, indicate day, month and year.)

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

County of Hidalgo, Texas
100 N. Closner Boulevard
Edinburg, Texas 78539

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

HDR Architecture, Inc.
8750 N. Central Expressway, Suite 100
Dallas, Texas 75231

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

New Hidalgo County Courthouse

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

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1 and in the Request for Qualifications, 2015-005-02-04-YSS, Hidalgo County "Professional Architectural Services Pool Hidalgo County" ("RFQ") and any modifications to which the parties agree. The requirements of this Agreement, and the requirements of the Legal Notice of the RFQ that by their nature survive the RFQ process, are complementary, and that which is required by either is required by both.

§ 1.1.1 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

«See attached Exhibit E - Project Scope Statement»

§ 1.1.2.1 The Project's characteristics: See attached Exhibit E - Project Scope Statement

§ 1.1.2.2 [Programming and Schematic Design phase services were previously rendered. This Agreement will require some redesign to components established in the previous Schematic Design to meet programmatic and budget requirements.]

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

The Owner's Budget for the Cost of the Work is \$113,000,000 and shall be the basis for the reviews in Sections 3.3.7, 3.4.3, and 3.5.5, unless modified in writing by the Owner and Program Manager. The Architect's Basic Services lump sum fee shall cover design services up to a Cost of Work not to exceed \$120,000,000, including any alternates.

§ 1.1.4 The Owner's anticipated design and construction schedule [To be established by the Owner at a later date with input from the Jacobs Project Management Co. (herein the "Program Manager"), Architect and Construction Manager, except as noted in 1.1.4.1]:

.1 Design phase milestone dates, if any:

«Acceptance of Schematic Design Phase by Owner & Program Manager –
Acceptance of Design Development Phase by Owner & Program Manager –
Acceptance of Construction Documents Phase by Owner & Program Manager - »

.2 Commencement of construction:

« »

.3 Substantial Completion date or milestone dates:

« »

.4 Other:

« »

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

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

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

The Owner reserves the right to change the method of Project delivery and the form of agreement for such delivery. The term “Construction Manager” when used in this Agreement shall refer to the Project Construction Manager or, if construction management is not used as the method of Project delivery, the contractor(s) Owner hires to construct the Project.

§ 1.1.6 The Owner’s requirements for accelerated or fast-track scheduling, multiple bid packages or phased construction are set forth below:
(List number and type of bid/procurement packages.)

Any such requirements will be fully developed during the Construction Document Phase in consultation with the Program Manager and Construction Manager and must be approved by Owner. Architect should anticipate that at a minimum an early site utilities, excavation, and foundation package will be required. Additional such requirements and packages may be required and are a part of the Basic Services. No more than three design packages are anticipated.

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as the Owner’s sustainable objective, if any, or historic preservation requirements.)

As provided in Exhibit “A” – Request for Qualifications attached hereto. In the event of a direct conflict between this Agreement and the content of Exhibit “A”, the terms of this Agreement shall prevail.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:
(List name, address and other information.)

Valde Guerra
100 N. Closner Boulevard
Edinburg, Texas 78539

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

Jacobs Project Management Co.
911 Central Parkway North, Suite 425
San Antonio, Texas 78232
Attn: Brian McIntyre

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

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

To be selected

- .2 Cost Consultant (if in addition to the Construction Manager the Owner elects to do so in its discretion):
(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.3.6, 3.3.7, 3.4.2, 3.4.3, 3.5.4, 3.5.5, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)

To be selected (if any)

- .3 Program Manager:

Jacobs Project Management Co.
911 Central Parkway North, Suite 425
San Antonio, Texas 78232
Attn: Brian McIntyre

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

John Niesen, RA, LEED ID+C
Project Manager
HDR
8750 N. Central Expressway, Suite 100
Dallas, TX 75231
D 972.960.4183 M 214.587.2596
john.niesen@hdrinc.com

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

§ 1.1.12.1 Consultants provided under Basic Services (which consultants shall be employees of Architect):

- .1 Landscaping Architect and Irrigation;
- .2 Roofing;
- .3 Parking;
- .4 Design, Procurement assistance and Move-in/Installation Coordination of furniture, fixtures and equipment;
- .5 Courtroom Design and Technology;
- .6 Technology (audio-visual, electronic security and physical security);
- .7 Graphics and Wayfinding;

- .8 Movement of incarcerated persons; and
- .9 Hardware.

The Architect shall ensure that all such consultants and those listed in 1.1.12.2 below produce all services and deliverables within their respective disciplines necessary for the Architect to provide a complete and proper design for the Project.

Architect may not engage any consultant for any of the foregoing services without the prior written consent of Owner.

§ 1.1.12.2 Consultants which are not employees of Architect retained under Basic Services (to the extent any such consultant is identified below as “TBD,” such consultant must be duly approved in advance of engagement of such consultant in writing by Owner):

- .1 Vertical Transportation / Elevator Consultant – Lerch Bates (Carrollton, Texas);
- .2 Curtain Wall / Window Wall Consultant – McClintock Facades Consulting, LLC (San Francisco, California) together with Morrison + Hershfield (Houston, Texas);
- .3 Local Consulting Architect – ERO Architects (McAllen, Texas);
- .4 Structural Engineer – ERO Architects (McAllen, Texas);
- .5 Mechanical Engineer – Halff Associates, Inc. (McAllen, Texas);
- .6 Electrical Engineer – Halff Associates, Inc. (McAllen, Texas);
- .7 Plumbing Engineer – Halff Associates, Inc. (McAllen, Texas);
- .8 Fire Alarm Design – Halff Associates, Inc. (McAllen, Texas);
- .9 Fire Protection Engineer – Halff Associates, Inc. (McAllen, Texas);
- .10 Civil Engineer (site utilities) – Pacheco Koch Consulting Engineers, Inc. (Dallas, Texas);
- .11 Civil Engineer (traffic engineering) – LG Consulting Engineers (Mission, Texas);
- .12 Geotechnical Engineer – TBD
- .13 Technology (network, telecommunications, data, IT and low voltage) – Halff Associates, Inc. (McAllen, Texas);
- .14 Accessibility Consultant – Felipe Guerrero (Brownsville, Texas);
- .15 Interior Design – The Warren Group (McAllen, Texas);
- .16 Topographic and Underground Utilities Survey – Pacheco Koch Consulting Engineers, Inc. (Dallas, Texas) together with a local consultant TBD;
- .17 Cost Estimating (Schematic Design Phase) – Building Cost Consultants (BCC) (Plattsmouth, NE);
- .18 Acoustical Design – WJHW (San Antonio, Texas);

The Architect shall ensure that all such consultants and those listed in Section 1.1.12.1 above produce all services and deliverables within their respective disciplines necessary for the Architect to provide a complete and proper design for the Project.

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

The Total Project Budget, including all associated soft costs, is \$150,000,000.

The following non-exclusive list of services will be provided as Basic Services:

- Architectural Design + Program Verification
- Structural Engineering
- Mechanical Engineering
- Electrical Engineering
- Plumbing Engineering
- Fire Protection, Fire Alarm, and Fire Suppression Design
- Architectural Interior Design
- Building Information Modeling
- Existing Facilities Survey + Measured Drawings
- Site & Building Layout
- Acoustical Analysis
- Civil Engineering – Site Utilities

- Landscape Architecture, Grading, and Paving Design
- Land Surveying
- On-Site Parking Design
- Geotechnical Engineering & Report
- Hardware Design & Coordination
- Furniture, Fixtures, & Equipment – Design, Specification, and Procurement/Installation Coordination
- Courtroom Technology Design
- Low Voltage, Communications, & Information Technology Design
- Technology Active Equipment Design & Specification
- Audio/Visual Systems & Equipment Design & Specification
- Electronic Security Design
- 100% Schematic Design Estimate of Probable Cost
- Vertical Transportation Consulting & Analysis (Elevators & Escalators)
- Physical Security Consulting, Evaluation, Planning & Design
- Participation in Value Engineering sessions with Program Manager and CMAR
- Consideration of Life-Cycle Costs in Equipment Specification
- Signage, Graphics, and Wayfinding Design & Coordination
- Accessibility Consultant
- Building Envelope / Roofing Consultant
- Coordination of As-Built Record Drawings with CMAR
- Coordination of Warranty Period Activities with CMAR
- Coordination with Owner's Consultants
- Assistance with Selection of CMAR

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall endeavor to agree on any adjustment to the schedule, the Architect's services and the Architect's compensation caused by any such material change. The Architect shall bear the burden of proving that any change is material.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement. In providing its services for the Project, the Architect shall at all times exercise not less than the standard of professional care customarily exercised by nationally-recognized architecture firms practicing in the State of Texas performing services similar to those required by this Agreement and for the Project. The services and deliverables provided by the Architect shall comply with all laws, codes, statutes, ordinances, orders, rules and regulations of all federal, state, county and local governmental agencies having jurisdiction over the Project and the Project's design and construction ("Laws").

§ 2.2 The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and in conformance with the Architect's Schedule as modified from time to time in coordination with the overall Project Schedule. Architect shall not be liable for any Project delay except to the extent such delay is caused by the breach of contract or other legal duty, negligence or negligent misrepresentation of the Architect.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager. The Architect shall not be responsible for actions taken by the Construction Manager except to the extent such actions are caused by the breach of contract or other legal duty, negligence or negligent misrepresentation of the Architect.

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

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

§ 2.6 The Architect is responsible for the overall coordination and management of the entire Project design including, without limitation, any elements of the Project design provided by or through the Owner or Construction Manager.

The Architect shall provide its services in cooperation with the services provided by Owner and Owner's consultants and contractors including, without limitation, the Program Manager and Construction Manager (collectively, "Owner's consultants and contractors") and shall coordinate its services with those services provided by Owner and Owner's consultants and contractors. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by Owner and Owner's consultants and contractors except to the extent Architect knew or should have known such information was incomplete or in error. The Architect shall provide prompt written notice to the Owner and Program Manager if the Architect becomes aware of any error, omission, or inconsistency in such services or information. The Architect shall not be held responsible for Owner's consultants' or contractors' work, services, conduct or finished product except to the extent of a Loss caused by the negligence, negligent misrepresentation or breach of contract or other legal duty by Architect including, without limitation, the Architect's duty to coordinate and manage the overall design.

§ 2.7 Representations and Warranties. The Architect represents and warrants to Owner as follows with respect to the Architect, its consultants and their principals and employees:

- .1 Any and all entities of which the Architect is comprised are financially solvent, can pay all bills owed when due and has the financial resources to perform all services required of it by this Agreement;
- .2 The Architect and its consultants (if any) have and will maintain throughout the performance of this Agreement all registrations and licenses necessary to perform its services under this Agreement;
- .3 All professionals providing services on this Project or under this Agreement for Architect have all licenses and registrations required by law and regulation;
- .4 No promise, agreement, representation, inducement or condition that is not stated in this Agreement has been made to Architect by Owner or anyone acting on Owner's behalf in executing this Agreement;
- .5 The Architect is duly authorized to enter into this Agreement;
- .6 The person or persons executing this Agreement have been duly authorized to so act by Architect;
- .7 The Architect will perform all services under this Agreement and for the Project in the best interests of Owner;
- .8 The Architect will at all times while performing any obligations under this Agreement cause all Architect Parties (defined in 8.1.3.1.5) to comply with the Ethical Standards.

§ 2.8 Ethical Standards. The Architect acknowledges the following Ethical Standards and shall at all times while performing any obligations under this Agreement comply and cause all Architect Parties (defined in 8.1.3.1.5) to comply with and not breach any applicable Ethical Standards including, without limitation the following:

§ 2.8.1 It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of the Owner, or for any elected official, department head or employee or former elected official, department head or employee of the Owner, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or qualification therefore pending before any department or agency of the Owner.

§ 2.8.2 It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of Architect or a consultant under a contract to the Architect or higher tier consultant for any contractor for the Owner, or any person associated therewith, as an inducement for the award of a contract or order.

§ 2.8.3 No public official shall have an interest in this Agreement except in accordance with Chapter 171 of the Texas Local Government Code.

§ 2.8.4 Except as permitted under this Agreement, Architect and all Architect Parties (defined in 8.1.3.1.5) shall not engage in private communication with a member of the Hidalgo County Commissioners Court or department heads regarding any procurement of goods or services by the Owner. Any such private communications shall not be binding on the parties to this Agreement. Members of the Commissioners Court are required to make a reasonable effort to inform themselves regarding potential procurements and have a duty to inquire of vendors, their representatives or

employees, the nature of any private communication being sought prior to engaging in any communication. "Private Communication" means communication with any Architect Party participating outside of a posted meeting of the governing body, a regular meeting of a standing or appointed committee or negotiation, which has been specifically authorized by the governing body.

§ 2.9 Insurance. The Architect shall maintain insurance for the duration of this Agreement and thereafter as required by Exhibit "B", Owner's Insurance Requirements of Architect.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3, the customary structural, mechanical, electrical, and plumbing engineering, and all other consulting and design services listed in Section 1.1.12.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Program Manager, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Program Manager, the Construction Manager, and the Owner's consultants; provided, however, that Architect shall not be entitled to rely on the accuracy or completeness of services and information it knows or should know to not be accurate or complete. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 Within fourteen (14) days after the date of this Agreement, the Architect shall submit to the Owner, the Program Manager, and the Construction Manager a schedule of the Architect's services (the "Architect's Schedule") for inclusion in the Project Schedule prepared by the Program Manager. The Architect's Schedule shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Program Manager and Construction Manager's review, (3) for the performance of the Construction Manager's Preconstruction Phase services, (4) for the performance of the Owner's consultants, and (5) for approval of submissions by authorities having jurisdiction over the Project. The Architect's Schedule shall be coordinated with and adhere to the Project Schedule attached as Exhibit D – Project Schedule (as of Effective Date of Agreement) (*See also* Section 5.5).

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

§ 3.1.5 Once the Project Schedule is established and agreed to by Owner, the Owner (subject to Section 5.5, below) and Architect shall not exceed the Project Schedule and the Architect's Schedule, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made without the Architect's approval. Notwithstanding the foregoing or anything herein to the contrary, the Architect shall provide prompt guidance to the Owner concerning such matters of which the Architect has knowledge or should have knowledge with the exercise of reasonable care.

§ 3.1.7 The Architect shall, at appropriate times, in coordination with the Program Manager and Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall comply with the requirements imposed by such governmental authorities and by such entities providing utility services.

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

§ 3.1.9 The Architect shall be responsible for submitting design phase submittals meeting all of the requirements detailed in Exhibit C – Instructions to Designers at the following intervals (in addition to meeting all other requirements in this Agreement and Exhibit C): 100% Schematic Design; 100% Design Development Documents, 50% Construction Documents, 95% Construction Documents, and 100% Construction Documents. The Architect shall meet all other requirements detailed in Exhibit C – Instructions to Designers. The requirements of this Agreement and Exhibit C – Instructions to Designer are complementary, and that which is required by one is required by both.

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

§ 3.2.1 Prior to the Owner's acceptance of the Guaranteed Maximum Price proposal the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner and Program Manager on all communications related to substitution requests, clarifications, and interpretations.

§ 3.2.2 During one of the design phases, the Owner will receive a Guaranteed Maximum Price proposal (or multiple proposals in the case of early design packages) from the Construction Manager. The Architect shall assist the Owner and Program Manager in reviewing the Construction Manager's proposal(s) or estimate(s). The Architect's review is not for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner, Program Manager and Construction Manager in writing.

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

§ 3.2.4 The Scope of Architect's Basic Services described in Article 3 includes the services Architect will provide for the Project, which also includes those services reasonably inferable from the descriptions of services in Article 3. The Architect represents and warrants to the Owner that the Scope of Architect's Basic Services includes all the architectural, engineering and other design and consultation services that, in the opinion of the Architect, are necessary for the complete successful design of and design documentation for the Project without the necessity of providing any Additional Services. The Owner may, in addition to obtaining Additional Services, reduce the Scope of Architect's services in Owner's sole discretion, with a commensurate reduction in compensation and adjustment to the Architect's Schedule. The Architect shall continue providing its services through final completion and acceptance of the Project by Owner and any commissioning or other services to be provided by or through the Architect and through any Additional Services, except to the extent such services are terminated by Owner.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program, the previously submitted Schematic Design, and other information furnished by the Owner, Program Manager and Construction Manager, and shall comply with all Laws.

§ 3.3.2 The Architect shall verify the program updated by the Program Manager attached in Exhibit E and submit any recommended changes in writing to the Owner and Program Manager that Architect, in its professional opinion, deems necessary to accommodate future growth space requirements for administrative or other functions, or for other reasons which Architect determines may be necessary. Once verified or updated by the Architect and approved by the Owner and Program Manager, this program shall become the space program for the Project.

§ 3.3.3 Intentionally Deleted

§ 3.3.4 Intentionally Deleted

§ 3.3.5 Based on the Project requirements agreed upon with the Owner and based upon the previously submitted Schematic Design, the Architect shall prepare updated Schematic Design Documents for the Owner's approval and the Program Manager's and Construction Manager's review. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations;

and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

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

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

§ 3.3.6 Not less than two (2) weeks prior to the conclusion of the Schematic Design Phase, the Architect shall submit the updated Schematic Design Documents to the Owner and Program Manager. The Architect shall meet with the Program Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Program Manager's response to the Schematic Design Documents and the Architect's estimate of probable cost at the conclusion of the Schematic Design Phase, if in the Owner's and Program Manager's evaluation, and based on the Program Manager's concurrence with the Architect's estimate of probable cost, the design meets the Owner's budget, schedule, and scope criteria, the Architect may request written approval to proceed to the next design phase. If the design does not meet the budget, schedule, and scope criteria, the Architect shall redesign elements of the Project, as Basic Services without additional compensation, to bring the Project back in compliance with the budget, schedule, and scope criteria. If Architect is unable to redesign the Project to satisfy the budget, schedule, and scope criteria, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's budget, schedule, or scope. Owner in consultation with the Program Manager and Construction Manager shall consider Architect's recommendations, but shall decide, in its sole discretion, what adjustments to make. In no case shall the Architect proceed to the next design phase without the Prior written approval from the Owner.

§ 3.4 Design Development Phase Services

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

§ 3.4.2 Not less than two weeks prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner, Program Manager and the Construction Manager. The Architect shall meet with them to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Program Manager's response to the Design Development Documents and the Construction Manager's information and estimate at the conclusion of the Design Development Phase, if in the Owner's and Program Manager's evaluation and based on the Construction Manager's estimate, the design meets the Owner's budget, schedule, and scope criteria, the Architect may request written approval to proceed to the next design phase. If the design does not meet the budget, schedule, and scope criteria, the Architect shall redesign elements of the Project, as Basic Services without additional compensation, to bring the Project back in compliance with the budget, schedule, and scope criteria. If Architect is unable to redesign the Project to satisfy the budget, schedule, and scope criteria, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's budget, schedule, or scope. Owner in consultation with the Program Manager and Construction Manager shall consider Architect's recommendations, but shall decide, in its sole discretion, what adjustments to make. In no case shall the Architect proceed to the next design phase without the Prior written approval from the Owner.

§ 3.5 Construction Documents Phase Services

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

§ 3.5.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project and comply with all Laws.

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

§ 3.5.4 The Architect shall submit an interim review set of Construction Documents at the 50% stage. At least four (4) weeks prior to the conclusion of the Construction Documents Phase, the Architect shall submit the 95% Construction Documents to the Owner, Program Manager and the Construction Manager. The Architect shall meet with them to review the Construction Documents. The Architect shall submit the 100% Construction Documents at or prior to the conclusion of the Construction Documents Phase, addressing any design review comments or issues raised by the Owner, Program Manager and Construction Manager during the review of the 95% Construction Documents set.

§ 3.5.5 Upon receipt of the Program Manager's response to the Construction Documents and the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, if in the Owner's evaluation and based on the Construction Manager's estimate, the design meets the Owner's budget, schedule, and scope criteria, the Architect may request written approval to complete the Construction Documents Phase and proceed to the next phase. If the design does not meet the budget, schedule, and scope criteria, the Architect shall redesign elements of the Project, without additional compensation, to bring the Project back in compliance with the budget, schedule, and scope criteria. If Architect is unable to redesign the Project to satisfy the budget, schedule, and scope criteria, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's budget, schedule, or scope. Owner shall consider Architect's recommendations, but shall decide, in its discretion, what adjustments to make. In no case shall the Architect proceed to the next phase without prior written approval from the Owner.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction (as modified).

§ 3.6.1.2 The Architect's responsibility to provide Construction Phase Services commences upon the occurrence of Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and the Owner's issuance of a Notice to Proceed to the Construction Manager. The Architect shall continue providing its services through final completion and acceptance of the Project by Owner and any commissioning or other services to be provided by or through the Architect and through any Additional Services, except to the extent such services are terminated by Owner.

§ 3.6.1.3 The Architect shall advise and consult with the Owner, Program Manager and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the

Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work, except to the extent of a Loss caused by the negligence negligent misrepresentation or breach of contract of the Architect.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at least once per week and at all major milestones as stated by Program Manager and Construction Manager, at intervals appropriate to the stage of construction to become familiar with the progress and quality of the portion of the Work completed, and to determine if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner and Program Manager reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Program Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

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

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall within seven (7) days of receipt of Construction Manager's Application for Payment, inspect the progress of the Work, carefully evaluate, review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed in writing by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

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

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with Architect's

Schedule, the Project Schedule, and the approved submittal schedule or, in the absence of an approved submittal schedule, within fourteen (14) days of receipt from Construction Manager. In the event the time allotted to review a submittal is insufficient in the Architect's professional judgment to permit adequate review, the Architect shall within three (3) days of receipt of the submittal make a written request to the Program Manager for additional review time.

§ 3.6.4.2 In accordance with the approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is for the purpose of determining the general accuracy and not for the purpose of determining the completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If it is determined that any submittal does not comply with the requirements of the Contract Documents, then Architect shall require Construction Manager to come into compliance. The Architect shall promptly report in writing to the Construction Manager, Program Manager and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples. The Architect is not authorized to approve changes involving major systems such as HVAC, roof, foundation, outward appearance, color schemes, floor plans, building materials, or mechanical equipment without Owner's prior written consent.

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

§ 3.6.4.4 The Architect shall timely review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within seven (7) days or as otherwise approved in writing by the Owner. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may, after consultation with the Program Manager, authorize minor changes in the Work with Owner's written consent that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Program Manager's review and for the Owner's approval and execution in accordance with the Contract Documents. As necessary, the Architect shall prepare and distribute Drawings and Specifications to describe the Work to be added, deleted, or otherwise modified.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Construction Manager and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Construction Manager; and issue a Certificate of Final Completion and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Program Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected. Inspections shall continue as necessary until a Certificate of Final Completion is issued and the entire Project is complete.

§ 3.6.6.3 When the Work is found to be substantially complete, and again when the Work is found to have reached Final Completion, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum for final completion or correction of the Work.

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

§ 3.6.6.5 Prior to the expiration of eleven (11) months from the date of Substantial Completion, the Architect shall, without additional compensation, inspect the Work and conduct a meeting with the Owner, Program Manager and Construction Manager to review the facility operations and performance for the purpose of identifying defects, warranty issues, and proposed corrections and advising Owner in writing regarding the need for correction of the Work.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section shall entitle the Architect to compensation pursuant Article 11, provided that Architect obtained a prior duly approved written Work Authorization to provide such Additional Services. Notwithstanding anything herein to the contrary, Additional Services will be authorized only through individual written Work Authorizations duly approved and issued by the Owner. Absent the written Work Authorization being duly approved and issued prior to the Additional Services being provided, no additional compensation shall be paid. The Owner may, in addition to obtaining Additional Services, reduce the scope of Architect's services in any Work Authorization in Owner's sole discretion, with a commensurate reduction in compensation and adjustment to the Project Schedule. No Additional Services have been authorized as of the Effective Date of this Agreement.

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.2.1 Programming (B202™-2009)	Not Provided	
§ 4.2.2 Multiple preliminary designs	Not Provided	
§ 4.2.3 Detailed cost estimating	Construction Manager	
§ 4.2.4 On-site project representation (B207™-2008)	Not Provided	
§ 4.2.5 Facility Support Services (B210™-2007)	Not Provided	
§ 4.2.6 Tenant-related services	Not provided	
§ 4.2.7 Commissioning	Owner	Architect shall include commissioning specifications in the project manual as a Basic Service.
§ 4.2.8 Extensive sustainable design services	Not Provided	
§ 4.2.9 LEED® Certification (B214™-2012)	Not Provided	
§ 4.2.10 Historic Preservation (B205™-2007)	Not Provided	

<p>§ 4.2.11 Furniture, Furnishings, and Equipment Design, Procurement and Installation Coordination</p>	<p>Architect</p>	<p>Procurement will be handled by Owner's Purchasing Department. Architect is to design FF&E and assist in preparing procurement documents, evaluating vendors, and coordinating the purchase, delivery, and installation.</p>
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ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall, through itself or its consultants, provide information in a timely manner regarding requirements for and limitations on the Project, subject to 5.5.

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

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

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

§ 5.4.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but may carry with it associated risks. Such risks include the Owner incurring costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs it deems appropriate.

§ 5.5 The Owner shall identify one or more representative(s) authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. The Architect acknowledges, however, that the Owner is a public body, and as a result, must obtain information and approvals from many varied sources to be able to respond, which could cause Project delays without adequate planning. It is the Architect's duty in its planning for obtaining information from the Owner to plan and build into the Architect's Schedule adequate time to accommodate obtaining Owner's decisions and information.

§ 5.6 Intentionally Deleted

§ 5.7 Intentionally Deleted

§ 5.8 The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

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

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

§ 5.11 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, but the Owner shall not be obligated to identify any such errors, omissions or inconsistencies.

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

§ 5.13 Before the Owner executes the Contract for Construction, the Architect shall notify the Owner and Program Manager if the Architect's duties and responsibilities set forth in the Contract for Construction are not coordinated with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

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

ARTICLE 6 COST OF THE WORK

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

§ 6.2 The Owner's estimate for the Cost of the Work is provided in the Initial Information, and may be adjusted by Owner throughout the Project. Any evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

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

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

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

ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 The Architect assigns to the Owner at the time of creation its rights, including copyright, in its Instruments of Service, all deliverables, and in all Architectural Works created for the Project. All Instruments of Service and Architectural Works shall be considered Works Made for Hire. The Architect shall obtain similar assignments to the Owner from the Architect'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 Architect, the Owner, and their consultants and contractors under their respective services agreements. Instruments of Service include, without limitation, drawings, plans, specifications, spreadsheets, tables, control tools, studies, surveys, models, sketches, digital models, and other similar materials. The Architect may retain copies of its Instruments of Service.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law.

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

§ 8.1.3 Indemnities.

§ 8.1.3.1 Definitions

- .1 “Claims”: any and all claims, demand, causes of action and claims for Loss brought, alleged or asserted through any direct claim, cross-claim, counterclaim or claim for contribution or indemnity that arise, in whole or in part, in connection with this Agreement, its performance or interpretation or with respect to the Project or services this Agreement describes;
- .2 “Defend”: provide a competent legal defense to the Owner Parties with legal counsel and experts reasonably acceptable to Owner at no cost to any Owner Parties;
- .3 “Loss”: any and all actual and alleged loss, costs and damages of any nature including, without limitation, actual, special and consequential damages, vicarious liability, personal injury, death, property damage including loss of use thereof, and economic loss, and any expense including, without limitation, reasonable attorney’s and experts’ fees and all costs of litigation and defense;
- .4 “Owner Parties”: the Owner and its County Judge, Commissioners, Commissioners’ Court, its present and former officials and employees, and regardless of whether employed by the Owner, its agents and representatives;
- .5 “Architect Parties”: the Architect, all entities that comprise Architect if more than one, and their parents, affiliates, subsidiaries, officers, directors, members, managers, partners, joint venturers, consultants, present and former employees, and regardless of whether employed by the Architect, its agents and representatives;

§ 8.1.3.2 **General Indemnity.** The Architect shall to the fullest extent permitted by law indemnify and hold harmless the Owner Parties from and against all Loss and Claims Loss to the extent such Loss is caused by the negligent acts or omissions, negligent misrepresentation, breach of contract or breach of any other legal duty of any Architect Parties.

§ 8.1.3.3 **Indemnity for Employee Injury Claims.** THE ARCHITECT SHALL TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW DEFEND, INDEMNIFY AND HOLD HARMLESS ALL OWNER PARTIES FROM AND AGAINST ALL CLAIMS AGAINST ANY OWNER PARTIES FOR THE PERSONAL INJURY OR ALLEGED PERSONAL INJURY OR DEATH, AT THE PROJECT SITE OR IN CONNECTION WITH THE PROJECT, OF AN EMPLOYEE OF ANY ARCHITECT PARTIES OF ANY TIER, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, BROUGHT BY, THROUGH OR UNDER SUCH INJURED EMPLOYEE OR THE EMPLOYEE’S WORKERS COMPENSATION INSURANCE CARRIER (REFERRED TO HEREIN AS AN “EMPLOYEE INJURY CLAIM”), REGARDLESS OF WHETHER ANY SUCH CLAIMS ARE CAUSED, OR ARE ALLEGED TO BE CAUSED, BY ANY NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF

CONTRACT OR BREACH OF ANY OTHER DUTY OR OBLIGATION OF ANY OWNER PARTIES INDEMNIFIED, DEFENDED OR HELD HARMLESS. THESE OBLIGATIONS SHALL NOT BE LIMITED BY ANY INSURANCE PROVISIONS OR BENEFITS PAYABLE UNDER ANY EMPLOYEE BENEFITS INCLUDING, WITHOUT LIMITATION, WORKERS' COMPENSATION OR DISABILITY ACTS.

§ 8.1.3.4 The parties intend that all provisions of Article 8 shall be enforced the fullest extent permitted by Chapter 151 of the Texas Insurance Code. These indemnity and waiver obligations shall survive termination or expiration of this Agreement.

§ 8.2 Dispute Resolution

§ 8.2.1 Subject to any mediation the parties agree to participate in, all disputes arising between the Architect and Owner shall be resolved by a jury trial in a State District Court located in Hidalgo County, Texas. The Architect agrees to cooperate with and assist Owner in any disputes to which Architect is not a party between Owner and its Program Manager, Construction Manager, consultants, contractors or others concerning or related to any aspect of the Project.

§ 8.2.2 Without limitation to any other term of this Agreement, Architect shall pay Owner's reasonable attorneys' and experts' fees and all costs of litigation and defense to the extent Owner prevails on any claim for breach of contract or in *quantum meruit*.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails without cause to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services under such conditions, the Architect shall give thirty days' written notice to the Owner and opportunity to cure before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services properly performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses found caused by the interruption and resumption of the Architect's services.

§ 9.3 If the Owner suspends the Project for more than 90 consecutive or 180 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than thirty days' written notice.

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services properly performed prior to termination then due.

§ 9.7 The parties' rights and remedies that continue after performance shall survive the termination of this Agreement including, without limitation, Owner's rights under Section 2.9, Article 7 and Article 8.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by Texas law. Exclusive venue for any disputes shall be in a State District Court in Hidalgo County, Texas.

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

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Architect shall not assign this Agreement without the prior written consent of the Owner.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review and comment at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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

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

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or privileged information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary.

§ 10.8 Architect shall keep according to GAAP full and detailed records pertaining to services that it is required to perform and shall, without cost, furnish a copy of such records to Owner upon request. Architect shall exercise such controls as may be necessary for proper financial management under this Agreement, which shall be reasonably acceptable to Owner and sufficient to substantiate all costs incurred. Owner and Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, Architect's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, Consultant's agreements, consultant agreements, proposals, purchase orders, vouchers, memoranda and other data relating to this Agreement. In the event any such audit is of documents the County does not require to be submitted with invoices, the County will consider making review of such materials at the offices of the Architect. In the event that any audit reveals an error or discrepancy of any nature whatsoever, such error or discrepancy will be corrected promptly, and any moneys owing and due Owner will be paid promptly. Architect shall not charge Owner for any costs incurred by Architect while assisting Owner with audits performed pursuant to this Agreement. If the audit reveals that Architect has overstated any cost to Owner by more than three percent (3%) of the cost of construction, and/or if Architect is delinquent in furnishing any records or reports required under this § 10.8, and Owner shall have chosen to have an audit and accounting made of Architect's financial records, then Architect shall pay the cost of such audit and accounting. Architect shall be found delinquent in furnishing records, if, after the 14th day after the Owner requests the records or reports the Architect fails to provide the requested records or reports. Architect shall preserve these records for a period of five years after final payment, and for so long thereafter as there may remain any unresolved questions or disputes regarding any item or for such longer period as may be required by law.

§ 10.9 In the event any one or more provisions of this Agreement, or the application thereof to any person or circumstance, shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, illegality or unenforceability shall be deemed stricken and shall not affect any other provision of this Agreement or the application of such provisions to other persons or circumstances, and the balance of this Agreement shall be enforced to the greatest extent permitted by law.

§ 10.10 Notices

§ 10.10.1 Written notice if to Architect shall be deemed to have been duly served when delivered to a manager or officer of the firm or entity; or if sent by certified mail (return receipt requested) the date shown received.

§ 10.10.2 Written notice if to Owner shall be deemed to have been duly served when delivered in person on, or if by certified mail (return receipt requested) upon Owner's receipt by, the person(s) designated in 1.1.8.

§ 10.11 The failure of Owner to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance or any other term, covenant, condition or right.

§ 10.12 Claims, disputes, or other matters in controversy arising out of or related to the Contract may by agreement of the parties be mediated prior to resolution by jury trial in a state district court in Hidalgo County, Texas. A request for mediation shall be made in writing and, delivered to the other party to the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described in this Agreement, the Owner shall compensate the Architect as follows:

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

A lump sum price of «\$9,000,000, which includes consideration for all expenses necessary to deliver the services listed in this Agreement, excluding any expenses for building permits. »

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

«On a lump sum basis agreed in advance by the parties. »

§ 11.3 Intentionally Deleted

§ 11.4 Intentionally Deleted

§ 11.5 Compensation for Basic Services shall be as follows:

Schematic Design Phase	5%	Payable after Owner's Notice to Proceed to the Design Development Phase
Design Development Phase	27%	Payable in three payments: (1) 25% completion, (2) 75% completion, and (3) after Owner's Notice to Proceed to the Construction Documents Phase
50% Construction Documents Phase	10%	Payable after the Owner's Notice to Proceed to the 95% Construction Documents Phase
95% Construction Documents Phase	15%	Payable after the Owner's Notice to Proceed to the 100% Construction Documents Phase
100% Construction Documents Phase	10%	Payable after the Owner's acceptance of the 100% Construction Documents
Construction Phase	32%	Payable in monthly installments in accordance with the Construction Manager's Certified Percentage Completion of the Work
Warranty Period	1%	Payable at the conclusion of the services indicated in Section 3.6.6.5
	100%	Payable after all services under this Agreement are properly provided

§ 11.6 Intentionally deleted.

§ 11.7 Intentionally deleted.

§ 11.8 Intentionally deleted.

§ 11.9 Intentionally deleted.

§ 11.10 Intentionally deleted.

§ 11.10.1 An initial payment of zero dollars (\$ 0.00) shall be made upon execution of this Agreement.

§ 11.10.2 Payments for services shall be made as indicated in 11.5, less a one percent (1%) retainage. Architect shall submit detailed reports with each invoice describing in detail the services performed during the invoice period. No payment shall be made to the extent of Architect's services were faulty or the subject of a dispute. If payment is made for services subsequently determined to be faulty, the Owner may offset the cost to correct such faulty services against future invoices. The portion of invoices not in question and that have been duly approved by Owner shall be paid.

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect.

§ 11.10.4 Intentionally deleted.

§ 11.10.5 Final Payment to the Architect, including retainage held by Owner (if any), shall not be made until after the Project is completed and accepted by Owner and all Instruments of Service in native format and supporting documents are delivered to the Owner, and this Agreement is otherwise fully performed by the Architect, per Article 3 (and Article 4, as applicable). The acceptance by the Architect of final payment upon the completion of its services under this Agreement, or of any final payment due upon any earlier termination of this Agreement, shall constitute a full and complete release of the Owner from any claims, demands and causes of action of any nature whatsoever that the Architect may have against the Owner in connection with this Agreement, except for claims, demands, or causes of action previously made known to the Owner in writing. The making of partial payments or of any such final payment by the Owner to the Architect shall not constitute an acceptance of the services and/or work product of the Architect or a release of the Architect from any claims, demands or causes of action that the Owner may, now or at any time, hereafter, have against the Architect.

§ 11.10.6 In the event that, during any term hereof, the Commissioners Court of Owner does not appropriate sufficient funds to meet the obligations of Owner under this Agreement, Owner may terminate this Agreement upon sixty (60) days written notice to Architect. Owner agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Owner pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903 (Vernon Supp. 1996).

§ 11.10.7 Nothing in this Agreement is intended to and Owner does not hereby waive, release or relinquish any right to assert any of the defenses Owner enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to Owner as to any claim or action of any person, entity, or individual against Owner.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1 For the delivery of the Project, Architect shall utilize the Project Management Control System (PMCS) implemented by the Program Manager. This shall include the use of Prolog for cost and schedule tracking, SharePoint for document storage, and Bluebeam Revu for design reviews.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents listed below, and the Exhibits are incorporated herein by reference as if set forth at length. The documents comprising the Agreement are complementary, and that which is required by one shall be required by all. In the event of a direct conflict between the terms of this AIA Document B133-2014 and any Exhibit, the former shall prevail with respect to the directly conflicting term.

- .1 AIA Document B133™–2014, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as modified herein
- .2 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

- Exhibit A – Request for Qualifications
- Exhibit B – Owner’s Insurance Requirements of Architect
- Exhibit C – Instructions to Designers
- Exhibit D – Project Schedule (as of Effective Date of this Agreement)
- Exhibit E – Project Scope Statement

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

OWNER (Signature)

County of Hidalgo, Texas
 (Printed name and title)

ARCHITECT (Signature)

 « HDR Architecture, Inc. »« »
 (Printed name and title)

