



AIA® Document B133™ – 2014

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

AGREEMENT made as of the 20th day of November in the year 2018.
(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
100 East Cano, 2nd Floor
Edinburg, Texas 78539
(956) 318-2600

and the Architect:

(Name, legal status, address and other information)

Rike-Ogden-Figueroa-Alex Architects, Inc., a Texas corporation
1007 Walnut Avenue
McAllen, Texas 78501
(956) 686-7771

for the following Project:

(Name, location and detailed description)

Design and Construction of Hidalgo County Services Facilities and Justice Center
1212 South 25th Street (East Side of Expressway 281)
Edinburg, Texas 78539
(956) 292-7000 Ext. 5600

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

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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.

The Owner and Architect agree as follows.

Init.

AIA Document B133™ – 2014. Copyright © 2014 by The American Institute of Architects. **All rights reserved.** **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 15:39:07 ET on 02/14/2019 under Order No. 1870689069 which expires on 06/19/2019, and is not for resale.
User Notes:

(3B9ADA5A)



Init.

/

AIA Document B133™ – 2014. Copyright © 2014 by The American Institute of Architects. **All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 15:39:07 ET on 02/14/2019 under Order No. 1870689069 which expires on 06/19/2019, and is not for resale.
User Notes:

(3B9ADA5A)

TABLE OF ARTICLES

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

EXHIBIT A INITIAL INFORMATION

EXHIBIT A-1 PROPOSAL

EXHIBIT A-2 REQUEST FOR QUALIFICATIONS

EXHIBIT B INSURANCE CERTIFICATES

EXHIBIT C A201

ARTICLE 1 INITIAL INFORMATION

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

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution," or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

The Initial Information is set forth in Exhibit A, which consists of the Architect's revised proposal (including fee structure) dated October 29, 2018, attached hereto as Exhibit A-1, which was prepared after multiple meetings with the Owner. The alternates package referenced on page 3 of the proposal is not part of the Project, and no fees will be due to the Architect for any such package

Additional information is included in the Request for Qualifications, selected portions of which are attached hereto as Exhibit A-2.

§ 1.1.2 The Project's physical characteristics:

Init.

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

The frontage property is approximately 5.11 acres and the rear property is approximately 1.5 acres. Approximately 6.61 total acres.

Facilities to be located on at 1212 South 25th Street (East side of Expressway 281), Edinburg, Texas 78539
– (Legal Description: Tex-Mex Survey Lot 7-E 325'- W345"- S 200' N 250', Block 270 (1.5 Acreage) and Tex-Mex Survey Lot 7 NW 6.60 Exc. NW 1.49 5.11 Block 270 (Acreage 5.11)

§ 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.)

is Four Million Eight Hundred Forty Thousand Dollars (\$ 4,840,000.00). As set forth in Section 6.1, this amount does not include compensation of the Architect or the compensation of the Construction Manager for Preconstruction Phase services.

§ 1.1.4 The Owner's anticipated design and construction schedule (which may be delayed by the County in its discretion):

.1 Design phase milestone dates, if any:

.2 Commencement of construction:

June 2019

.3 Substantial Completion date or milestone dates:

May 2019

.4 Other:

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement as such agreement is modified by the Owner:

(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.

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.

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

§ 1.1.7 Other Project information:

Init.

AIA Document B133™ – 2014. Copyright © 2014 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 15:39:07 ET on 02/14/2019 under Order No. 1870689069 which expires on 06/19/2019, and is not for resale.

User Notes:

(3B9ADA5A)

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

See the Request for Qualifications attached hereto as Exhibit A-2. In the event of a direct conflict between the terms contained in this B133 portion of the Agreement and other parts of this Agreement, the terms in this B133 shall prevail.

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

County of Hidalgo
100 East Cano, 2nd Floor
Edinburg, TX 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.)

- 1 Valde Guerra, Executive Officer
Hidalgo County Executive Office
2818 South Business Highway 281
Edinburg, Texas 78539
(956) 292-7000 Ext. 5600
- .2 Glinda Pacheco, Executive Office Analyst
Hidalgo County Executive Office
2818 South Business Highway 281
Edinburg, Texas 78539
(956) 292-7000 Ext. 5600
- .3 B2Z Engineering, LLC
P O Box 2724
McAllen, Texas 78502
(956) 580-3773

The information in this Section 1.1.1.9 may be changed at the Owner's discretion.

§ 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)

Construction Manager will be retained after execution of this Agreement.

- .2 Cost Consultant (if in addition to the Construction Manager):

Init.

(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.)

N/A

.3 Land Surveyor:

SAMES, Inc.
The Chase Tower
200 South 10th Street, Suite 1500
McAllen, Texas 78501
(956) 381-6480

.4 Geotechnical Engineer:

Millennium Engineers Group, Inc.
5804 North Gumwood
Pharr, Texas 78577
(956) 702-8500

.5 Civil Engineer:

.6 Other consultants:

(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)

Project Manager:
B2Z Engineering
PO Box 2724
McAllen, TX 78502
(956) 585-3773

(While the Project Manager is sometimes referred to as a “construction manager”, the parties acknowledge the Project Manager is not the Construction Manager as such term is used in this Agreement.

The information in this Section 1.1.1.10 is for informational purposes only, and may be changed at the Owner’s discretion.

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

Michael E. Alex, AIA Principal and Vice President

Init.

AIA Document B133™ – 2014. Copyright © 2014 by The American Institute of Architects. **All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 15:39:07 ET on 02/14/2019 under Order No. 1870689069 which expires on 06/19/2019, and is not for resale.

User Notes:

(3B9ADA5A)

Rike-Ogden-Figueroa-Alex Architects, Inc
1007 Walnut Avenue
McAllen, Texas 78503
(956) 686-7771

§ 1.1.12 The Architect will 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 retained under Basic Services:

.1 Structural Engineer:
TBD

.2 Mechanical Electrical and Plumbing Engineer:
TBD

.3 Civil Engineer:
Not applicable.

§ 1.1.12.2 Consultants retained under Additional Services:

Civil Engineer:

Mariano Garcia, PE
M. Garcia Engineering, LLC
400 Nolana Suite H2

Init.

McAllen, Texas 78504
(956) 687-9421

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

N/A

§ 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 negotiate adjustments in schedule, compensation and Changes in the Work in accordance with Section 3.6..

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 In accordance with Section 271.904 of the Texas Local Government Code, the Architect shall perform its services (1) with the professional skill and care ordinarily provided by architects practicing under the same or similar circumstances and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

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

§ 2.5.1 The Architect shall be a representative of the Owner with respect to this Project, and shall not engage in any activity or course of conduct which is detrimental to the Owner's best interests. The Architect shall take all reasonable steps necessary to comply with the terms and conditions set forth in Section 3.6.2— Evaluation of the Work.

§ 2.6 **Insurance.** The Architect shall maintain the following insurance for the duration of this Agreement.

§ 2.6.1 Commercial General Liability with policy limits of not less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned by the Architect and non-owned vehicles used by the Architect with policy limits of not less than one million dollars (\$1,000,000.00) per claim for bodily injury and property damage along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.6.1 and 2.6.2.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with policy limits of not less than one million dollars (\$1,000,000.00).

§ 2.6.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million dollars (\$2,000,000.00) per claim and two million dollars (\$2,000,000.00) in the aggregate.

Init.

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

§ 2.6.7 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as additional insureds on the Commercial General Liability, Automobile Liability, and any excess policies. The current certificates are attached hereto as Exhibit B, and the Architect shall provide updated certificates as the same expire.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner 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 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 Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services 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 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.

§ 3.1.4 The Architect shall submit information to the 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 Owner, Construction Manager, and Architect agree to the time limits established by the Project schedule, the Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 In addition to the responsibilities and Basic Services identified in Articles 2 and 3 respectively, the following services shall be the responsibility of the Architect without additional compensation:

- § 3.1.6.1 **Schedule Development and Monitoring;**
- § 3.1.6.2 **Programming (in coordination with Owner);**
- § 3.1.6.3 **(intentionally omitted);**
- § 3.1.6.4 **(intentionally omitted);**
- § 3.1.6.5 **On-Site Project Representation;**
- § 3.1.6.6 **Record Drawings (in coordination with Construction Manager);**
- § 3.1.6.7 **Structural Design; and**
- § 3.1.6.8 **Electrical and Plumbing Design**

§ 3.1.7 The Architect shall, at appropriate times, in coordination with the 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 respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect shall assist the Owner 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 Architect's Responsibilities.

§ 3.1.9.1 To the extent any existing facilities are present at the location of the Project, the Architect shall provide a review of such existing facilities, and shall make recommendations to Owner regarding the modification of such facilities that are necessary to complete the Project and to bring the existing facilities into compliance with applicable laws, codes, regulations and ordinances.

§ 3.1.9.2 The Architect shall be responsible for coordination and review of all Owner supplied data, and the dissemination of such data to Owner's and Architect's consultants and to the Construction Manager, any subcontractors and other parties as may need such data to perform their duties or responsibilities with respect to the Project.

§ 3.1.9.3 The Architect shall assist the Owner and Construction Manager in preparing any Project schedules or timelines and in monitoring the progress of Owner, Construction Manager, Architect, and any consultants, contractors, subcontractors or other parties that may be responsible for completing the tasks designated in such schedules or timelines. Architect shall make recommendations to Owner regarding changes and updates in schedules or timelines, as well as any action required by Owner as result of any failure or any person to comply with schedules or timelines.

§ 3.1.10 Bidding. The Architect shall assist the Owner in the development and preparation of (1) any bidding and procurement information and (2) the form of agreement between the Owner and the Construction Manager. The Architect shall assist the Owner in establishing a list of prospective construction managers if requested. The Architect shall assist the Owner, if requested in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contract with the Construction Manager.

§ 3.1.11 The Architect shall assist the Owner in bidding the Project by:

- .1 procuring the reproduction of appropriate Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda;
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner; and
- .6 **if requested by the Owner, participating in negotiations with the selected bidder.**

The Architect shall provide related assistance in bidding by the Construction Manager.

§ 3.1.12 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders upon Owner's written approval thereof.

§ 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 or Control Estimate, as applicable, 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 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 Control Estimate, as appropriate, from the Construction Manager. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; 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 and Construction Manager.

§ 3.2.2.1 If the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, unless the Owner either (1) gives written approval of an increase in the budget for the Cost of the Work (which may be by execution of the GMP Amendment) or (2) implements any other mutually acceptable alternative, then the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget. Based on the Owner's decision with respect to such recommendations, the Architect shall incorporate required modifications in the Design Development Phase Drawings, Specifications or other documentation.

§ 3.2.3 Upon authorization by the Owner, and subject to Section 4.3.1.15, 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 or Control Estimate.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review and comply with laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating sustainable design approaches, and consideration of the implementation of the Owner's sustainable objective, if any. The Architect shall reach an understanding with the Owner approved by the Owner in writing regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the 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 under Article 4.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction 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 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager and, at the Owner's option the Owner, to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality, or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

(Paragraph Deleted)

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval 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 approved 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 detail their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 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 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.

§ 3.5.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project and shall assist the Owner with filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner 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 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager and, at the Owner's option the Owner, to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and obtain the Owner's approval of the Construction Documents.

§ 3.5.6 At the acceptance of the GMP Amendment with the Construction Manager, the Architect shall incorporate all addenda, bid clarifications, changes accepted, alternatives and open alternatives into a "For Construction" set of drawings at the Owner's request.

§ 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™–2017, General Conditions of the Contract for Construction as modified by the Owner, which is attached hereto as Exhibit C (the "A201").

§ 3.6.1.2 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or the Owner's issuance of a Notice to Proceed to the Construction Manager. Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services terminates on the expiration of the period of correction for the Work as described in the Owner's contract with the Construction Manager.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall be a representative of and shall advise the Owner during the construction until final payment to the Construction Manager is paid, and at the Owner's direction, during the period of correction of the Work described in the Owner's contract with the Construction Manager. The Architect shall furnish architectural services and consultations necessary to correct minor construction defects encountered during such correction period. 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.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect as a representative of the Owner shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, 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 informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work. However, the Architect shall not have control over or charge of 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 acts or omissions of the Construction Manager, any Subcontractor, or their agents or employees, or of any other person or entities performing portions of the Work unless such other party is the Architect's subcontractor.

§ 3.6.2.1.1 The Architect will attend, as the Owner's representative, all concrete pours that are contributory to the structural integrity of any structure (including all concrete footings, grading beams, floor slabs, and concrete superstructure components if applicable) and to take all reasonable care to determine general conformance with the Contract Documents and to notify both the Owner and the Construction Manager of

any observed deficiencies. Furthermore, job site meetings shall be held weekly or at the Owner's discretion. Attendees will include the Owner, the Construction Manager's project manager and or superintendent and the Architect. Said meetings will begin at the time of Construction commencement and shall cease after substantial completion of the Work.

§ 3.6.2.2 The Architect has the authority and responsibility 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. The Architect shall promptly notify the Owner of any nonconforming Work and shall reject such nonconforming work unless the Owner objects to the rejection in writing with 24 hours of such notification. Performance of any additional inspection or testing which would result in additional costs to the Owner shall require advance notice to and the written approval of the Owner. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the 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 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. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.2.6 **The Architect shall be responsible for providing services, at no additional cost to the Owner, which are made necessary by major defects or deficiencies in the contractor's work which the Architect should have discovered through reasonable care.**

§ 3.6.2.7 **The Architect and the Owner at all times have access to the Work whenever it is in preparation or progress.**

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall 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 by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect 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 the approved

submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Construction Manager or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the 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. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Construction Manager or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review.

Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the 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.

§ 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 review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of 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 authorize minor changes in the Work not involving an adjustment to the Contract Sum or an extension of the Contract Time 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 Owner's approval and execution in accordance with the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe the Work to be added, deleted or modified in accordance with Article 4. Preparation of Change Orders which do not substantially affect the Project shall be included in the compensation under Article 11.1 and at no additional cost to the Owner.

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

§ 3.6.5.3 **The Architect shall review properly prepared, timely requests by the Owner or Construction Manager for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.**

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in a material change to the contract that may cause an adjustment in the Contract Time, Contract Sum of GMP, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Construction Manager, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Construction Manager.

§ 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 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 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.

§ 3.6.6.3 When the Work is found to be substantially complete, 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, if any, for final completion or correction of the Work.

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

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance and to make appropriate recommendations to the Owner.

§ 3.6.6.6 The Architect shall be responsible for a complete reevaluation of the Project during the eleventh (11th) month after Substantial Completion. Such services shall be furnished without additional charge except for travel and subsistence costs. Furthermore, the Architect shall report all deficiencies observed during said evaluation and shall be responsible for monitoring the correction of said deficiencies.

§ 3.6.6.7 Warranty Phase- The Architect shall be responsible for reporting all known building deficiencies to the Construction Manager for a period of one (1) year from the date of Substantial Completion. Additionally, the Architect shall monitor the progress of the reported corrections and furnish the Owner with written notification of completed corrections. The one-year period shall be extended to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. The obligation under this Section 3.6.6.7 shall survive the acceptance of the Work under the Construction Contract.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

| 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) |
|--|--|--|
| § 4.1.1 Assistance with selection of the Construction Manager | Not Provided | |
| § 4.1.2 Programming (B202™–2009) | Not Provided | |
| § 4.1.3 Multiple preliminary designs | Not Provided | |
| § 4.1.4 Measured drawings | Not Provided | |
| § 4.1.5 Existing facilities surveys | Not Provided | |
| § 4.1.6 Site Evaluation and Planning (B203™–2007) | Not Provided | |
| § 4.1.7 Building Information Modeling (E203™–2013) | Not Provided | |
| § 4.1.8 Civil engineering | Architect | Exhibit A |
| § 4.1.9 Landscape design | Architect | Exhibit A |
| § 4.1.10 Architectural Interior Design (B252™–2007) | Not Provided | |
| § 4.1.11 Value Analysis (B204™–2007) | Not Provided | |
| § 4.1.12 Detailed cost estimating | Not Provided | |
| § 4.1.13 On-site project representation (B207™–2008) | Not Provided | |
| § 4.1.14 Conformed construction documents | Not Provided | |
| § 4.1.15 As-Designed Record drawings | Not Provided | |
| § 4.1.16 As-Constructed Record drawings | Not Provided | |
| § 4.1.17 Post occupancy evaluation | Not Provided | |
| § 4.1.18 Facility Support Services (B210™–2007) | Not Provided | |
| § 4.1.19 Tenant-related services | Not Provided | |
| § 4.1.20 Coordination of Owner’s consultants | Not Provided | |
| § 4.1.21 Telecommunications/data design | Not Provided | |
| § 4.1.22 Security Evaluation and Planning (B206™–2007) | Not Provided | |
| § 4.1.23 Commissioning (B211™–2007) | Not Provided | |
| § 4.1.24 Extensive sustainable design services | Not Provided | |
| § 4.1.25 LEED® Certification (B214™–2012) | Not Provided | |
| § 4.1.26 Historic Preservation (B205™–2007) | Not Provided | |
| § 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007) | Not Provided | |

Services shown in the chart as not included in Additional Services include services that are included in this Agreement as Basic Services.

§ 4.2 Insert a **description** of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

§ 4.3 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 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

Init.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3 Services necessitated by the Owner's request for extensive sustainable design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .4 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations, or official interpretations;

(Paragraphs Deleted)

- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or, with Owner's approval, the Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing, a dispute resolution proceeding or legal proceeding, except (1) where the Architect is party thereto and (2) meetings of, presentations to or hearings before the Commissioners Court in which the subject Project is a topic of discussion (in each excluded case, such attendance being included herein as Basic Services);
- .11 Consultation concerning replacement of Work resulting from fire or other cause during construction;

(Paragraph Deleted)

- .13 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- and
- .15 Making revisions in Drawings, Specifications, and other documents resulting from substitutions included in the agreed to assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

(Paragraphs Deleted)

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 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 Construction 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 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.

(Paragraph Deleted)

§ 5.5 The Owner shall identify a representative 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.

§ 5.6 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants 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 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; provided however, that failure of the Owner to provide such notice shall in no way affect the Architect's obligations hereunder, nor shall such failure relieve the Architect from any liability for failure to discover and correct any such fault, defect, error, omission or inconsistency.

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

(Paragraph Deleted)

§ 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 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 costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The **Owner's budget for the Cost of the Work is provided in the Initial Information**, and may be adjusted throughout the Project as required under Sections 5.4 and 6.4. 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 shall 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. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. 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 Subject to Section 4.3, 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.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's

budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect of this Project. 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 and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Original drawings and specifications are the property of the Architect; however, the Project is the property of the Owner, and the Architect may not use the drawings and specifications therefore for any purpose not related to the Project without Owner's consent. Owner shall be furnished with such reproductions of drawings and specifications as Owner may reasonably require. Upon completion of the Work or any earlier termination of this Agreement, Architect will revise drawings to reflect changes made during construction and he will promptly furnish the Owner with one complete set of reproducible record prints. All such reproductions shall be property of the Owner who may use them without Architect's permission for any proper purpose related to the Project, including, but not limited to additions to or completion of the Project. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service for purposes of completing, using and maintaining the Project.

(Paragraph Deleted)

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

(Paragraph Deleted)

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

Init.

Construction Manager, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

§ 8.1.4 The Architect waives consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Article 9.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement may, if agreed to in writing by all parties after the claim or dispute has arisen, be submitted to mediation prior to the institution of legal or equitable proceedings by either party..

§ 8.2.2 The Owner and Architect may endeavor to resolve claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. However, nothing in this Agreement shall be construed as requiring mandatory mediation of claims, disputes or other matters in questions between the parties.

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails 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, the Architect shall give

Init.

seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

§ 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 performed prior to termination, together with Reimbursable Expenses then due.

(Paragraph Deleted)

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by the Owner. All references in this Agreement to the A201, including to the A201-2017, A201-2007 or the AIA Document A201-2017, shall mean to the modified version attached hereto as Exhibit C.. The term "Contractor" as used in A201-2017 shall mean the Construction Manager. The term "A101" as used in the A201-2017 shall mean to the AIA Document A133-2009 referenced in Section 1.1.5, with any references to any provision in the A101 being deemed to be references to the related provision of the A133-2009 or the GMP Amendment, as applicable. References in the A201-2017 to the Contract Sum shall be deemed to include reference to the GMP and references to the Contract shall be deemed to include reference to the GMP Amendment, as applicable.

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

§ 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 at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to 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.

Init.

(Paragraphs Deleted)

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except (1) to its employees, (2) to those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, (3) to its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) as required by law.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

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

.1 Six and one half percent (6.5 %) of the Cost of the Work, it being agreed that for purposed of determining the compensation due hereunder the Cost of the Work expressly excludes:

- .1 compensation to the Project Manager;
- .2 any amount paid directly by the Owner except amounts paid to the Construction Manager (excluding any such payment for Preconstruction Services); and
- .3 compensation to the Architect; and

.2 unless the Owner changes the scope of the Project, the maximum amount payable to the Architect for Basic Services is Three Hundred Fifteen Thousand-Two Hundred Fifty Dollars and Zero Cents (\$ 315,250.00)

§ 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.)

The hourly fee schedule set forth in Exhibit A-1; except that instead of this section, Section 11.4 below shall apply to services provided pursuant to Section 4.1.8.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

The hourly fee schedule set forth in Exhibit A-1.

§ 11.4 Compensation for Additional Services of the Architect’s consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent (0 %). With respect to the services provided pursuant to Section 4.1.8, such amount shall not exceed \$25,000 without obtaining Owner’s prior written approval.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

(Table Deleted)

| Phase | Percentage of Amount from Section 11.1 Allocated to Phase |
|-------|---|
| | |

Init.

| | |
|------------------------------|-----------------------------|
| Schematic Design Phase | Fifteen percent (15%) |
| Design Development Phase | Twenty percent (20%) |
| Construction Documents Phase | Forty percent (40%) |
| Bidding/Negotiation Phase | Five percent (5%) |
| Construction Phase | Twenty percent (20%) |
| Total Basic Compensation | One hundred percent (100%) |

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services as appropriate.

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the Owner-accepted Guaranteed Maximum Price Amendment or Control Estimate, as applicable, or (2) if the Guaranteed Maximum Price proposal or Control Estimate has not been accepted by the Owner, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

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

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See hourly rates on Exhibit A.

(Table Deleted)

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets with prior written approval from Owner;;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents, excluding five (5) copies of all Instruments of Service to be furnished to the Owner as part of Basic Services;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's consultants' expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;

Init.

.9 All taxes levied on professional services and on reimbursable expenses; and

.11 Other similar Project-related expenditures with prior written approval from Owner.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10%) of the expenses incurred.

(Paragraph Deleted)

(Paragraphs Deleted)

§ 11.10 Payments to the Architect

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

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice to the Commissioners' Court of the Owner. Amounts unpaid zero (0) days after the invoice presentation date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

At the rate established under Texas Government Code Section 2251.025.

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

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1 Additional Payment Terms

§ 12.1.1 Requests for Payment. On or before noon of the first Monday of each month during the performance of the services, Architect shall submit to Owner for its approval a request for payment ("Request for Payment") in form and substance satisfactory to Owner. Each Request for Payment shall set forth the amount due for Services rendered, a detailed breakdown of the amount and the sum of all prior payments. Owner shall review each such Request for Payment and may make such exceptions as Owner reasonably deems necessary or appropriate under the circumstances then existing. About five (5) working days after the Owner's governing body meets approving such payment, the Owner shall make payment to Architect in the amount so approved subject to Section 12.1.3 below.

§ 12.1.2 Final Payment. After final completion of the work and acceptance thereof by Owner, Architect shall submit a final request ("Final Request") which shall set forth all amounts due and remaining unpaid to Architect and upon approval thereof by Owner, Owner shall pay to Architect the amount due ("Final Payment") under such Final Request in accordance with the provisions of Section 12.1.1. The Final Request for Payment shall not be made until

Init.

Architect delivers to Owner an affidavit that so far as Architect has knowledge or information all materials and services over which Architect has control have been paid.

§ 12.1.3 Qualifications on Obligations to Pay. Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any payment (whether a payment under Section 12.1 hereof or Final Payment) to Architect hereunder if any one or more of the following conditions precedent exist:

- .1 Architect is in default of any of its obligations hereunder or otherwise is in default under this Agreement or any of the Contract Documents;
- .2 Any part of such payment is attributable to Services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to Services which were performed in accordance with this Agreement;
- .3 Architect has failed to make payments promptly to consultants or other third parties used in connection with the Services for which Owner has made payment to Architect;
- .4 If Owner, in Owner's good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Services in accordance with this Agreement, no additional payments will be due Architect hereunder unless and until Architect, at Architect's sole cost, performs a sufficient portion of the Services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to so complete the Services.

§ 12.1.4 No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the Services to which such partial payment relates or relieves Architect of any of its obligations hereunder with respect thereto.

§ 12.1.5 Architect shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the Services.

§ 12.1.6 Waiver. The making of the Final Payment shall constitute a waiver of all claims by the Owner except those arising from (1) faulty or defective Services appearing after completion of the Work, (2) failure of the Services to comply with the requirements of this Agreement or the Contract documents or (3) terms of any special warranties required by this Agreement or provided at law or in equity. The acceptance of Final Payment shall constitute a waiver of all claims by the Architect except those previously made in writing and identified by the Architect as unsettled at the time of the Final Request for Payment.

§ 12.1.7 In the event of a conflict between the provisions of this Section 12.1 and other provisions in this B133, the provisions of Section 12.1 shall control.

§ 12.2 OTHER CONDITIONS OR SERVICES

§ 12.2.1 Notwithstanding anything to the contrary contained in this Agreement, Owner and Architect agree and acknowledge that Owner is entering into this Agreement in reliance on Architect's experience and abilities with respect to performing the Services. The Architect accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Architect covenants with Owner to use its **best** efforts, skill, judgment and abilities to design the Project and to further the interests of Owner in accordance with the Owner's requirements and procedures, in accordance with the American Institute of Architects' professional standards, and in compliance with all applicable national, federal, state and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Prior to the commencement of construction, Architect shall certify in writing to Owner that the Drawings and Specifications and all drawings and the improvements when built in accordance therewith conform to all applicable governmental regulations, statutes and ordinances then in effect. Architect represents covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the Services.

§ 12.2.2 The Architect represents, covenants and agrees that all of the Services to be furnished by the Architect

Init.

under or pursuant to this Agreement, from the inception of the Agreement until the Project has been fully completed, shall be of the standard and quality which prevail among architects of similar experience, knowledge, skill and ability engaged in architectural practice throughout Texas under the same or similar circumstances involving the design and construction of a project such as the Project with all the amenities as set forth in the Drawings and Specifications.

§ 12.2.3 The Architect represents, covenants and agrees that its special talent, training and experience cause it to be the prime professional on the Project and that because of such talent and training, Architect envisions the construction of the Project in its entirety and possesses the special skills which enable it to recognize dangerous conditions that a reasonable, prudent Architect having such special skills could anticipate may arise from the proper use of the Project after accepted by the Owner; as the design professional, it has knowledge which will enable it to recognize specific dangers that may arise from the proper use of the Project after accepted by the Owner; and, it recognizes that any management, employees, and agents of the Owner, plus guests and visitors are within a class of foreseeable persons who will be relying on the Project being designed in a professional and safe manner.

§ 12.2.4 Architect represents, covenants and agrees that its Project Drawings and Specifications will be accurate and free from any material errors and the shop drawings that it must approve will be accurate and free from any material errors relating to design intent. Architect additionally represents, covenants and agrees to the following: the design of the Project will conform to its foreseeable use as a project with all the amenities as set forth in the Drawings and Specifications; the result of the Drawings and Specifications, if built in accordance therewith, will be suitable for purposes for which the Project is designed; the result of Architect's inspection of the Project will be suitable for purposes for which the Project is designed; and, the Project will be designed and the construction will be inspected in a workmanlike, professional manner and will be suitable for human occupancy and use. The Architect's responsibilities as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner of the Drawings and Specifications nor shall the Architect be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Architect's skill and knowledge in preparing the Drawings and Specifications. Notwithstanding the immediately preceding sentence, Architect may rely on any documents or information forwarded by Owner pursuant to Article 2 hereof.

§ 12.2.5 The Architect represents, covenants and agrees that the person directly in charge of the professional architectural work is duly registered under Tex. Rev. Civ. Stat. Ann., art. 249(a), as amended.

§ 12.2.6 Indemnification. To the fullest extent permitted by applicable law, the Architect and its agents, partners, and consultants (collectively "Indemnitors") shall and do agree to indemnify, protect, defend and hold harmless the Owner, Owner's respective Commissioners Court, elected officials, employees and agents (collectively "Indemnitees") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind or description (collectively "Liabilities") of any person or entity whomsoever arising out of, caused by or resulting from the performance of the Services or any part thereof provided that any such Liabilities (1) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to the injury to or destruction of tangible personal property including the loss of use and consequential damages resulting therefrom, and (2) are caused in whole or in part by any negligent act or omission of the Architect, anyone directly or indirectly employed by it or anyone for whose acts it may be legally liable. In this connection, it is agreed and understood that Architect shall not be responsible for any portion of the liability proximately caused by Owner's negligence or any other liability excluded by Texas Local Government Code Section 271.904.

§ 12.2.7 Joint and Several Liability. In the event more than one of the Indemnitors are connected with an accident or occurrence covered by the indemnification in Section 12.2.6 above, then each of such Indemnitors shall be jointly and severally responsible to the Indemnitees for indemnification and the ultimate responsibility among such Indemnitors for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee. The provisions of this Section 12.2 shall not be construed to eliminate or reduce any other indemnification or right which Owner or any of the Indemnitees has by law.

§ 12.2.8 Insurance. Architect agrees to maintain a General and Professional Liability Insurance Policy to cover the liability of Architect connected with the performance of the services or any service covered by this Agreement in an amount equal to or exceeding the greater of the value of the Project and any other amounts specified in the Agreement, unless specifically agreed to by the Owner in a separate written agreement. Any such policy must either

be for any occurrence as a result of that performance or, if limited to claims made, include at least a five (5) year extended reporting period. Architect agrees to furnish Owner Certificates of Insurance showing the said Policy to be fully paid, in full force and effect, and not subject to modification or change for the period specified in this Agreement.

§ 12.2.9 Time Extensions for Unusually Severe Weather. This provision specifies the procedures for the determination of time extensions for unusually severe weather. The listing below defines the monthly anticipated adverse weather for the Contract period and is based on National Oceanic and Atmospheric Administration data for the geographical location of the Project:

| Monthly Anticipated Adverse Weather Calendar Days | | | | | | | | | | | | |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------|
| Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Annual |
| 2 | 2 | 1 | 2 | 3 | 4 | 3 | 3 | 5 | 3 | 2 | 2 | 32 |

.1 Determination. The above schedule of anticipated adverse weather will constitute the base line for monthly (or portion thereof) weather time evaluations. Upon acknowledgment of the notice to proceed and continuing throughout the Contract on a monthly basis, actual adverse weather days will be recorded on a calendar day basis (including weekends and holidays) and compared to the monthly anticipated adverse weather tabulated above. The term actual adverse weather days shall include days impacted by actual adverse weather days.

.2 The number of actual adverse weather days shall be calculated chronologically from the first to the last day in each month. Once the number of actual adverse weather days anticipated above have been incurred, the Owner will examine any subsequently occurring adverse weather days to determine whether the Construction Manager is entitled to a time extension. These subsequently occurring adverse weather days must prevent work for 50 percent or more of the Construction Manager's work day and delay work critical to the timely completion of the Project. The Owner will convert any delays to meeting the above requirements to calendar days and issue a Change Order in accordance with the Contract Documents.

.3 The Construction Manager's schedule must reflect the above anticipated adverse weather delays on all weather dependent activities.

§ 12.3 In the event of a conflict between the provisions of this Article 12, and other provisions in this AIA B133-2014, the provisions of Article 12 shall control.

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:

- .1 AIA Document B133™–2014, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition

(Paragraph Deleted)

(Paragraph Deleted)

- .2 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

- .1 Exhibit A Initial Information:

A-1 Proposal (Includes Scope of Work and Rate Schedule)

Init.

AIA Document B133™ – 2014. Copyright © 2014 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 15:39:07 ET on 02/14/2019 under Order No. 1870689069 which expires on 06/19/2019, and is not for resale.
User Notes:

(3B9ADA5A)

A-2 Request for Qualifications

.2 Exhibit B Insurance Certificates

.3 Exhibit C A201-2017



Init.

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

(Table Deleted)

OWNER:

THE COUNTY OF HIDALGO

By: _____
Ramon Garcia,
County Judge

ARCHITECT:

**RIKE-OGDEN-FIGUEROA-ALEX ARCHITECTS,
INC.**

By: _____
Michael E. Alex
AIA Principal and Vice President

ATTEST:

By: _____
Arturo Guajardo Jr., County Clerk

**APPROVED AS TO FORM FOR COUNTY:
ATLAS, HALL & RODRIGUEZ, LLP**

By: _____
Stephen L. Crain



Init.

/

AIA Document B133™ – 2014. Copyright © 2014 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 15:39:07 ET on 02/14/2019 under Order No. 1870689069 which expires on 06/19/2019, and is not for resale.
User Notes:

(3B9ADA5A)

EXHIBIT A

to

Agreement between
Hidalgo County and Rike - Ogden - Figueroa - Alex Architects, Inc.
(Hidalgo County Services Facilities and Justice Center)

Initial Information

- A-1 Proposal (Includes Scope of Work and Rate Schedule)
- A-2 Request for Qualifications

Init.

EXHIBIT B

to

Agreement between
Hidalgo County and Rike - Ogden - Figueroa - Alex Architects, Inc.
(Hidalgo County Services Facilities and Justice Center)

Insurance Certificates



Init.

/

EXHIBIT C

to

Agreement between
Hidalgo County and Rike - Ogden - Figueroa - Alex Architects, Inc.
(Hidalgo County Services Facilities and Justice Center)

AIA Document A201-2017 General Conditions of the Contract for Construction, as modified



Init.

Additions and Deletions Report for AIA® Document B133™ – 2014

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:39:07 ET on 02/14/2019.

PAGE 1

AGREEMENT made as of the 20th day of November in the year 2018.

...

County of Hidalgo
100 East Cano, 2nd Floor
Edinburg, Texas 78539
(956) 318-2600

...

and the Architect:

...

Rike-Ogden-Figueroa-Alex Architects, Inc., a Texas corporation
1007 Walnut Avenue
McAllen, Texas 78501
(956) 686-7771

...

(Name, location and detailed description)

...

Design and Construction of Hidalgo County Services Facilities and Justice Center

...

1212 South 25th Street (East Side of Expressway 281)
Edinburg, Texas 78539
(956) 292-7000 Ext. 5600

PAGE 3

TABLE OF ARTICLES

...

EXHIBIT A INITIAL INFORMATION

...

EXHIBIT A-1 PROPOSAL

...

EXHIBIT A-2 REQUEST FOR QUALIFICATIONS

...

EXHIBIT B INSURANCE CERTIFICATES

...

EXHIBIT C A201

...

The Initial Information is set forth in Exhibit A, which consists of the Architect's revised proposal (including fee structure) dated October 29, 2018, attached hereto as Exhibit A-1, which was prepared after multiple meetings with the Owner. The alternates package referenced on page 3 of the proposal is not part of the Project, and no fees will be due to the Architect for any such package

Additional information is included in the Request for Qualifications, selected portions of which are attached hereto as Exhibit A-2.

PAGE 4

The frontage property is approximately 5.11 acres and the rear property is approximately 1.5 acres. Approximately 6.61 total acres.

Facilities to be located on at 1212 South 25th Street (East side of Expressway 281), Edinburg, Texas 78539 – (Legal Description: Tex-Mex Survey Lot 7-E 325'- W345"- S 200' N 250', Block 270 (1.5 Acreage) and Tex-Mex Survey Lot 7 NW 6.60 Exc. NW 1.49 5.11 Block 270 (Acreage 5.11)

...

is Four Million Eight Hundred Forty Thousand Dollars (\$ 4,840,000.00). As set forth in Section 6.1, this amount does not include compensation of the Architect or the compensation of the Construction Manager for Preconstruction Phase services.

...

§ 1.1.4 The Owner’s anticipated design and construction ~~schedule~~:schedule (which may be delayed by the County in its discretion):

...

June 2019

...

May 2019

...

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following ~~agreement~~:agreement as such agreement is modified by the Owner:

...

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.

PAGE 5

See the Request for Qualifications attached hereto as Exhibit A-2. In the event of a direct conflict between the terms contained in this B133 portion of the Agreement and other parts of this Agreement, the terms in this B133 shall prevail.

...

County of Hidalgo
100 East Cano, 2nd Floor
Edinburg, TX 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.)

...

.

...

1 Valde Guerra, Executive Officer

...

Hidalgo County Executive Office

...

2818 South Business Highway 281
Edinburg, Texas 78539

...

(956) 292-7000 Ext. 5600

...

.2 Glinda Pacheco, Executive Office Analyst

Hidalgo County Executive Office
2818 South Business Highway 281
Edinburg, Texas 78539
(956) 292-7000 Ext. 5600

.3 B2Z Engineering, LLC

P O Box 2724
McAllen, Texas 78502
(956) 580-3773

...

The information in this Section 1.1.1.9 may be changed at the Owner's discretion.

...

Construction Manager will be retained after execution of this Agreement.

PAGE 6

N/A

...

SAMES, Inc.

...

The Chase Tower

...

200 South 10th Street, Suite 1500

...

McAllen, Texas 78501

...

(956) 381-6480

...

Millennium Engineers Group, Inc.

...

5804 North Gumwood

...

Pharr, Texas 78577

...

(956) 702-8500

...

Project Manager:

...

B2Z Engineering

...

PO Box 2724

...

McAllen, TX 78502

...

(956) 585-3773

...

(While the Project Manager is sometimes referred to as a “construction manager”, the parties acknowledge the Project Manager is not the Construction Manager as such term is used in this Agreement.

...

The information in this Section 1.1.1.10 is for informational purposes only, and may be changed at the Owner's discretion.

...

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4.2.3:

...

Michael E. Alex, AIA Principal and Vice President
Rike-Ogden-Figueroa-Alex Architects, Inc
1007 Walnut Avenue
McAllen, Texas 78503
(956) 686-7771

PAGE 7

TBD

...

.2 Mechanical Electrical and Plumbing Engineer:

...

TBD

...

.3 Electrical-Civil Engineer:

...

Not applicable.

...

Civil Engineer:

...

Mariano Garcia, PE

...

M. Garcia Engineering, LLC

...

400 Nolana Suite H2

PAGE 8

McAllen, Texas 78504

...

(956) 687-9421

...

N/A

...

§ 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 ~~appropriately adjust the schedule, the Architect's services and the Architect's compensation.~~ negotiate adjustments in schedule, compensation and Changes in the Work in accordance with Section 3.6..

...

§ 2.2 ~~The Architect shall perform its services consistent~~ In accordance with Section 271.904 of the Texas Local Government Code, the Architect shall perform its services (1) with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. ~~under the same or similar circumstances and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect.~~

...

§ 2.5.1 ~~The Architect shall be a representative of the Owner with respect to this Project, and shall not engage in any activity or course of conduct which is detrimental to the Owner's best interests. The Architect shall take all reasonable steps necessary to comply with the terms and conditions set forth in Section 3.6.2—~~ **Evaluation of the Work.**

...

§ 2.6 Insurance. The Architect shall maintain the following insurance for the duration of this Agreement. ~~If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost as set forth in Section 11.8.3.~~

...

§ 2.6.1 Commercial General Liability with policy limits of not less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) in the aggregate for bodily injury and property damage.

...

§ 2.6.2 Automobile Liability covering vehicles owned by the Architect and non-owned vehicles used by the Architect with policy limits of not less than ~~(\$ one million dollars (\$1,000,000.00) per claim and (\$) in the aggregate~~ for bodily injury and property damage along with any other statutorily required automobile coverage.

...

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with policy limits of not less than one million dollars (\$1,000,000.00).

...

§ 2.6.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million dollars (\$2,000,000.00) per claim and two million dollars (\$2,000,000.00) in the aggregate.

PAGE 9

§ 2.6.7 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as additional insureds on the Commercial General Liability, Automobile Liability, and any excess policies. The current certificates are attached hereto as Exhibit B, and the Architect shall provide updated certificates as the same expire.

...

§ 3.1.5 Once the Owner, Construction Manager, and Architect agree to the time limits established by the Project schedule, the ~~Owner and~~ Architect shall not exceed them, 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.~~ **3.1.6 In addition to the responsibilities and Basic Services identified in Articles 2 and 3 respectively, the following services shall be the responsibility of the Architect without additional compensation:**

...

§ 3.1.6.1 Schedule Development and Monitoring;

...

§ 3.1.6.2 Programming (in coordination with Owner);

...

§ 3.1.6.3 (intentionally omitted);

...

§ 3.1.6.4 (intentionally omitted);

...

§ 3.1.6.5 On-Site Project Representation;

...

§ 3.1.6.6 Record Drawings (in coordination with Construction Manager);

...

§ 3.1.6.7 Structural Design; and

...

§ 3.1.6.8 Electrical and Plumbing Design

PAGE 10

§ 3.1.9 Architect's Responsibilities.

...

§ 3.1.9.1 To the extent any existing facilities are present at the location of the Project, the Architect shall provide a review of such existing facilities, and shall make recommendations to Owner regarding the modification of such facilities that are necessary to complete the Project and to bring the existing facilities into compliance with applicable laws, codes, regulations and ordinances.

...

§ 3.1.9.2 The Architect shall be responsible for coordination and review of all Owner supplied data, and the dissemination of such data to Owner's and Architect's consultants and to the Construction Manager, any subcontractors and other parties as may need such data to perform their duties or responsibilities with respect to the Project.

...

§ 3.1.9.3 The Architect shall assist the Owner and Construction Manager in preparing any Project schedules or timelines and in monitoring the progress of Owner, Construction Manager, Architect, and any consultants, contractors, subcontractors or other parties that may be responsible for completing the tasks designated in such schedules or timelines. Architect shall make recommendations to Owner regarding changes and updates in schedules or timelines, as well as any action required by Owner as result of any failure or any person to comply with schedules or timelines.

...

§ 3.1.10 Bidding. The Architect shall assist the Owner in the development and preparation of (1) any bidding and procurement information and (2) the form of agreement between the Owner and the Construction Manager. The Architect shall assist the Owner in establishing a list of prospective construction managers if requested. The Architect shall assist the Owner, if requested in (1) obtaining either competitive bids or negotiated proposals; (2)

confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contract with the Construction Manager.

...

§ 3.1.11 The Architect shall assist the Owner in bidding the Project by:

...

.1 procuring the reproduction of appropriate Bidding Documents for distribution to prospective bidders;

...

.2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;

...

.3 organizing and conducting a pre-bid conference for prospective bidders;

...

.4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda;

...

.5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner; and

...

.6 if requested by the Owner, participating in negotiations with the selected bidder.

...

The Architect shall provide related assistance in bidding by the Construction Manager.

...

§ 3.1.12 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders upon Owner's written approval

...

§ thereof.

...

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

PAGE 11

§ 3.2.2.1 If the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, unless the Owner either (1) gives written approval of an increase in the budget for the Cost of the Work (which may be by execution of the GMP Amendment) or (2) implements any other mutually acceptable alternative, then the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget. Based on the Owner's decision with respect to such recommendations, the Architect shall incorporate required modifications in the Design Development Phase Drawings, Specifications or other documentation.

...

§ 3.3.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review and comply with laws, codes, and regulations applicable to the Architect's services.

...

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating sustainable design approaches, and consideration of the implementation of the Owner's sustainable objective, if any. The Architect shall reach an understanding with the Owner approved by the Owner in writing regarding the requirements of the Project.

PAGE 12

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager and, at the Owner's option the Owner, to review the Schematic Design Documents.

...

~~§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.~~

...

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval 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 approved 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-detail their quality levels.

...

§ 3.5.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project and shall assist the Owner with filing documents required for the approval of governmental authorities having jurisdiction over the Project.

...

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner 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.

PAGE 13

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager and, at the Owner's option the Owner, to review the Construction Documents.

...

§ 3.5.6 At the acceptance of the GMP Amendment with the Construction Manager, the Architect shall incorporate all addenda, bid clarifications, changes accepted, alternatives and open alternatives into a "For Construction" set of drawings at the Owner's request.

...

§ 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, A201™-2017, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. Construction as modified by the Owner, which is attached hereto as Exhibit C (the "A201").

...

§ 3.6.1.2 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or the Owner's issuance of a Notice to Proceed to the Construction Manager. Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment. expiration of the period of correction for the Work as described in the Owner's contract with the Construction Manager.

...

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall be a representative of and shall advise the Owner during the construction until final payment to the Construction Manager is paid, and at the Owner's direction, during the period of correction of the Work described in the Owner's contract with the Construction Manager. The Architect shall furnish architectural services and consultations necessary to correct minor construction defects encountered during such correction period. 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.

...

§ 3.6.2.1 The Architect as a representative of the Owner shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, 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 reasonably-informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work. However, the Architect shall not have control over or charge of 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 acts or omissions of the Construction Manager, any Subcontractor, or their agents or employees, or of any other person or entities performing portions of the Work unless such other party is the Architect's subcontractor.

PAGE 14

§ 3.6.2.1.1 The Architect will attend, as the Owner's representative, all concrete pours that are contributory to the structural integrity of any structure (including all concrete footings, grading beams, floor slabs, and concrete superstructure components if applicable) and to take all reasonable care to determine general conformance with the Contract Documents and to notify both the Owner and the Construction Manager of any observed deficiencies. Furthermore, job site meetings shall be held weekly or at the Owner's discretion. Attendees will include the Owner, the Construction Manager's project manager and or superintendent and the Architect. Said meetings will begin at the time of Construction commencement and shall cease after substantial completion of the Work.

...

§ 3.6.2.2 The Architect has the authority and responsibility 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. The Architect shall promptly notify the Owner of any nonconforming Work and shall reject such nonconforming work unless the Owner objects to the rejection in writing with 24 hours of such notification. Performance of any additional inspection or testing which would result in additional costs to the Owner shall require advance notice to and the written approval of the Owner. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

...

§ 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. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, ~~shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.~~ Manager. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

...

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, ~~A201-2017~~, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

...

§ 3.6.2.6 The Architect shall be responsible for providing services, at no additional cost to the Owner, which are made necessary by major defects or deficiencies in the contractor's work which the Architect should have discovered through reasonable care.

...

§ 3.6.2.7 The Architect and the Owner at all times have access to the Work whenever it is in preparation or

...

§-progress.

...

§ 3.6.3 Certificates for Payment to Construction Manager

...

§ 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.~~

PAGE 15

§ 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 the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Construction Manager or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review.

...

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the 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. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Construction Manager or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the 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.

...

§ 3.6.4.4 ~~Subject to the provisions of Section 4.3, the~~ The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the

requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

...

§ 3.6.5.1 The Architect may authorize minor changes in the Work not involving an adjustment to the Contract Sum or an extension of the Contract Time that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe the Work to be added, deleted or modified in accordance with Article 4. Preparation of Change Orders which do not substantially affect the Project shall be included in the compensation under Article 11.1 and at no additional cost to the Owner.

...

§ 3.6.5.3 The Architect shall review properly prepared, timely requests by the Owner or Construction Manager for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

PAGE 16

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in a material change to the contract that may cause an adjustment in the Contract Time, Contract Sum of GMP, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Construction Manager, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Construction

...

§-Manager.

...

§ 3.6.6 Project Completion

...

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and ~~performance~~ performance and to make appropriate recommendations to the Owner.

...

§ 3.6.6.6 The Architect shall be responsible for a complete reevaluation of the Project during the eleventh (11th) month after Substantial Completion. Such services shall be furnished without additional charge except for travel and subsistence costs. Furthermore, the Architect shall report all deficiencies observed during said evaluation and shall be responsible for monitoring the correction of said deficiencies.

...

§ 3.6.6.7 Warranty Phase- The Architect shall be responsible for reporting all known building deficiencies to the Construction Manager for a period of one (1) year from the date of Substantial Completion. Additionally, the Architect shall monitor the progress of the reported corrections and furnish the Owner with written notification of completed corrections. The one-year period shall be extended to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. The obligation under this Section 3.6.6.7 shall survive the acceptance of the Work under the Construction Contract.

PAGE 17

| <u>Services</u> | <u>Responsibility</u> <i>(Architect, Owner or Not Provided)</i> | <u>Location of Service Description</u> <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i> |
|--|---|---|
| <u>§ 4.1.1 Assistance with selection of the Construction Manager</u> | <u>Not Provided</u> | |
| <u>§ 4.1.2 Programming (B202™-2009)</u> | <u>Not Provided</u> | |
| <u>§ 4.1.3 Multiple preliminary designs</u> | <u>Not Provided</u> | |
| <u>§ 4.1.4 Measured drawings</u> | <u>Not Provided</u> | |
| <u>§ 4.1.5 Existing facilities surveys</u> | <u>Not Provided</u> | |
| <u>§ 4.1.6 Site Evaluation and Planning (B203™-2007)</u> | <u>Not Provided</u> | |
| <u>§ 4.1.7 Building Information Modeling (E203™-2013)</u> | <u>Not Provided</u> | |
| <u>§ 4.1.8 Civil engineering</u> | <u>Architect</u> | <u>Exhibit A</u> |
| <u>§ 4.1.9 Landscape design</u> | <u>Architect</u> | <u>Exhibit A</u> |
| <u>§ 4.1.10 Architectural Interior Design (B252™-2007)</u> | <u>Not Provided</u> | |
| <u>§ 4.1.11 Value Analysis (B204™-2007)</u> | <u>Not Provided</u> | |
| <u>§ 4.1.12 Detailed cost estimating</u> | <u>Not Provided</u> | |
| <u>§ 4.1.13 On-site project representation (B207™-2008)</u> | <u>Not Provided</u> | |
| <u>§ 4.1.14 Conformed construction documents</u> | <u>Not Provided</u> | |
| <u>§ 4.1.15 As-Designed Record drawings</u> | <u>Not Provided</u> | |
| <u>§ 4.1.16 As-Constructed Record drawings</u> | <u>Not Provided</u> | |
| <u>§ 4.1.17 Post occupancy evaluation</u> | <u>Not Provided</u> | |
| <u>§ 4.1.18 Facility Support Services (B210™-2007)</u> | <u>Not Provided</u> | |
| <u>§ 4.1.19 Tenant-related services</u> | <u>Not Provided</u> | |
| <u>§ 4.1.20 Coordination of Owner’s consultants</u> | <u>Not Provided</u> | |
| <u>§ 4.1.21 Telecommunications/data design</u> | <u>Not Provided</u> | |
| <u>§ 4.1.22 Security Evaluation and Planning (B206™-2007)</u> | <u>Not Provided</u> | |

| | | |
|--|--------------|--|
| § 4.1.23 Commissioning (B211™-2007) | Not Provided | |
| § 4.1.24 Extensive sustainable design services | Not Provided | |
| § 4.1.25 LEED® Certification (B214™-2012) | Not Provided | |
| § 4.1.26 Historic Preservation (B205™-2007) | Not Provided | |
| § 4.1.27 Furniture, Furnishings, and Equipment Design (B253™-2007) | Not Provided | |

| Services | Responsibility <i>(Architect, Owner or Not Provided)</i> | Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i> |
|--|--|--|
| § 4.1.1 Assistance with selection of the Construction Manager | | |
| § 4.1.2 Programming (B202™ 2009) | | |
| § 4.1.3 Multiple preliminary designs | | |
| § 4.1.4 Measured drawings | | |
| § 4.1.5 Existing facilities surveys | | |
| § 4.1.6 Site evaluation and planning (B203™ 2007) | | |
| § 4.1.7 Building information modeling (E203™ 2013) | | |
| § 4.1.8 Civil engineering | | |
| § 4.1.9 Landscape design | | |
| § 4.1.10 Architectural interior design (B252™ 2007) | | |
| § 4.1.11 Value analysis (B204™ 2007) | | |
| § 4.1.12 Detailed cost estimating | | |
| § 4.1.13 On-site project representation (B207™ 2008) | | |
| § 4.1.14 Conformed construction documents | | |
| § 4.1.15 As-designed record drawings | | |
| § 4.1.16 As-constructed record drawings | | |
| § 4.1.17 Post occupancy evaluation | | |
| § 4.1.18 Facility support services (B210™ 2007) | | |
| § 4.1.19 Tenant-related services | | |
| § 4.1.20 Coordination of Owner's consultants | | |
| § 4.1.21 Telecommunications/data design | | |
| § 4.1.22 Security evaluation and planning (B206™-2007) | | |
| § 4.1.23 Commissioning (B211™ 2007) | | |
| § 4.1.24 Extensive environmentally responsible design | | |
| § 4.1.25 LEED® certification (B214™ 2012) | | |
| § 4.1.26 Historic preservation (B205™ 2007) | | |
| § 4.1.27 Furniture, furnishings, and equipment design (B253™ 2007) | | |
| ... | | |

Services shown in the chart as not included in Additional Services include services that are included in this Agreement as Basic Services.

~~.5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;~~

...

~~.6 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;~~

...

~~.7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or or, with Owner's approval, the Construction Manager;~~

...

~~.8 Preparation for, and attendance at, a public presentation, meeting or hearing;hearing~~

...

~~.9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except (1) where the Architect is party thereto;~~

...

~~.10 Evaluation of the qualifications of bidders or persons providing proposals; thereto and (2) meetings of, presentations to or hearings before the Commissioners Court in which the subject Project is a topic of discussion (in each excluded case, such attendance being included herein as Basic Services);~~

...

~~.12 Assistance to the Initial Decision Maker, if other than the Architect;~~

...

~~.14 Services necessitated by the Owner's delay in engaging the Construction Manager; and~~

...

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

...

~~.1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule agreed to by the Architect;~~

...

~~.2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field~~

conditions, other Owner provided information, Construction Manager prepared coordination drawings, or prior Project correspondence or documentation;

...

~~.3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;~~

...

~~.4 Evaluating an extensive number of Claims as the Initial Decision Maker;~~

...

~~.5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom; or~~

...

~~.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.~~

...

~~§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:~~

...

~~.1 () reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager~~

...

~~.2 () visits to the site by the Architect over the duration of the Project during construction~~

...

~~.3 () inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~

...

~~.4 () inspections for any portion of the Work to determine final completion~~

...

~~§ 4.3.4 If the services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.~~

...

~~§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the~~

Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. ~~Project.~~ Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

PAGE 19

~~§ 5.4.1~~ The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and 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.~~

...

§ 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. Service; provided however, that failure of the Owner to provide such notice shall in no way affect the Architect's obligations hereunder, nor shall such failure relieve the Architect from any liability for failure to discover and correct any such fault, defect, error, omission or inconsistency.

...

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

PAGE 20

~~§ 5.13~~ Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. ~~The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.~~

...

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial ~~Information,~~ Information, and may be adjusted throughout the Project as required under Sections 5.4 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

...

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development ~~Phase exceeds~~ Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

PAGE 21

§ 7.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect of this Project. 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 and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Original drawings and specifications are the property of the Architect; however, the Project is the property of the Owner, and the Architect may not use the drawings and specifications therefore for any purpose not related to the Project without Owner's consent. Owner shall be furnished with such reproductions of drawings and specifications as Owner may reasonably require. Upon completion of the Work or any earlier termination of this Agreement, Architect will revise drawings to reflect changes made during construction and he will promptly furnish the Owner with one complete set of reproducible record prints. All such reproductions shall be property of the Owner who may use them without Architect's permission for any proper purpose related to the Project, including, but not limited to additions to or completion of the Project. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

...

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service for purposes of completing, using and maintaining the Project.

...

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

...

§ 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, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

PAGE 22

~~§ 8.1.4~~ The Architect and Owner ~~waive~~ waives consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This ~~mutual~~ waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in ~~Section 9.7.~~ Article 9.

...

~~§ 8.2.1~~ Any claim, dispute or other matter in question arising out of or related to this Agreement ~~shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~ may, if agreed to in writing by all parties after the claim or dispute has arisen, be submitted to mediation prior to the institution of legal or equitable proceedings by either party.

...

~~§ 8.2.2~~ The Owner and Architect ~~shall~~ may endeavor to resolve claims, disputes and other matters in question between them by mediation which, ~~unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.~~ mediation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. ~~The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~ However, nothing in this Agreement shall be construed as requiring mandatory mediation of claims, disputes or other matters in questions between the parties.

...

Litigation in a court of competent jurisdiction

...

§ 8.3 Arbitration

...

~~§ 8.3.1~~ If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

...

~~§ 8.3.1.1~~ A demand for arbitration shall be made ~~no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

...

~~§ 8.3.2~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

...

~~§ 8.3.3~~ The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

...

~~§ 8.3.4 Consolidation or Joinder~~

...

~~§ 8.3.4.1~~ Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

...

~~§ 8.3.4.2~~ Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

...

~~§ 8.3.4.3~~ The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

PAGE 23

~~§ 9.2~~ If the Owner suspends the Project, Project for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

...

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

...

~~§ 9.6~~ In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

...

~~§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~

...

~~§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.7.~~

...

~~§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3. located.~~

...

~~§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, A201-2017, General Conditions of the Contract for Construction, except as modified in this Agreement, as modified by the Owner. All references in this Agreement to the A201, including to the A201-2017, A201-2007 or the AIA Document A201-2017, shall mean to the modified version attached hereto as Exhibit C.. The term "Contractor" as used in A201-2007 shall mean the Construction Manager. A201-2017 shall mean the Construction Manager. The term "A101" as used in the A201-2017 shall mean to the AIA Document A133-2009 referenced in Section 1.1.5, with any references to any provision in the A101 being deemed to be references to the related provision of the A133-2009 or the GMP Amendment, as applicable. References in the A201-2017 to the Contract Sum shall be deemed to include reference to the GMP and references to the Contract shall be deemed to include reference to the GMP Amendment, as applicable.~~

...

~~§ 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.~~

PAGE 24

~~§ 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 proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.~~

...

~~§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except (1) to (1)-its employees, (2) to those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) to its consultants and~~

contractors whose contracts include similar restrictions on the use of confidential ~~information~~-information, or (4) as required by law.

...

.1 Six and one half percent (6.5 %) of the Cost of the Work, it being agreed that for purposes of determining the compensation due hereunder the Cost of the Work expressly excludes:

- .1 compensation to the Project Manager;
- .2 any amount paid directly by the Owner except amounts paid to the Construction Manager (excluding any such payment for Preconstruction Services); and
- .3 compensation to the Architect; and

.2 unless the Owner changes the scope of the Project, the maximum amount payable to the Architect for Basic Services is Three Hundred Fifteen Thousand-Two Hundred Fifty Dollars and Zero Cents (\$ 315,250.00)

...

The hourly fee schedule set forth in Exhibit A-1; except that instead of this section, Section 11.4 below shall apply to services provided pursuant to Section 4.1.8.

...

The hourly fee schedule set forth in Exhibit A-1.

...

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent (%), ~~or as otherwise stated below: 0 %~~. With respect to the services provided pursuant to Section 4.1.8, such amount shall not exceed \$25,000 without obtaining Owner's prior written approval.

...

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

...

| | | |
|------------------------------|-----------------------|--------|
| Schematic Design Phase | percent-(| %) |
| Design Development Phase | percent-(| %) |
| Construction Documents Phase | percent-(| %) |
| Construction Phase | percent-(| %) |
| <hr/> | | |
| Total Basic Compensation | one hundred percent-(| 100 %) |

PAGE 25

| Phase | Percentage of Amount from Section 11.1 Allocated to Phase |
|------------------------------|--|
| Schematic Design Phase | Fifteen percent (15%) |
| Design Development Phase | Twenty percent (20%) |
| Construction Documents Phase | Forty percent (40%) |
| Bidding/Negotiation Phase | Five percent (5%) |
| Construction Phase | Twenty percent (20%) |

| | |
|--------------------------|----------------------------|
| Total Basic Compensation | One hundred percent (100%) |
|--------------------------|----------------------------|

...

See hourly rates on Exhibit A.

...

Employee or Category

Rate (\$0.00)

...

.2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and ~~extranets;~~extranets with prior written approval from Owner;

...

.4 Printing, reproductions, plots, standard form ~~documents;~~documents, excluding five (5) copies of all Instruments of Service to be furnished to the Owner as part of Basic Services;

PAGE 26

.9 All taxes levied on professional services and on reimbursable ~~expenses;~~

...

~~.10 Site office expenses; and~~

...

.11 Other similar Project-related ~~expenditures.~~expenditures with prior written approval from Owner.

...

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10%) of the expenses incurred.

...

~~§ 11.8.3 If the insurance requirements listed in Section 2.6 exceed the types and limits the Architect normally maintains and the Architect incurred additional costs to satisfy such requirements, the Owner shall reimburse the Architect for such costs as set forth below:~~

...

§ 11.9 Compensation for Use of Architect's Instruments of Service

...

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

...

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

...

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. ~~Amounts unpaid~~ (invoice to the Commissioners' Court of the Owner. ~~Amounts unpaid zero (0) days after the invoice presentation date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.~~

...

At the rate established under Texas Government Code Section 2251.025.

...

%

...

§ 12.1 Additional Payment Terms

...

§ 12.1.1 Requests for Payment. On or before noon of the first Monday of each month during the performance of the services, Architect shall submit to Owner for its approval a request for payment ("Request for Payment") in form and substance satisfactory to Owner. Each Request for Payment shall set forth the amount due for Services rendered, a detailed breakdown of the amount and the sum of all prior payments. Owner shall review each such Request for Payment and may make such exceptions as Owner reasonably deems necessary or appropriate under the circumstances then existing. About five (5) working days after the Owner's governing body meets approving such payment, the Owner shall make payment to Architect in the amount so approved subject to Section 12.1.3 below.

PAGE 27

§ 12.1.2 Final Payment. After final completion of the work and acceptance thereof by Owner, Architect shall submit a final request ("Final Request") which shall set forth all amounts due and remaining unpaid to Architect and upon approval thereof by Owner, Owner shall pay to Architect the amount due ("Final Payment") under such Final Request in accordance with the provisions of Section 12.1.1. The Final Request for Payment shall not be made until Architect delivers to Owner an affidavit that so far as Architect has knowledge or information all materials and services over which Architect has control have been paid.

...

§ 12.1.3 Qualifications on Obligations to Pay. Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any payment (whether a payment under Section 12.1 hereof or Final Payment) to Architect hereunder if any one or more of the following conditions precedent exist:

...

.1 Architect is in default of any of its obligations hereunder or otherwise is in default under this Agreement or any of the Contract Documents;

...

.2 Any part of such payment is attributable to Services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to Services which were performed in accordance with this Agreement;

...

.3 Architect has failed to make payments promptly to consultants or other third parties used in connection with the Services for which Owner has made payment to Architect;

...

.4 If Owner, in Owner's good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Services in accordance with this Agreement, no additional payments will be due Architect hereunder unless and until Architect, at Architect's sole cost, performs a sufficient portion of the Services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to so complete the Services.

...

§ 12.1.4 No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the Services to which such partial payment relates or relieves Architect of any of its obligations hereunder with respect thereto.

...

§ 12.1.5 Architect shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the Services.

...

§ 12.1.6 Waiver. The making of the Final Payment shall constitute a waiver of all claims by the Owner except those arising from (1) faulty or defective Services appearing after completion of the Work, (2) failure of the Services to comply with the requirements of this Agreement or the Contract documents or (3) terms of any special warranties required by this Agreement or provided at law or in equity. The acceptance of Final Payment shall constitute a waiver of all claims by the Architect except those previously made in writing and identified by the Architect as unsettled at the time of the Final Request for Payment.

...

§ 12.1.7 In the event of a conflict between the provisions of this Section 12.1 and other provisions in this B133, the provisions of Section 12.1 shall control.

...

§ 12.2 OTHER CONDITIONS OR SERVICES

...

§ 12.2.1 Notwithstanding anything to the contrary contained in this Agreement, Owner and Architect agree and acknowledge that Owner is entering into this Agreement in reliance on Architect's experience and abilities with respect to performing the Services. The Architect accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Architect covenants with Owner to use its **best** efforts, skill, judgment and abilities to design the Project and to further the interests of Owner in accordance with the Owner's requirements and procedures, in accordance with the American Institute of Architects' professional standards, and in compliance with all applicable national, federal, state and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Prior to the commencement of construction, Architect shall certify in writing to Owner that the Drawings and Specifications and all drawings and the improvements when built in accordance therewith conform to all applicable governmental regulations, statutes and ordinances then in effect. Architect represents covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the Services.

PAGE 28

§ 12.2.2 The Architect represents, covenants and agrees that all of the Services to be furnished by the Architect under or pursuant to this Agreement, from the inception of the Agreement until the Project has been fully completed, shall be of the standard and quality which prevail among architects of similar experience, knowledge, skill and ability engaged in architectural practice throughout Texas under the same or similar circumstances involving the design and construction of a project such as the Project with all the amenities as set forth in the Drawings and Specifications.

...

§ 12.2.3The Architect represents, covenants and agrees that its special talent, training and experience cause it to be the prime professional on the Project and that because of such talent and training, Architect envisions the construction of the Project in its entirety and possesses the special skills which enable it to recognize dangerous conditions that a reasonable, prudent Architect having such special skills could anticipate may arise from the proper use of the Project after accepted by the Owner; as the design professional, it has knowledge which will enable it to recognize specific dangers that may arise from the proper use of the Project after accepted by the Owner; and, it recognizes that any management, employees, and agents of the Owner, plus guests and visitors are within a class of foreseeable persons who will be relying on the Project being designed in a professional and safe manner.

...

§ 12.2.4 Architect represents, covenants and agrees that its Project Drawings and Specifications will be accurate and free from any material errors and the shop drawings that it must approve will be accurate and free from any material errors relating to design intent. Architect additionally represents, covenants and agrees to the following: the design of the Project will conform to its foreseeable use as a project with all the amenities as set forth in the Drawings and Specifications; the result of the Drawings and Specifications, if built in accordance therewith, will be suitable for purposes for which the Project is designed; the result of Architect's inspection of the Project will be suitable for

purposes for which the Project is designed; and, the Project will be designed and the construction will be inspected in a workmanlike, professional manner and will be suitable for human occupancy and use. The Architect's responsibilities as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner of the Drawings and Specifications nor shall the Architect be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Architect's skill and knowledge in preparing the Drawings and Specifications. Notwithstanding the immediately preceding sentence, Architect may rely on any documents or information forwarded by Owner pursuant to Article 2 hereof.

...

§ 12.2.5 The Architect represents, covenants and agrees that the person directly in charge of the professional architectural work is duly registered under Tex. Rev. Civ. Stat. Ann., art. 249(a), as amended.

...

§ 12.2.6 Indemnification. To the fullest extent permitted by applicable law, the Architect and its agents, partners, and consultants (collectively "Indemnitors") shall and do agree to indemnify, protect, defend and hold harmless the Owner, Owner's respective Commissioners Court, elected officials, employees and agents (collectively "Indemnitees") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind or description (collectively "Liabilities") of any person or entity whomsoever arising out of, caused by or resulting from the performance of the Services or any part thereof provided that any such Liabilities (1) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to the injury to or destruction of tangible personal property including the loss of use and consequential damages resulting therefrom, and (2) are caused in whole or in part by any negligent act or omission of the Architect, anyone directly or indirectly employed by it or anyone for whose acts it may be legally liable. In this connection, it is agreed and understood that Architect shall not be responsible for any portion of the liability proximately caused by Owner's negligence or any other liability excluded by Texas Local Government Code Section 271.904.

...

§ 12.2.7 Joint and Several Liability. In the event more than one of the Indemnitors are connected with an accident or occurrence covered by the indemnification in Section 12.2.6 above, then each of such Indemnitors shall be jointly and severally responsible to the Indemnitees for indemnification and the ultimate responsibility among such Indemnitors for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee. The provisions of this Section 12.2 shall not be construed to eliminate or reduce any other indemnification or right which Owner or any of the Indemnitees has by law.

PAGE 29

§ 12.2.8 Insurance. Architect agrees to maintain a General and Professional Liability Insurance Policy to cover the liability of Architect connected with the performance of the services or any service covered by this Agreement in an amount equal to or exceeding the greater of the value of the Project and any other amounts specified in the Agreement, unless specifically agreed to by the Owner in a separate written agreement. Any such policy must either be for any occurrence as a result of that performance or, if limited to claims made, include at least a five (5) year extended reporting period. Architect agrees to furnish Owner Certificates of Insurance showing the said Policy to be fully paid, in full force and effect, and not subject to modification or change for the period specified in this Agreement.

...

§ 12.2.9 Time Extensions for Unusually Severe Weather. This provision specifies the procedures for the determination

of time extensions for unusually severe weather. The listing below defines the monthly anticipated adverse weather for the Contract period and is based on National Oceanic and Atmospheric Administration data for the geographical location of the Project:

...

| Monthly Anticipated Adverse Weather Calendar Days | | | | | | | | | | | | |
|--|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|---------------|
| <u>Jan</u> | <u>Feb</u> | <u>Mar</u> | <u>Apr</u> | <u>May</u> | <u>Jun</u> | <u>Jul</u> | <u>Aug</u> | <u>Sep</u> | <u>Oct</u> | <u>Nov</u> | <u>Dec</u> | <u>Annual</u> |
| <u>2</u> | <u>2</u> | <u>1</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>3</u> | <u>3</u> | <u>5</u> | <u>3</u> | <u>2</u> | <u>2</u> | <u>32</u> |

...

.1 Determination. The above schedule of anticipated adverse weather will constitute the base line for monthly (or portion thereof) weather time evaluations. Upon acknowledgment of the notice to proceed and continuing throughout the Contract on a monthly basis, actual adverse weather days will be recorded on a calendar day basis (including weekends and holidays) and compared to the monthly anticipated adverse weather tabulated above. The term actual adverse weather days shall include days impacted by actual adverse weather days.

...

.2 The number of actual adverse weather days shall be calculated chronologically from the first to the last day in each month. Once the number of actual adverse weather days anticipated above have been incurred, the Owner will examine any subsequently occurring adverse weather days to determine whether the Construction Manager is entitled to a time extension. These subsequently occurring adverse weather days must prevent work for 50 percent or more of the Construction Manager’s work day and delay work critical to the timely completion of the Project. The Owner will convert any delays to meeting the above requirements to calendar days and issue a Change Order in accordance with the Contract Documents.

...

.3 The Construction Manager’s schedule must reflect the above anticipated adverse weather delays on all weather dependent activities.

...

§ 12.3 In the event of a conflict between the provisions of this Article 12, and other provisions in this AIA B133-2014, the provisions of Article 12 shall control.

...

.2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

...

.3

...

.2 Other documents:

...

.1 Exhibit A Initial Information:

...

A-1 Proposal (Includes Scope of Work and Rate Schedule)

PAGE 30

A-2 Request for Qualifications

...

.2 Exhibit B Insurance Certificates

...

.3 Exhibit C A201-2017

PAGE 31

OWNER *(Signature)*

ARCHITECT *(Signature)*

(Printed name and title)

(Printed name and title)

...

OWNER:

ARCHITECT:

...
THE COUNTY OF HIDALGO

**RIKE-OGDEN-FIGUEROA-ALEX ARCHITECTS,
INC.**

...
By: _____ **By:** _____

...
Ramon Garcia,

Michael E. Alex

...
County Judge

AIA Principal and Vice President

...
ATTEST: _____

...
By: _____

...
Arturo Guajardo Jr., County Clerk

...
APPROVED AS TO FORM FOR COUNTY:

...
ATLAS, HALL & RODRIGUEZ, LLP

By: _____

...

Stephen L. Crain

PAGE 33

EXHIBIT A

...

to

...

Agreement between

...

Hidalgo County and Rike - Ogden - Figueroa - Alex Architects, Inc.

...

(Hidalgo County Services Facilities and Justice Center)

...

Initial Information

...

A-1 Proposal (Includes Scope of Work and Rate Schedule)

...

A-2 Request for Qualifications

PAGE 34

EXHIBIT B

...

...

to

Agreement between

...

Hidalgo County and Rike - Ogden - Figueroa - Alex Architects, Inc.

...

(Hidalgo County Services Facilities and Justice Center)

...

Insurance Certificates

PAGE 35

EXHIBIT C

...

to

Agreement between

...

Hidalgo County and Rike - Ogden - Figueroa - Alex Architects, Inc.

...

(Hidalgo County Services Facilities and Justice Center)

...

AIA Document A201-2017 General Conditions of the Contract for Construction, as modified

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:39:07 ET on 02/14/2019 under Order No. 1870689069 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B133™ - 2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)